The Conglomerates: A Neighbor's View

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Chairman Celler opened recent hearings on conglomerates before the House Subcommittee on Antitrust with the observation (among others) that General Electric Company is engaged in 14 business categories listed in the Standard Industrial Classification, IBM in 8 and duPont in 9. Whether these older multi-market companies would be classified as "conglomerates" by Chairman Celler, by the new free form corporations, or by each other, at least some acquaintance with the problems of the very large, multi-market company, as observed from a time before Corwin Edwards added the term "conglomerate" to the antitrust vocabulary, provides a different, and perhaps even useful, perspective of the newer firms.

The multi-market firm is not a new phenomenon. Some of the late medieval and early modern merchant traders had interests in such diverse fields as shipping, banking, real estate, farming, whaling, fur trade, railroads, manufacturing, textiles, and mining. The East India Company was an 18th century multi-line operation, and the zaibatsu are as old as modern Japanese industry. Diversification has been an accepted practice in American business for upwards of two centuries, and to some it may seem late in the day to challenge in principle the invention of the department store or the mail order house.

The new conglomerates are thus unique less in their morphology than in their ontogeny. The older multi-product firms can usually identify an ancestral core business with some relevance to their growth history. The new firms have been synthesized by a process of merger, tender offer, and the invention of novel forms of securities — sometimes called "funny money." The genius of their conception has centered on exploiting to the limit the interest deduction and the installment sales provisions of the Internal Revenue Code; the pooling of interests chapter in generally accepted accounting principles; the appetite of investors for combining the security of a creditor with the right to share in success through equity warrants; the pyramiding of price-earnings ratios; and perhaps also the fact that section 7 of the Clayton Act deals only with transactions which may substantially lessen competition or tend to create a monopoly — not with bumptious


1 Hearings on the Economic and Political Significance of Mergers and Acquisitions by Conglomerate Corporations Before Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary, 91st Cong., 1st Sess. 7 (1969) (opening statement of Chairman Emanuel Celler) [hereinafter cited as Conglomerate Merger Hearings].

2 Internal Revenue Code of 1954, § 163.

3 Id. § 453(b).
newcomers willing to build a single corporate roof over wholly unrelated businesses.\textsuperscript{4}

To many, the work of putting together the new conglomerates does not emerge as a form of economic activity with a socially useful objective, however rewarding it may be to some individuals. Even the most conservative would agree that tax laws and accounting rules which favor one form of business organization over another stand in need of reexamination. Yet the fact that a course of business conduct is selfishly motivated falls short of warranting government intervention. The issue is whether or not the conglomerate is socially or economically harmful, rather than whether or not it is selfish; and on this issue its ontogeny, however dubious, is not of primary relevance.

It is of some importance to the American economy to continue to provide a laboratory for the development of new forms of economic organization.\textsuperscript{5} Unless the new conglomerates are forcing early policy decisions by irreversibly restructuring the economy or creating unacceptable aggregate concentration, or unless there is no possibility that they may prove to be of value to the economy, the preferred policy is to let the conglomerate experiment run its course, with present action directed toward responding to some lessons already learned as to the need for changes in accounting practices, tax rules, and securities regulation. In this view, the main issues posed by the new conglomerates are whether we face a present emergency in restructuring or aggregate concentration; and whether the conglomerates offer possibilities worth a further laboratory experiment. Finally, the new conglomerates may need to be reexamined in the light of the general criticisms being directed toward all multi-market companies.

\textbf{Current Status of the Conglomerate Movement}

The rapid early development of the conglomerate movement raised a question as to whether the major American manufacturing companies were launched on a course leading to ultimate consolidation into one “General Everything Corporation.”\textsuperscript{6} The high price-earnings ratios placed on the leading conglomerates by an enthusiastic stock market gave them the appearance of a wave of the future, with a potential without clear limits.

It was, of course, evident from the beginning that the number of companies for sale at advantageous prices was finite, and that the concept of

\textsuperscript{4} For an excellent statement of the view that a go-go corporation is one that goes to the limit of law and morals, see \textit{Conglomerates: A Perspective}, Address by Arthur H. Dean at the University of Chicago, October 17, 1969.

\textsuperscript{5} J. Schumpeter, \textit{Capitalism, Socialism, and Democracy} ix (3rd ed. 1950).

\textit{"The fundamental source of industrial gain, the profits that the capitalist order attaches to successful introduction of new goods or new methods of production or new forms of organization." Id. (emphasis added).}

\textsuperscript{6} Or the Samson and Delilah company of Art Buchwald's invention. See United States v. Pabst Brewing Co., 384 U.S. 546, 553 (1966) (appendix to the concurring opinion of Mr. Justice Douglas).
a market for business firms implies the operation of a law of supply and demand. The recent judgment of the securities market on the future of growth by acquisition is reflected in the shrunkn price-earnings ratios of conglomerate stocks. The price of conglomerate shares, as a multiple of earnings, has thus fallen well behind the price of shares of some of the older multi-product companies. This loss of market enthusiasm for the new firms reflected a number of factors:

(a) Some of the conglomerates experienced substantial difficulty in assimilating their acquisitions. These difficulties have been reflected in reduced earnings growth.

(b) The possibilities of continued growth through acquisitions were clouded by the initiation of five test suits by the Antitrust Division.

(c) It became clear that there would be changes in the Internal Revenue Code which would make it more difficult to carry out acquisitions without incurring seriously discouraging taxes.

(d) The conglomerates have not been notably successful in acquiring companies numbered among the leaders in their fields. This fact, however helpful it might be for antitrust purposes, is calculated to generate reduced confidence in the quality of the conglomerates' assets.

(e) The widely publicized failure of Northwest Industries to take over Goodrich was a conspicuous reminder that the tender offer is less than irresistible.

(f) The Accounting Principles Board has drafted a proposed opinion

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7 One typical list is the following:

<table>
<thead>
<tr>
<th>Company</th>
<th>P/E Ratios</th>
</tr>
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<tbody>
<tr>
<td>Bangor Punta</td>
<td>10.2</td>
</tr>
<tr>
<td>City Investing</td>
<td>11.1</td>
</tr>
<tr>
<td>IT &amp; T</td>
<td>17.2</td>
</tr>
<tr>
<td>Walter Kidde</td>
<td>11.3</td>
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<tr>
<td>LTV</td>
<td>5.5</td>
</tr>
<tr>
<td>Litton</td>
<td>15.0</td>
</tr>
<tr>
<td>Signal Companies</td>
<td>10.9</td>
</tr>
<tr>
<td>US Industries</td>
<td>9.1</td>
</tr>
</tbody>
</table>


8 See, e.g., Ruckeyser, Litton Down to Earth, FORTUNE, April 1968, at 140.


which would eliminate pooling of interest accounting. The effect would be to force an acquiring company to revalue tangible assets and, should the value of the securities issued for the acquired company exceed the value of the tangible assets, to recognize intangible goodwill. The draft opinion has generated a good deal of controversy, but one may hope that, at minimum, accounting principles are about to catch up with the "old movie inventory" ploy, i.e., buying existing assets at a high price in cash and new securities; booking them at a much lower figure based on the seller's original cost less depreciation; and calculating future profits on sale or use of the assets from depreciated book rather than the price paid by the alleged profit-maker.

(g) Some of the less dramatic methods of the conglomerates for improving performance by accounting devices have been copied by prospective acquirees.

Most of the conglomerates are going through a period of testing and assimilation. They no longer seem to be on the verge of restructuring the American economy. The features of accounting practice and tax law which were important to the conglomerate movement have been discounted in the security markets even before changes in existing laws and regulations have been completed.

Signs are accumulating that this particular wave of the future has receded; for example, the FTC Report has tended to downstage the overall role of the new conglomerates in the current merger movement. In this report by the "Jeremiah of Mergers," Dr. W. F. Mueller, only 11 of the 25 most active acquiring corporations among the top 200 turn out to have been "so called new conglomerates." Not only have the new conglomerates been authoritatively deprived of their primacy of position as principal sinners in the new merger movement, but data published since the issuance of the FTC Report indicate that total merger activity (at least among large firms) has abated substantially.

11 American Institute of Certified Public Accountants (AICPA), Business Combinations and Goodwill 13 (Second Draft Aug. 27, 1969) (confidential memo). See also AICPA, A Critical Study of Accounting for Business Combinations, Accounting Research Study (ARS) No. 5 (1963). This unpublished opinion has received considerable criticism from various elements of the financial and accounting communities and its future is doubtful.


14 FTC Report 262.


The total number of mergers reported by W. T. Grimm and Company increased in
THE PROBLEM OF AGGREGATE CONCENTRATION

"Concentrate," as a matter of definition, means "to gather into one body, mass, or force." In its economic sense, it connotes a gathering of moderate-size firms into corporate giants, with consequences vividly drawn for the particular case of lawyers (among others) in a recent address by Attorney General Mitchell:

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.

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 businesssmen 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.

Economic concentration is a phrase that evokes the history of the disappearance of the Roman farmer into the great slave-operated estates; the zaibatsu of Japan; the land distribution problems of Southeast Asia; and the special rhetoric of Brandeis' Curse of Bigness. Quite plainly, the prospect of an American corporate yeomanry being gobbled up by the "General Everything Corporation" arouses instinctive popular objection.

Some measure of the extent to which the "General Everythings" are in fact taking over the more moderate-size firms in the manufacturing and mining sectors of the economy can be garnered from Internal Revenue statistics on the number of tax returns filed by mining and manufacturing

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170 over 1969, with a fourth quarter surge in activity attributed to anticipation of legal and accounting changes. See Wall Street Journal, Jan. 6, 1970, at 4, col. 1. The Grimm data, with its fourth quarter 1969 increase in mergers, cast doubt on the more simplistic conglomerate price-earnings ratio explanations of the recent merger movement. The decline in large mergers reported by McLaren, taken with the increase in total number of mergers reported by Grimm, suggest at least a possibility that mergers, as a business strategy, are now being pursued more by small firms than by large firms.

16 Webster's New Collegiate Dictionary (1961 ed.).

corporations in various size classes during recent years. In 1958, firms with assets of under $10 million filed 154,224 returns. By 1964, the number had risen (not fallen) to 192,207. While 1965 witnessed a decline in the number of returns filed to 191,714, preliminary figures in 1966 indicate that 193,433 returns were filed, representing a net gain of 39,209 for the period in question. At the same time, reported assets for these firms increased from $60,407 million in 1958, to $86,974 million in 1966—a gain of some $26,567 million, or 43 percent. In other words, during the 1958-1966 period, the population of small manufacturing and mining firms increased by 25 percent while their assets increased by 43 percent.

During this same period the $10-$100 million asset group registered a net increase of 703 firms, while their assets increased from $54,687 million to $74,676 million—a net increase of $19,989 million. Thus, this size class saw an increase in population of 36 percent, with a corresponding increase in assets of 37 percent. It is apparent from the growth in numbers and assets of moderate-size firms that we are not in fact witnessing a gathering of our corporate yeomanry into General Everything. Attorney General Mitchell's lawyer audience may lose an occasional moderate-size client to the merger movement, but the overall supply of new moderate-size clients is growing in numbers and fee-paying capability.

Despite these figures, there have been widely-publicized claims that "concentration" in the manufacturing sector of the economy is increasing. These claims derive from the fact that the number and size of large firms—say, firms with assets of over $100 million—have grown more rapidly than the number and size of firms with assets of less than $100 million. Much of this growth is no doubt a by-product of general prosperity, reflecting growth of smaller firms into larger ones. Some of it is due to inflation. But in some sense this over-$100 million group evidently accounted for a considerably greater part of the total increment to the national stock of manufacturing and mining capital than did the under-$100 million group. While a concurrent expansion of both groups evidently does not fit the elementary definition of concentration—a gathering of smaller firms into larger ones—the more rapid expansion of large firms does make it possible to say that the over-$100 million group had a higher percentage, or "share," of total assets at the end of the period than it had at the beginning.

The most widely used figures of the type just described appear in
Study Paper Number 2 of the Cabinet Committee on Price Stability, and the FTC Report. The impression created by figures such as those used in the Study Paper is typified by the remarks of George D. Reycraft at a panel discussion on the merger guidelines held in August 1968:

From 1957 to 1967, corporate manufacturing assets held by the hundred largest firms moved from about 45.8% to 47.7% and the share of the 200 largest rose from 55% to 58.7%. I think we are going to hear a good deal more about those numbers in the next Session of Congress and from the Federal Trade Commission. It is an interesting fact that had there have been no mergers during this period of time, the concentration figures in industry generally would have declined somewhat and if firms in the non-manufacturing industries had been included, the degree of concentration would have declined substantially.

So I suggest that we are going to be looking at Guidelines in the near future which are going to direct themselves toward conglomerate mergers, not in terms of competition, as the Antitrust Division Guidelines do, but in terms of absolute size and in terms of overall industry concentration. . . .

The Study Paper (and later, the FTC Report) accept a version of the Reycraft statement and argue that had there been no mergers, "concentration" figures (i.e., the percentages) would have declined. According to the argument, between 1960 and 1967 the top 200 firms (per their 1967 ranking) had acquired assets equal to 4.3 percent of total 1967 assets; and if these assets are deducted from the assets of the top 200 and added back to the assets of the "all other" category, the growth rate for "all others" would approximate the growth rate for the top 200. The statistical result of the argument depends on returning the acquired assets to "all others" without returning to the top 200 what the top 200 had paid for the acquired assets. The argument also assumes that the "all other" group would have experienced the same general prosperity, as measured by capital growth, even if the lucrative possibilities of the merger market had not existed—a not altogether plausible assumption.

While anyone with the normal degree of sympathy for the underdog would be less than completely happy with the apparent fact that large firms—over $100 million, the top 200, the top 100, or the top 10—have grown more rapidly than the small manufacturing firm sector, only about 23.4 percent of the national stock of plant and equipment is in the manufacturing sector. Overall, services are increasing their share of the GNP relative to durable and nondurable goods, and whether the economy as a whole is moving toward greater concentration is very doubtful. In any case, the statistical record on capital formation counsels a certain caution in dealing with proposals to block the development of large business units—at least if one believes that it is in the interest of human beings to get the

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world's work done with a maximum input of capital and a minimum input of human effort. There is certainly no statistical indication that the typical American manufacturing firm of moderate size is in urgent need of artificial respiration, or that it stands in discernible danger of disappearance within the foreseeable future.

THE POSSIBLE ECONOMIC CONTRIBUTION OF CONGLOMERATES

An assessment of the possible economic contribution of conglomerates overlaps the case for more conventional multi-market firms; but, to borrow again from the biologists, the overlap is in morphology, and the differences of ontogeny have economic significance.

A. Reasons for Diversification and the Conglomerates

The business decision process behind diversification has not yet been the subject of extensive objective research. The absence of such research is to be regretted, because there is reason to regard the conventional explanations with considerable skepticism. Nevertheless, a number of hypothetical reasons have been advanced for the movement toward diversification (whether by internal growth or by acquisition) among American business corporations. Perhaps the most common stereotype explanation is that a company, finding itself with more money than necessary to meet the capital requirements of its own businesses, invests the surplus in some new business.25 There is thought to be a tax reason for investing profits rather than distributing them to stockholders, since the investment enhances the capital value of the stock, whereas the dividend distribution would be taxed as ordinary income to the stockholders. In addition, the interest of management in expanding into new fields is explained in terms of the satisfactions — financial and psychological — associated with increases in the size of the organization. Less invidiously, diversification is rationalized as a form of risk spreading — an expression of hope that several different markets will not go bad all at once.

The portrayal of the typical business corporation as endowed with more cash than it wishes to use in its existing business or to distribute in dividends is not particularly credible. In an expanding economy with rising prices, charges to depreciation are unlikely to suffice to replace existing plant, let alone finance the expansion necessary to keep up with an existing growing business. Consequently, substantial retention of earnings is likely to be necessary to enable a business to do no more than hold its position in a growing market. A full employment economy implies a rising cost of labor and spot manpower shortages, thereby intensifying pressure toward new capital investment in automatic equipment. The general concept of Amer-

25 See, e.g., 1968 WHITE HOUSE TASK FORCE REPORT ON ANTITRUST POLICY, 115 CONG. REC. 5642, 5645 (daily ed. May 27, 1969) [hereinafter cited as NEAL TASK FORCE REPORT]; FTC REPORT 79.
ican business generating extensive surplus funds for diversification is also
difficult to reconcile with a persistent rise in business borrowings from
banks, particularly in the face of record-breaking interest rates.26

The urge to retain earnings may also be somewhat overstated. The
effect on the value of the company's outstanding shares from increasing its
dividend rate may well be more favorable than the effect of reporting to
stockholders an investment in an unfamiliar business; and the picture of a
management which has been successful in one business experiencing a con-
suming desire to hazard its good record and increase its workload by ex-
cursions into other and less familiar businesses has no a priori plausibility.
There is at least a possibility that necessity plays a much larger part in cor-
porate diversification than most observers suspect. This is particularly true
if the term "necessity" is understood to include the obligation of corporate
management to use the assets of the corporation to the best advantage.
Some examples may illustrate the point.

The development of a new and competitive product frequently con-
fronts manufacturers of older products with a Hobson's choice between con-
tinuing to concentrate on the old product and diversifying into the new
product. As an obvious example, the invention of the aircraft gas turbine
presented manufacturers of piston engines with a choice between going into
the jet business or accepting the loss of a great part of their future prospects.
Less obviously, the development of gas turbines for aircraft presented manu-
ufacturers of steam turbines with a possible opportunity to apply steam
turbine technology to gas turbines, under a long-term threat that the gas
turbine might ultimately be a substitute for some steam turbines. As a
result, some steam turbine builders found themselves in the aircraft engine
business and some piston engine builders became manufacturers of gas
turbines — in no case, one suspects, as the result of an exercise in complete
freedom of choice.

The development of the computer presented a similar problem to
manufacturers of punch card accounting machines, e.g., IBM and Sperry
Rand. Again, it may be doubted whether either company felt that entry into
the computer business was a decision as to which it had any real choice.

New product technology frequently ignores existing market patterns.
The electronic and chemical industries are extreme — but not unique —
examples of the impossibility of keeping technological competence within
the bounds of any definable historic product markets.

There is another aspect of technology which tends to encourage di-
versification. Frequently, one of the more promising ways to improve an
existing product is to develop a new component or a new material for use
in the product. The manufacturer who improves components and materials

26 See, e.g., NAT'L INDUS. CONF. Bd., BUSINESS TRENDS, Nov. 10, 1969, showing an
increase of 10.5 percent in business loans for the week ended October 29, as compared
to the previous years.
for use in its own products may find that it has an engineering asset which can be fully exploited only by manufacturing and selling the improvement as a separate product line.

One has to guess at the odds, but it is better than an even bet that a business has reached a point of decline if it generates available funds from depreciation and undistributed earnings faster than they can profitably be absorbed in the business. Thus, the railroads which have reached the conclusion that some portion of their available funds should be invested outside the railroad industry are in effect expressing understandable doubts as to the future of the railroad industry.27

Without attempting an impossible judgment as to whether diversification under some measure of economic compulsion is more or less common than diversification for its own sake, it is still clear that the two kinds of diversification present different policy questions. There may be economic objections to a rule of law which would prevent an entrepreneur from putting a number of business entities under one corporate roof after the manner of the new conglomerates. But the economic objections are not the same as the objections to legal restrictions which would prevent a company from entering additional markets in the interest of making the most efficient possible use of its existing physical, technological, or managerial assets, or simply redeploying an existing organization from a declining industry to one with better prospects.

Conversely, to the extent that the older multi-market firms in fact diversify more from necessity than from choice, the new conglomerates may have filled a need to broaden the market for business firms. Clearly, one factor which contributed to the development of the conglomerate is the existence of a demand for a market in which going businesses may be sold. The owner of a business often has good reason to liquidate his investment in it. The enterprise may not be suitable for conversion to a publicly held corporation, and in any event the sale of a business to the public through underwriters, with underwriting commissions and the accompanying cost of registration, is expensive at best and impossible unless the business is of substantial size.

The early decisions of the Supreme Court under the Celler-Kefauver Act28 markedly reduced the most obvious markets for businessmen who wish to sell out—namely, their competitors, vendors and customers. Statistically, the number of horizontal and vertical mergers, as a percentage of the whole, declined markedly, with the balance shifting heavily toward conglomerate

27 See, e.g., Wall Street Journal, July 25, 1968, at 1, col. 4 (commenting on plans of the Penn-Central).
acquisitions.29 This is not to say that the conglomerate merger movement is a by-product of the Celler-Kefauver Act. The Act does not explain the increase in the number of corporate mergers since 1950. The most that can be said with any confidence is that if the most recent merger movement had occurred under pre-1950 antitrust laws, the conglomerates would have played a smaller role. What they did was, in some uncertain degree, to fill a gap in the market for firms created by the amendment of section 7.

B. Management and Organization Potential of the Multi-market Firm

Structurally, both the new conglomerates and older multi-market firms characteristically include an echelon of division managers, each with overall responsibility for product design, manufacturing and selling in a single market, or in a few closely related markets. Both kinds of firm also include a headquarters management group, and it is quite possible that as a problem in industrial organization, the conglomerate issue resolves into a question as to the role and usefulness of the headquarters management group.30 This is not, however, a question that invites any simple answer. As a first approach, one can draw on current organization theory for some tentative indications as to the appropriate function of headquarters management in a multi-market firm, suggested by such terms as management specialization, organization slack, asset management, management appraisal, and systems management.

I. Management Specialization

Current organization theory suggests that different levels of management should be specialized to the making of different specific types of decisions.31 This concept entails at least partial rejection of the older pyramid concepts of management in which men at the higher levels of management were looked upon as the wiser and more mature—or more ingenious—counterpart of men at the lower and middle strata of management, to be consulted on generally the same types of decision as might be initiated at the lower levels of management whenever the dollar significance of the decision warranted higher level consultation.

The conglomerate company may exemplify the development of specialization in a new level of management superimposed on the acquired firms and specialized to the investment, capital planning and financial functions. The usual advantages of specialization can be expected. Financial planning for the enterprise is likely to be done better by experienced individuals, while recruitment of competent management for the operating businesses is simplified because the candidate is not required to have the

29 See Studies, supra note 22, at 77, fig. 11.
30 For this provocative suggestion, the writer is indebted to Thomas Paine, presently Administrator of NASA, and formerly with General Electric Company.
special skills of a securities analyst. Perhaps most basic, the shareholder interest in resource allocation is likely to be somewhat better represented by individuals with little personal commitment to any one of the diversified businesses in which the firm engages.

2. Organization Slack

The modern concept of organization slack may also be relevant to the headquarters role in the new conglomerates. The phrase “organization slack” is descriptive of the tendency of business (and other) organizations to expand and undertake comparatively marginal programs in times of prosperity. The management psychology behind this phenomenon includes the desire for pleasant interpersonal relations within the organization, the interest of management in the growth and development of the business, and a touch of “empire building.” There is a certain plausibility in monitoring programs with an uncertain payoff in the distant future from a perspective comparatively free of the psychological commitments which create organizational slack. At least potentially, the conglomerate seems to offer a mechanism for such monitoring.

3. Asset Management

In assessing the long-term role of conglomerate management, it must also be recognized that in addition to the normal operating problem of allocating resources among going businesses, the redeployment of resources from old to new areas of diversification is a continuing business problem, not simply an occasional problem of single-line companies. The usual prediction is that the pace of technological change is more likely to increase than to slow down. An increasing, rather than declining, rate of change in the social and economic environment in which business firms operate is also the accepted prophecy. The need for improved management mechanisms for coping with change is obvious, and these mechanisms will almost have to include financial control groups with a minimal career commitment to any specific field of business.

4. Management Appraisal

Another role for the headquarters group is suggested by the classic line of criticism to the effect that corporate management is comparatively immune from shareholder removal for marginal incompetence. The conglomerate headquarters group has obvious advantages over the investment trust or the securities market in assessing management competence at the level of division or subsidiary operations. The conglomerate has access to more information; its appraisal program can be more persistent and con-

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tinuous. And when in doubt as to the competence of the management in place, the conglomerate can assess the available alternatives and exercise a power to bring in better managers, rather than resort to selling off the investment — the usual recourse of dissatisfied investors.

There remains the question of whether the top layer of management in a conglomerate is itself adequately responsible to shareowners. This is not, however, a simple counterpart of the older question as to management of operating companies. The role of top conglomerate or diversified management is inherently more attuned to the investor viewpoint in dealing with the operating subsidiaries or divisions, since headquarters management in a multi-market company lacks a personal commitment to a single line of business. It is also easier for the investing public to appraise conglomerate management performance, since the management of a conglomerate is not in a position to attribute unsatisfactory profits to transient conditions in any one business. Finally, in terms of the national interest in economic productivity, there may be a little less at stake, in that below average performance by a conglomerate's top managers does not necessarily affect the productive efficiency of the constituent enterprises.

5. Systems Management

Historical modes of organizing separate business firms and separate markets to provide economic services are sometimes capable of improvement. As a highly simplified example, transportation of cargo on the Great Lakes has traditionally involved, among others, naval architects who design the ships; other architects who design cargo handling facilities; shipbuilders who construct the ships; contractors who build the terminals; separate firms which operate the ships; still others which run the terminals; and last, but by no means least, the shippers who supply the cargo. Each of these participants has its own profit interests, its own traditions, its own trade secrets, and its private perspective on its own needs and the needs of related firms. Litton has undertaken development of a unified system of transportation on the Great Lakes, consisting essentially in designing and building the major parts of the transportation system for the direct benefit of the system as a whole, with minimal stress on the discrete interests of the separate parts.34

This concept of "systems management" embraces whatever possibilities may exist for answering the question of why it is possible to go to the moon, but not possible to solve some conspicuous problems much closer to home. Perhaps the broader applications of systems management are possible only in an outer space free of entrenched human self-interest. For present purposes, it is enough only to note that no business organization can explore the possibilities of the systems approach to major economic functions so

long as the firm is tied, ideologically or by law, to a narrow group of historic markets.

All this is not to suggest that the actual management behavior of either the new conglomerates or older multi-market firms conforms very closely to the possibilities. The empirical research is scanty, and the uses of executive time notoriously mix a large element of response to urgency with more thoughtfully planned effort. At least one unpublished study of a sample of new and old multi-market firms produced indications that headquarters management in the new firms intervened more actively in division operations than was the practice in older multi-market firms. Headquarters intervention was measured by such indicators as telephone bills and executive time spent in travel to plant locations. The older firms had large central staffs, built up from "mother division" staffs as new businesses had been added. The newer firms typically had not added headquarters staff much beyond the personnel needed for the acquisition program, and in the absence of staff experts, the new breed of headquarters executive who wishes to know what is happening in the operating divisions apparently has to go see for himself. This behavior pattern may help explain why conglomerate executives frequently see themselves as bringing better management to the acquired firms. That, plus the additional fact that management methods are undergoing such rapid development, means that there are very few firms where an aggressive newcomer could not accelerate the management innovation process.

The conclusion that does suggest itself is that there is a reasonable basis in organization theory for continuing to experiment with the multi-market firm. Subdividing the management function between headquarters and operations executives is a respectable form of specialization, not unlikely to facilitate gains in decision-making and planning efficiency ranging from the marginal to realization of the more epic prospects of the systems approach.

CRITICISMS OF THE MULTI-MARKET COMPANY

A. Cross-Subsidization

The principal economic arguments against conglomerates are variants of the proposition that, since conglomerates have total resources disproportionate to their needs in any given market, they have the power to use their total resources to destroy or weaken competitors in any one business by loss selling or the threat of it, i.e., to "restructure" the markets in which they operate by "cross-subsidization."
The notion that business corporations with deep treasuries are likely to use their funds to discipline a particular market or drive out smaller competitors in the hope of thereafter exacting monopoly or oligopoly prices is a warmly cherished feature of the American antitrust tradition. The potency of the argument may be judged from the fact that it has had the unlikely effect of making the National Farmers' Union a dedicated supporter of the Robinson-Patman Act. Yet in its simpler form, the theory does not explain why even a small competitor in almost any market should not go into partnership with anyone of numerous sources of large capital funds—banks, insurance companies, investment funds, or private owners of very large fortunes—and create a monopoly.

Perhaps as good a reason as any for the persistence of the concern over predatory pricing is that those who regard it as a major problem have never felt called upon to attempt the exercise of preparing a concrete proposal for taking over a particular industry via predatory pricing. In preparing such a business plan, it would be necessary to keep in mind four or five points:

(a) As long as a firm's competitors can recover their variable costs, it will pay them to continue in production rather than retire from the market. To be effective, therefore, the firm's below-cost selling will have to be below variable costs. The level of variable costs

blunders. A relevant case is that of predatory pricing. For many years it was believed that large sellers would frequently sell below their cost in order to destroy their competitors. This belief, sustained by victims' anecdotes much like those we now read about in the fraud area, spurred enactment of section 2 of the original Clayton Act and other statutes. In 1958, a scholarly study of the Standard Oil Trust showed that, even before section 2 was enacted, the most notorious predator of them all had not, in fact, employed predatory pricing; the study also supplied reasons why, as a matter of economic theory, such pricing is rarely a rational strategy for monopsonizing. McGee, Predatory Price Cutting: The Standard Oil (N.J.) Case, 1 J. Law & Econ. 137 (1958). This study has never been refuted, and is widely accepted. See Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv. L. Rev. 1313, 1339-52 (1965). And they are corroborated by the extraordinary paucity of cases over the years in which predatory pricing could plausibly be inferred. Predatory pricing is now regarded by most students of antitrust as very largely a mythical beast. The belief in its reality was based on the same kind of casual, anecdotal evidence now adduced, again without good basis in theory, to create belief in the existence of a serious problem of consumer fraud.


38 Cf. Conglomerate Merger Hearings at 20 n.1 (remarks of Dr. Willard F. Mueller). Dr. Mueller recognizes that the single-market firm could make the “investment” decision. He also suggests three reasons why a single-market firm might find the “investment” less attractive than would a multi-market firm: (a) the possibility of short run negative total profits; (b) inability to generate the needed funds internally (an assumption hard to reconcile with the profitability of some single-line firms); and (c) inability to benefit from the investment in other markets. No a priori basis is advanced for supposing that (a) and (b) are less serious deterrents to division managers of multiple market firms than to independent owners of single market firms, nor are any empirical examples given where predation in one market has paid off in another market.
differs widely from industry to industry, but for the benefit of those unacquainted with industrial cost structures, the implied price cut would typically run on the order of 30 to 60 percent and represent a considerable multiple of profits.

(b) Whatever variable costs may be at the beginning of a price war, they are likely to get lower as the battle progresses. The history of cost reduction in *Utah Pie Co. v. Continental Baking Co.* is instructive, with profits surviving radically declining prices.

(c) It will be necessary to include plans for expanding the firm's production facilities to the extent necessary to supply the entire market. Otherwise, competitors can stay out of the market until the firm's facilities are entirely loaded (at prices far below the firm's full cost) and then return to the market at prices equal to their variable costs or somewhat more, depending on the importance of delivery schedules to customers in the market. In addition, the firm's new production facilities will have to be adequate to supply not only the volume sold at the old price, but also the expanded volume which can be sold at or somewhat below variable costs, since otherwise, competitors would have room to survive indefinitely in this expanded market. In other words, the firm is in the position of planning for construction of facilities considerably in excess of anything it can expect to load at a price sufficient to recover full costs.

(d) In preparing this plan for a skeptical appropriations committee, it will be necessary to deal with the contingency that some of the customers in the market, observing what is going on, may wish to protect themselves from dependence on a single source of supply by a defensive acquisition of one of your competitors (presumably, at some point your competitors will be up for sale at a bargain price). If, perchance, these defensive customers include such firms as Sears or General Motors, the problem of protecting against this contingency may not be soluble. More broadly, it will be necessary to deal with the risk that some or all of the competitors will eventually be acquired by others with resources equal to the firm's and who are willing to stay with the industry until prices start going back up.

(e) Some estimate of the firm's prospective monopoly profits will be required, *i.e.*, the difference between the monopoly price and the full costs of output at the monopoly level. Against this prospective return, it will be necessary to weigh the cost of acquiring the monopoly, measured by the losses incurred in selling below full costs over a period likely to run several years and the cost of constructing facilities considerably in excess of those required at monopoly output levels. Potential monopoly profits are largely a

function of elasticity of demand in the particular market, subject to the reservation that a program of drastic price increases will frequently provoke customers to postpone purchases, to go into the second-hand market, or to seek out substitutes which may not be completely rational equivalents for the firm's product. In estimating the time required to carry out the program, it may therefore be necessary to plan for gradual price increases over a period of several years to bring below-variable-cost prices up to monopoly levels.

As one might expect from the parameters implicit in such a plan, the few decided cases where predatory pricing has been successfully claimed have involved local, rather than national, markets, with most of the victims apparently already on the ragged edge of failure.\(^4\)

Acquisition of a monopoly by predatory pricing would constitute an exceptionally public violation of section 2; and in Sherman Act territory, a study of the economic shortcomings of such a scheme is of interest primarily as a preface to examination of a slightly less ambitious abuse of pricing — namely, as a punishment for competitive price cutting. The theory is that in an industry made up of small firms, entry by a large firm chills the preexisting competitive ardor of the small firms and converts them into timid followers of pricing policies administered by the large entrant.\(^4\)

This timidity is attributed to the small firms' inability to survive a price war as long as the large firm could survive it. From the point of view of the prosecuting authorities opposing a merger, this theory has the special attraction that a prima facie case can be made from the subjective testimony of interested smaller competitors, who as witnesses can easily be presented as

\(^4\) The cases are collected in the opinion of the court of appeals in Anheuser-Busch, Inc. v. FTC, 289 F.2d 835 (7th Cir. 1961).


The liquid bleach industry was already oligopolistic before the acquisition, and price competition was certainly not as vigorous as it would have been if the industry were competitive. Clorox enjoyed a dominant position nationally, and its position approached monopoly proportions in certain areas. The existence of some 200 fringe firms certainly does not belie that fact. Nor does the fact, relied upon by the court below, that, after the merger, producers other than Clorox "were selling more bleach for more money than ever before." In the same period, Clorox increased its share from 48.8% to 52%. The interjection of Procter into the market considerably changed the situation. There is every reason to assume that the smaller firms would become more cautious in competing due to their fear of retaliation by Procter. It is probable that Procter would become the price leader and that oligopoly would become more rigid.

\(4\) Id. (emphasis added and citations omitted). Cf. Reynolds Metals Co. v. FTC, 309 F.2d 223, 229-30 (D.C. Cir. 1962):

The power of the "deep pocket" or "rich parent" for one of the florist foil suppliers in a competitive group where previously no company was ever large and all were relatively small opened the possibility and power to sell at prices approximating cost or below and thus to undercut and ravage the less affluent competition.

Apparently, the "predatory" pricing complained of was initiated by Reynolds' less-than-intimidated competitors. See Turner, Conglomerate Mergers and Section 7 of the Clayton Act, 78 Harv. L. Rev. 1313, 1343-44 (1965).
properly canonized underdogs. If the acquiring firm has, in the name of foothold sales promotion or otherwise, introduced some price reductions in the industry, its competitive initiatives can be portrayed as improper and anticompetitive.

Another facet of the entrenchment theory is its applicability to the acquisition of a leading firm in a concentrated industry by a large multi-product or conglomerate company. Here, the argument is that no other potential challenger will risk entering an industry in which one of the leaders has the financial capacity to wage a prolonged price war.42

In a market with enough sellers to provide the perfect competition of theory, neither a small independent nor a similarly small division of a large conglomerate would stand to gain by charging above or below the going market price. The cross-subsidization-entrenchment argument presupposes imperfect competition; and as applied to an independent who may feel that his pricing discretion is affected by the conglomerate, the argument is limited to independents with a large enough market share to force their competitors to react to a price reduction, i.e., to single market oligopolists.

This naturally leads to the question of why a single line oligopolist should wish to reduce its prices or to forego an opportunity to follow a competitor's price rise. The conventional possibilities include: (a) disagreement as to the price level which will generally maximize net revenue for all sellers in the market; (b) the desire to increase market share; (c) the desire to meet various forms of nonprice competition by others, or to check promotional efforts of a newcomer to gain or increase its market share; (d) the desire, by a spot price reduction, to obtain a particularly attractive order. A price move in furtherance of any of these objectives carries risk of triggering an excessive reaction by competitors, both independent and conglomerate; and the question is whether or not conglomerates are inherently more likely to over-react than are other competitors.

The recent FTC Report argues in effect that the conglomerate is less restrained in pricing in any one market because underpricing in one market has less effect on its total earnings than on the total earnings of the single-line companies in that market.43 What this argument disregards is the fact that in the conglomerate it is the division manager who is held responsible for pricing in his market. The effect on his division's results is as striking as the effect on a single-line firm; and the procedures for dealing with a division manager who prices himself into inadequate current profits are both more certain of application and more summary than procedures for disciplining similarly errant presidents of independent corporations.

As a generalization, there is little reason to believe that a prudent firm will intentionally forego the best obtainable current price in the hope of obtaining higher total profit margin at some later date. The future prices

42 FTC REPORT 402.
43 See, e.g., id. at 418-20.
still dependent on the uncertainties of competitors' behavior — including the possibility that they will come to the preferred price level as well without as with a price war.

The FTC Report largely confirms the impression that punitive pricing by conglomerates is not a significant feature of the American economy. From its 55 years of clinical experience, the staff was able to cite only three markets where the phenomenon had allegedly occurred: (i) The Safeway Case: Groceries in Texas and New Mexico in 1954-1955; (ii) The Kraft Case: Jams and jellies in Washington-Maryland-Virginia in January-February 1961; and (iii) The Anheuser-Busch Case: Beer in St. Louis from October 1953 to March 1955.

In Anheuser-Busch the FTC Examiner found that there was no cross-subsidization, and the Seventh Circuit concluded that the FTC failed to prove any "present, actual injury to competition." 45

The most important question raised by all three examples is whether or not the punitive strategy proved profitable, and the FTC Report does not deal with this question. There are earnings figures in the Safeway case indicating that Safeway's total profits improved considerably after it was forced to discontinue loss selling. 46 The Kraft case involved a "two cases for the price of one" promotional offer to retail stores who took advantage of it by buying their requirements for some weeks ahead. It is at least doubtful that the promotion was profitable to Kraft. In the Anheuser-Busch case, the opinion of the Seventh Circuit makes it quite clear that Anheuser-Busch was following a pricing strategy designed more to recover lost market position than to add to its profit margin. 47 In short, the FTC Report is not responsive to the view that in a profit-maximizing economy, predatory or punitive pricing will rarely occur, simply because in any normal circumstances it is unprofitable. The risk that multi-market firms will deliberately engage in unprofitable behavior or slip into it by misjudgment is, on normal economic assumptions, not of sufficient significance to suggest the need of policy action.

B. Reciprocity

The economic critics of conglomerates have placed major emphasis on reciprocity, that is, "the practice of taking your business to those who bring their business to you." 48 While the opportunity, if not the propensity, for

44 Id. at 406-43.
45 Anheuser-Busch, Inc. v. FTC, 289 F.2d 835, 838 (7th Cir. 1961): "The respondent Anheuser-Busch, had embarked on its allegedly punitive pricing policy after losing (mostly to competitors) some 35% of its sales value in one year." The FTC Report gives no figures on Anheuser-Busch's sales losses preceding the price reductions.
46 FTC REPORT 420.
47 See 289 F.2d at 838-40.
48 FTC REPORT 323.
THE CONGLOMERATES

reciprocity is said to be increased by participation in many markets, reciprocity is not ordinarily a significant factor in the marketing of consumer goods, since the consumer is not usually in the position of offering a service of his own to his suppliers. Reciprocity is, however, a factor in industrial purchasing, but exactly how significant a factor is difficult to determine.

Industrial purchasing is conducted with a view to resale at a profit, and the pressure to buy at the best available price is obvious and direct. The payment of a price premium to a vendor on the basis of reciprocity has no business justification except as a form of price reduction on reciprocal sales to the vendor. If, in other words, Trucking Company X pays a higher price for General tires than X would have to pay some other tire manufacturer in order to get General to give Trucking Company X its freight business, what the trucking company is in substance doing is allowing General a concealed rebate on freight rates.\(^49\) The usual rules of the reciprocity game, as well as the profit motive, seem to require that reciprocity not be considered as a factor in industrial purchasing unless all other factors are equal (i.e., price, quality, and delivery).\(^50\) The distaste of many firms for reciprocity arises precisely from the necessity of admitting that its competitors really are equal to it in price, quality, and delivery. Such admissions are more than distasteful; they present substantial problems of morale and motivation within the business organization.

There are other reasons why reciprocity is not more widely favored in the business community. The marketing executive is faced with the dilemma that if his competitors are in an equally good position to use reciprocity, engaging a trade relations director will increase expenses without increasing sales; while if his competitors are not in a position to use reciprocity, the danger arises that the competition will respond with an unwelcome price reduction.\(^51\) To the purchasing department, a reciprocity program reduces the range of discretion open to it and is at best an extraneous burden on its operations.

It is not altogether evident that effective elimination of reciprocity would actually make it easier for new suppliers to break into a given market. In the absence of reciprocity, it is conceivable that many corporate purchasing departments would — as they do — limit themselves to one, two or three suppliers as a matter of purchasing convenience. Thus, reciprocity might cause a company selling supplies to a given industry to divide its reciprocal purchases among more of its customers than it would otherwise accept as vendors.

There is also reason to doubt that reciprocity necessarily operates to the advantage of large or diversified companies. The game turns on the balance of payments, and, as the FTC Report indicates, trading off pay-

\(^49\) Id. at 386.

\(^50\) Id. at 387: "[I]t's never equal."

\(^51\) This risk, of course, underlies part of the economic argument by Stigler and Coase that reciprocity is procompetitive. See id. at 328 n.2.
ment balances can be practiced through a long chain or title: if Company A has a trade surplus with Company B, Company B may offset this surplus by its own trade surplus with Company C, which has a trade surplus with Company A.\textsuperscript{52} Perhaps Leontieff tables offer a hint as to the ultimate solution of the reciprocity problem.

This unenthusiastic view of reciprocity as a profit making strategy finds some slight support in the data from one of the more spectacular reciprocity programs to find its way into the court—that conducted by General Dynamics after it acquired Liquid Carbonic in an effort to diversify from defense to commercial business.\textsuperscript{53} The reciprocity program was accompanied by a 3.3 percent reduction in sales between 1960 and 1962.\textsuperscript{54} The suspicion that reciprocity is a form of business ineptitude is not lessened by the fact that between 1957 and 1962, Liquid Carbonic's share of the total tons of carbon dioxide shipped by the six leading producers increased from 33.6 to 36.1 percent,\textsuperscript{55} particularly if one refers back to the district court opinion, where the \textit{FTC Report} sentence is completed with the words "and from 36.2 to 37.5 percent in dollar amounts."\textsuperscript{56} A 1.3 percent increase in dollar share for a 2.5 percent increase in share of physical volume is a highly ambiguous path to profit growth.

Reciprocity is, in the present state of the law, likely to amount to a violation of section 5 of the Federal Trade Commission Act and probably also of section 1 of the Sherman Act.\textsuperscript{57} As a business tactic, it has little appeal except in industries where competitors are prepared to admit that each other's offerings are "equal." Curiously, the most striking reciprocity cases go back to the 1930's and arise out of efforts to break legally regulated monopoly prices (railroad and terminal rates) by setting up a vendor to the railroads (in two cases) and a captive terminal company (in the third).\textsuperscript{58} It is difficult to discern any persuasive basis for concluding that either the effects of reciprocity are unambiguously evil or that the propensity to engage in it is so strong that otherwise reasonable forms of business organization must be suppressed in order to avoid reciprocity.

C. Potential Competition

The development of the multi-product firm evidently adds measurably to the range of potential competition. The potential entrant is not con-

\textsuperscript{52} Id. at \textit{378-80}.
\textsuperscript{54} See \textit{FTC Report} \textit{352}.
\textsuperscript{55} Id. at \textit{353}.
\textsuperscript{56} 258 F. Supp. at \textit{51}.
\textsuperscript{57} For a review of the case law, see \textit{The Antitrust Attack on Reciprocity and Reciproc-
\textsuperscript{58} See \textit{id.} at \textit{55,549}. Two shippers had set up vendors to the railroads, leading to Waugh Equip. Co., 15 F.T.C. 392 (1931) and Mechanical Mfg. Co., 16 F.T.C. 67 (1932). See also California Packing Corp., 25 F.T.C. 379 (1937) (the corporation set up its own terminal subsidiary).
ceptually limited to firms whose engineering, manufacturing, or distribution facilities are readily adapted to the market under consideration. The economy moves noticeably closer to the economic postulate of perfect mobility of resources; if a given market offers an above-normal rate of profit on the cost of entry, the venture company is not necessarily inhibited by the lack of any present ties to that market. The lesson that diversification need not be limited to neighboring markets, once taught by the new conglomerates, is not lost on older multi-market firms. Also, the greater the diversity of operations of a given firm, the greater the likelihood that it will already have available some part of the experience and resources needed to enter any given market.

One obvious effect of enlarging the number of potential entrants is to reduce the likelihood that entry by acquisition on the part of any one potential entrant will perceptibly affect the competitive structure of the market. But much more broadly, in any market (and hence in all markets) the entry forestalling price and the competitive price can be expected to converge as the number of firms including that market in their search for above-average profit opportunities expands. Theoretically, the buildup in potential competition implicit in the growth of the free-ranging multi-product firm would appear to have pro-competitive effects of a general scope and importance completely offscale in relation to the rather finicky case made for the anti-competitive effects of particular conglomerate mergers.

Part of the economic weakness of an inflexible anti-acquisition policy is that such a policy furnishes established firms in any given market with some degree of protection against entry by a newcomer inadequately seasoned in the folkway of the trade. The Neal Task Force Report suggests a rule that outsiders should be permitted to enter a concentrated market by acquiring one of the smaller firms in the market, but not by acquiring one of the leading firms. Here the hope seems to be that the acquiring company will develop a smaller firm at the expense of the larger firms in the market, with a resulting enhancement of competition.

There have been some instances where a new entrant has effected a radical dislocation of a concentrated market by a plan of entry which included some small acquisitions. The history of General Motors and the locomotive business is perhaps the best known. One may, however, cherish a certain skepticism as to whether the history of the locomotive industry would have been any different if General Motors had proceeded by the acquisition of American Locomotive, Baldwin, or Lima, instead of proceeding by a foothold acquisition of a small diesel engine builder.

Finally, there is the argument that entry into a new market by internal

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59 But cf. Sherman & Willett, Potential Entrants Discourage Entry, 75 J. Pol. Econ. 400 (1967), where it is argued that since multiple potential entrants are a deterrent to entry, the entry-forestalling price will be raised by increasing the number of potential entrants.

60 Neal Task Force Report 5646.
growth is, in some general sense, preferable to entry by acquisition. In terms of the economic employment of productive resources, it is difficult to see why there is any public interest in adding plant capacity to a given industry unless existing capacity is inadequate. To require a newcomer to bear the capital and operating losses of a new plant of minimum efficient size until sales can be built up to the break-even point—at which revenue offsets costs—will often amount to a major entry barrier. The construction of excess plant ranks as one of the more certain ways of losing an investment, and the invitation is likely to be resisted by investors.

D. The Socio-political Criticisms

In most small or medium-size American communities, the news that a prominent local business and civic leader has sold out his firm is not particularly welcome; and the professional manager sent in by the "outside" buyer to replace the local owner is not necessarily an adequate substitute in the civic structure of the local community. Fortunately or not, the population of the United States is geographically and socially mobile, and on balance, it is almost certainly a good thing that a man making a career in general management has a national (or international) market for his capabilities. This is not to say that American mobility is without its social problems, but only to suggest that the problems of mobility are easier to bear than the problems of immobility.

The argument that conglomerates represent a political power threat is even more difficult to take seriously. A large concentration of wealth undoubtedly has a substantial political capability if it can lawfully be applied to political purposes, as illustrated by the successful political use of the Rockefeller and Kennedy fortunes. The fatal problem with similar political use of corporate concentrations of wealth is that they cannot lawfully be applied to political uses, even if stockholders could be induced to agree on common political objectives and the business organization could survive the necessary diversion of effort. Salaried corporate managers are probably not as rich a potential source of political contributions as oil lessors, owners of automobile dealerships, and other entrepreneurs with substantial personal fortunes. And corporate management is rarely able to deliver the votes even of corporate stockholders, let alone employees, dealers, or suppliers. The Automobile Dealers Day-in-Court Act is eloquent testimony to the comparative political power of some very large corporations on the one hand and a group of "small" businessmen on the other. And in the judicial branch of government, the track record of large corporations before the Supreme Court suggests either a total lack of corporate political influence on the appointment of justices or an exceptional lack of corporate acumen in picking friends.

61 Id.

It would be closer to the truth to say that the large publicly held corporation, as an institution, has seldom received due credit for the sociopolitical contributions it has made to democracy of opportunity. Widespread nepotism has not been one of the faults of the publicly held company; and it has, within the limits of human fallibility, been generally faithful to the principle of merit advancement. There is much to be said for the family-held enterprise; but as soon as one gets beyond surface comparisons of size, it turns out that the case for the family firm inevitably lies far more in an aristocratic, "family in the house on the hill" tradition than in a democratic tradition.

CONCLUSION

As a matter of business organization, there are a number of recognizable and potentially valuable functions for the headquarters level of management in conglomerate firms. Whether they will realize their potential cannot be known without some years of experiment. The outcome may very well be indecisive, with some firms successful and others more or less unsuccessful. But there is little reason to think that partial or complete failure of the experiment will entail important costs in terms of consumer welfare, though the cost to investors—whose role is to take such risks—may be considerable. The more likely consequence is a considerable increase in the force of potential competition and in mobility of resources. And success of the experiment could contribute substantially to the dynamics of the economy and to both consumer and investor welfare.

The case for cutting off the experiment is particularly weak if one views a free economy as, among other things, a laboratory for the development and testing of new forms of organization. There is reason to believe that organization differences—embracing broadly motivation, leadership, and information flow—are responsible for far greater differences in economic productivity than are the competitive differences and inefficiencies of resource allocation explored in classical economic analysis. Substantial contributions to consumer welfare resulted from the invention of such economic institutions as the mail order house; the department store; the chain store; branch banking; various forms of franchised stores, restaurants, motels, and manufacturers; supermarkets; and, arguably, the multi-line corporation. All were attacked in one way or another by interests opposed to any reduction in the number of business firms—interests which some may think have prophesied disaster at least once too often.