Antitrust Guidelines for Conglomerate Mergers

order to continue operations and to require it to justify them as reasonable before a district court should the unions or the Government bring a suit for injunctive relief.

The procedure sanctioned by the Supreme Court may have two ill effects. Firstly, it may result in interruptions to interstate commerce, since struck carriers might be unable to operate during the period in which they would be seeking approval of proposed changes.[56] Secondly, it may create a bargaining imbalance in favor of unions, for a struck carrier might be forced to settle on union terms rather than suffer a work stoppage pending approval of changes.[57]

It cannot be emphasized too strongly that any possible ill effects of procedural aspects of the holding in *Railway Clerks* do not militate against the significance of the basic determination that a struck railroad or airline may make reasonably necessary temporary changes without following the statutory processes of negotiation and mediation. The scope of a struck carrier's right to attempt to operate has been defined at last by the highest court of the land.

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ANTITRUST GUIDELINES FOR CONGLOMERATE MERGERS

Evidencing great concern over a strong trend toward concentration via merger in the American economy,[1] Congress in 1950 enacted the Celler-Kefauver Anti-Merger bill, amending section 7 of the Clayton Antitrust Act of 1914.[2] The amendment allows the Department of Justice and the Federal Trade Commission, which are responsible for

[56]*Cf.* cases cited note 53 *supra* and accompanying text.

[57]*Cf.* NLRB v. Insurance Agents' Union, 361 U.S. 477, 488-500 (1960); Flight Eng'rs Ass'n v. Eastern Air Lines, Inc., 208 F. Supp. 182, 190 (S.D.N.Y.), *aff'd,* 307 F.2d 510 (2d Cir. 1962), *cert. denied,* 372 U.S. 945 (1963).

[1]" 'That the current merger movement [during the years 1940-1947] has had a significant effect on the economy is clearly revealed by the fact that the asset value of the companies which have disappeared through mergers amounts to 5.2 billion dollars, or no less than 5.5 percent of the total assets of all manufacturing corporations—a significant segment of the economy to be swallowed up in a short period of time.' " H.R. REP. No. 1191, 81st Cong., 1st Sess. 3 as quoted in Brown Shoe Co. v. United States, 370 U.S. 294, 315 n.27 (1962).

[2]In pertinent part, amended § 7 now reads: "No corporation engaged in commerce . . . shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 64 Stat. 1125 (1950), 15 U.S.C. 18 (1964), amending 38 Stat. 731 (1914).

the enforcement of section 7, to attack mergers—corporate combinations formed by the acquisition of assets.[3] To establish a violation of section 7, the complainant must allege and prove that there is a reasonable probability[4] that the acquisition will result in a substantial[5] lessening of competition in any line of commerce.

Section 7, as amended in 1950, applies to horizontal, vertical, and conglomerate mergers.[6] A horizontal merger involves the acquisition of the assets of a competitor—one engaged in a similar business at the same level of the production or distribution process as the acquiring corporation. A vertical merger involves the acquisition of the assets of a customer or supplier at a different level of the production or distribution process. A conglomerate merger is, simply, an acquisition which is neither vertical nor horizontal—one in which the acquired corporation is neither customer, supplier, nor competitor of the acquiring corporation.

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[3]Prior to the 1950 amendment, § 7 applied only to acquisitions of stock or other share capital which might substantially lessen competition, and the entire purpose of the section could be circumvented by direct purchase of assets. " 'The purpose of the proposed legislation is to prevent corporations from acquiring another corporation by means of the acquisition of its assets, whereunder [sic] the present law it is prohibited from acquiring the stock of said corporation. Since the acquisition of stock is significant chiefly because it is likely to result in control of the underlying assets, failure to prohibit direct purchase of the same assets has been inconsistent and paradoxical as to the over-all effect of existing law.' " S. REP. No. 1775, 81st Cong., 2d Sess. 2 as quoted in Brown Shoe Co. v. United States, 370 U.S. 294, 316 n.29 (1962).

[4]The legislative history of the 1950 amendment indicates that Congress used the words "*may* be substantially to lessen competition" [emphasis added] to emphasize its concern with *probabilities*, not certainties or mere possibilities. Brown Shoe Co. v. United States, 370 U.S. 294, 323 (1962). Thus, a § 7 violation does not exist upon a mere *possibility* that substantial injury to competition will occur. Nor is it a defense to a § 7 complaint that *actual* injury to competition has not occurred.

[5]Congress provided no definite qualitative or quantitative tests for determining the substantiality of a restraint on competition, but indicated that each acquisition must be viewed functionally in the context of its particular line of commerce. United States v. Continental Can Co., 378 U.S. 441, 458 (1964); Brown Shoe Co. v. United States, 370 U.S. 294, 321-22 (1962). The House Report on H.R. 2734 stated that substantial lessening of competition might be inferred from "findings, for example, that a whole or material part of the competitive activity of an enterprise, which had been a substantial factor in competition, had been eliminated; that the relative size of the acquiring corporation had increased to such a point that its advantage over competitors threatened to be 'decisive'; that an 'undue' number of competing enterprises had been eliminated; or that buyers and sellers in the relevant market had established relationships depriving their rivals of a fair opportunity to compete." *Id.* at 321 n.36 citing H.R. REP. No. 1191, 81st Cong., 1st Sess. 8.

[6]See Brown Shoe Co. v. United States, 370 U.S. 294, 817 (1962).

Since 1950 vigorous prosecution of section 7 has resulted in a line of United States Supreme Court cases that has established elaborate boundaries of legality for horizontal[7] and vertical[8] acquisitions. However, statistics indicate that the great majority of acquisitions today are conglomerate in nature, rather than vertical or horizontal.[9] Concerned about this new third wave of concentration, the Federal Trade Commission is attempting to establish authoritative guidelines for dealing with the conglomerate merger.[10]

On August 1, 1957, Procter & Gamble Company, the largest domestic manufacturer of household cleaning products,[11] acquired Clorox Chemical Company, the largest producer of household liquid bleach (hereinafter referred to as HLB).[12] On September 30, 1957,[13] the Federal Trade Commission filed a complaint, alleging that the acquisition violated section 7 of the Clayton Act and on November 26, 1963, issued its final order, invalidating the merger.[14] Procter & Gamble appealed to the United States Court of Appeals for the Sixth Circuit which, on March 18, 1966, set aside the Commission's order and dismissed the complaint.[15] The United States Supreme Court granted certiorari on October 16, 1966.[16] *Procter & Gamble Co. v. FTC* may have a significant impact on conglomerate merger policy, because the manner in which the Court of Appeals disposed of the complaint has afforded the Supreme Court an opportunity to answer an important

[7]See United States v. Von's Grocery Co., 384 U.S. 270 (1966); United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963).

[8]See Brown Shoe Co. v. United States, 370 U.S. 294 (1962); United States v. E.I. duPont deNemours & Co., 353 U.S. 586 (1957).

[9]See Address by FTC Commissioner John R. Reilly, Chicago Chapter Federal Bar Association Annual Meeting, June 13, 1966, in 5 Trade Reg. Rep. ¶ 50,147 (1966).

[10]" 'Clearly, what is needed in this increasingly important type of merger activity is more of the case-by-case exploration which has already provided such useful guides in respect to horizontal and vertical mergers.' " 5 Trade Reg. Rep. ¶ 50,147 at p. 55,101 (1966).

[11]In addition, Procter & Gamble manufactured and sold food products, shampoos, dentrifices, home permanents and paper products. Its assets exceeded one-half billion dollars; its annual sales exceeded one billion dollars. Procter & Gamble Co. v. FTC, 358 F.2d 74, 78 (6th Cir. 1966).

[12]Clorox, with assets of over twelve million dollars and annual sales of slightly less than forty million dollars, controlled 48.8% of the household liquid bleach market. *Id.* at 78-79.

[13]3 Trade Reg. Rep. Dkt. No. 6901 at 25,400 (1966).

[14]*Ibid.*

[15]358 F.2d 74 (6th Cir. 1966).

[16]Procter & Gamble Co. v. FTC, 358 F.2d 74 (6th Cir. 1966), *cert. granted,* 385 U.S. 897 (1966).

question: What significance is to be attached to the classification of a merger as conglomerate?

The Supreme Court has decided two cases bearing on this question, but neither decision has clearly answered it.

In *FTC v. Consolidated Foods Corp.*,[17] the Supreme Court invalidated the acquisition of a food products corporation by a wholesale-retail grocery network. The Court characterized the merger as conglomerate and invalidated it because it fostered reciprocal buying opportunities. Yet it would seem that companies encountering each other as seller and buyer would, at least arguably, establish the customer-supplier relationship necessary to classify a merger as vertical. Since the Court did not address itself to this question, alternative conclusions may be drawn from the decision: either (1) the Court regards reciprocal buying as having no vertical anti-competitive effect; or (2) the Court does not consider the distinction between vertical and conglomerate mergers to be absolute, so a merger may be conglomerate, yet have vertical implications.

In *United States v. Continental Can Co.*,[18] the Supreme Court invalidated the acquisition of a large producer of glass containers by a large producer of metal containers. The district court, in upholding the merger, characterized it as conglomerate, and evaluated its effects in terms of the impact on the glass container market and the metal container market, considered *separately*.[19] But the Supreme Court found that "meaningful competition"[20] existed between glass containers and metal containers and that this competition was within the "competition-preserving proscriptions of section 7."[21] The Court did not expressly classify the merger as either horizontal (among competitors) or conglomerate; so alternative conclusions are again available: either (1) the Court, by finding direct competition, impliedly classified the merger as horizontal; or (2) the Court did not consider the distinction between horizontal and conglomerate mergers to be absolute, so a merger may be conglomerate, yet have horizontal implications.

Summarily, the important question left unresolved by these two cases may be stated thus: Is the classification of a merger as conglomerate to be accorded legal significance—that is, are conglomerate mergers to be regarded as a distinct analytical class for sec-

[17] 380 U.S. 592 (1965).
[18] 378 U.S. 441 (1964).
[19] 217 F. Supp. 761 (S.D.N.Y. 1963).
[20] United States v. Continental Can Co., 378 U.S. 441, 449 (1964).
[21] *Id.* at 454.

tion 7 purposes; or is *conglomerate* merely a convenient economic frame of reference used to describe mergers that are neither conventionally horizontal nor conventionally vertical? This is the question that the Supreme Court has an opportunity to resolve in *Procter & Gamble.*

In the Court of Appeals, both parties agreed to a stipulation that the relevant line of commerce was the national HLB market and a series of regional markets.[22] The parties further stipulated that, prior to the merger, Procter & Gamble had never been a customer, supplier, or competitor in the HLB market.[23] Thus, the merger was characterized as conglomerate, and the Federal Trade Commission assumed the burden of proving that Procter & Gamble's acquisition of Clorox created the probability that competition would be substantially lessened in the manufacture and distribution of HLB.

Arguing that HLB is closely related to Procter & Gamble's household lines, both from the consumer point of view and in marketing techniques, the Commission characterized this acquisition as a *product-extension* merger. As the Commission said in its brief:

> By identifying the Clorox acquisition as a "product-extension" merger, and so distinguishing it, for example, from a truly conglomerate acquisition involving totally unrelated products, the Commission has delineated those salient characteristics of the instant type of merger which are most likely to give rise to anti-competitive consequences, namely, the identity of the techniques in marketing and distribution and the similarity in use of the products of the acquired and acquiring firms.[24]

The Commission argued that this close affinity between HLB and Procter & Gamble's products would enable Procter & Gamble to employ its "size, financial strength, experience, and investment in distribution, advertising, promotion, and marketing" to substantial advantage in the HLB industry.[25]

Noting that "Clorox and the bleaches sold by the other principal manufacturers are chemically identical . . . not protected by patents or secret processes, and that special machinery and equipment are not involved in the manufacture of Clorox or the other bleaches," the Commission concluded that Clorox owed its dominant position in

[22]358 F.2d at 79.
[23]*Ibid.*
[24]Brief for Respondent, p. 49 n.59.
[25]*Id.* at 49.

the HLB industry to advertising and promotion.[26] Further, because of the close relationship between Procter & Gamble's products and HLB, Procter & Gamble could easily channel its mammoth advertising and promotion resources into the HLB market.[27] For example, Procter & Gamble's huge advertising expenditures, which in 1957 exceeded those of any other United States company, would qualify it for "substantial discounts in purchasing television and magazine advertising." [28] Having joined forces with Procter & Gamble, Clorox could now be included in Procter & Gamble's large-scale, multi-product promotions, and the cost could be spread over Procter & Gamble's other products.[29]

In addition to the promotional advantages, the Commission noted that Clorox would no longer have to rely on independent brokers for distribution of its bleach because it could now use Procter & Gamble's sales force "which calls on the same grocery store outlets that sell Clorox." [30]

The Commission further pointed out that HLB is a product that fits well within Procter & Gamble's experience in manufacturing and marketing household products: "The acquisition dovetailed with Procter's policies of furthering its continued growth and diversification into related low-price, high-turnover consumer household goods. . . ." [31]

The Commission concluded that it was probable that Procter & Gamble would commit "so much of its vast resources and marketing techniques as may be necessary to fortify and enlarge Clorox's near-monopoly position and defeat new competitors. . . ." [32] This, argued the Commission, would be a substantial lessening of competition within the meaning of section 7.[33]

The elimination of a potential competitor is one of the bases upon which a merger may be invalidated.[34] The Commission concluded that since Procter & Gamble and Clorox were "already selling closely

[26] *Id.* at 43.
[27] *Id.* at 49.
[28] *Ibid.*
[29] *Id.* at 52.
[30] *Id.* at 53.
[31] *Id.* at 56.
[32] *Id.* at 55.
[33] Note that the House Report on H.R. 2734, note 5 *supra*, indicated that substantial lessening of competition might be inferred from the fact that the relevant size of the merged corporation had increased to such a point that its advantage over competitors threatened to be "decisive."
[34] See United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964); Ekco Products Co. v. FTC, 347 F.2d 745 (7th Cir. 1965).

allied products through the same stores to the same customers,"[35] Procter & Gamble was the prime prospective entrant to the HLB market.[36] In bolstering its contention that Procter & Gamble was a potential rival of Clorox (and had eliminated itself as a competitor by acquiring Clorox), the Commission reiterated in its reply brief that "Clorox was sold to the same customers, at the same stores and by the same merchandising methods as Procter's household cleansing agents, and that Procter possessed both the resources and technical skill necessary for the successful marketing of liquid bleach."[37]

In this particular case, it seems that strong argument could be made for the proposition that this is a horizontal merger; that is, that the products of Procter & Gamble and Clorox are directly competitive. Throughout its brief, submitted to the Court of Appeals, the Federal Trade Commission emphasized the similarities between the production and marketing facilities of Procter & Gamble and of Clorox. Moreover, the Commission continually alluded to the close functional relationship between the products of the two companies, pointing out that, aside from the anti-competitive effects in the HLB market, Procter & Gamble would receive significant promotional and distributional advantages in marketing its household cleaning products.[38]

Under the doctrines of *United States v. Philadelphia Nat'l Bank*[39] and *United States v. Von's Grocery Co.*,[40] Procter & Gamble would seem almost certain to lose this case if the merger were characterized as horizontal.

In *Philadelphia Nat'l Bank* the Supreme Court noted:

> This intense congressional concern with the trend toward concentration warrants dispensing, in certain cases, with elaborate proof of market structure, market behavior, or probable anticompetitive effects. Specifically, we think that a merger which produces a

[35]Brief for Respondent at p. 63.

[36]"The close affinity between liquid bleach and household cleansing agents, and Procter's eagerness to enter the bleach market are convincing proof that Procter was one of the most important potential competitors. . . ." *Id.* at 58.

[37]Reply Brief for Respondent, p. 17.

[38]"Conversely, Procter has obtained the added advantage of being able to use the valuable Clorox name to promote the sale of its soaps, detergents and cleaners in competition with such companies as Colgate-Palmolive, Lever Brothers, Purex, and B.T. Babbitt. . . . Clorox can now be tied into these promotions, thereby affecting competition not only in liquid bleach sales but also in sales of soaps, detergents and cleansers. Thus, the Commission was fully warranted in finding that the acquisition may enable Procter to strengthen its position in other allied markets." Brief for Respondent, pp. 52-53.

[39]374 U.S. 321 (1963).

[40]384 U.S. 270 (1966).

> firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anti-competitive effects.[41]

The Court went on to indicate that it was clear that 30 per cent would constitute such an undue share of the relevant market as to render the merger inherently likely to lessen competition.[42]

Von's Grocery Co. involved a horizontal merger between two retail grocery companies. Von's, the acquiring company, was the third largest firm in the relevant market, with a 4.7 per cent share.[43] Shopping Bag, the acquired company, was sixth, with a 4.2 per cent share.[44] The four largest firms had 24.4 per cent of the market; the top eight had 40.9 per cent.[45] The Supreme Court stated that this was simply a case of two powerful companies merging in a way which would make them more powerful than ever before and invalidated the merger.[46]

In *Procter & Gamble*, the Commission indicated that three firms, of which Procter & Gamble was the leader, controlled 80 per cent of the household cleansing agent industry.[47] In light of *Philadelphia Nat'l Bank* and *Von's Grocery Co.*, Procter & Gamble's share of the market would certainly be such that *any* acquisition within this field would violate section 7. Moreover, the acquisition of Clorox's 48.8 per cent of the household liquid bleach market would certainly represent a *significant* increase in Procter's market power.

However, the Commission agreed to a product-market definition which tends to prevent classification of the merger as horizontal. To understand the tactic employed by the Commission, it is necessary to reexamine the context in which the case arose. As mentioned previously, a line of United States Supreme Court cases has defined boundaries of legality for horizontal mergers.[48] These boundaries are extremely limited, so that the horizontal merger is rapidly disappear-

41 374 U.S. 321, 363 (1963).
42 *Id.* at 364.
43 384 U.S. 270, 281 (1966).
44 *Ibid.*
45 *Ibid.*
46 *Id.* at 278.
47 Brief for Respondent, p. 14.
48 United States v. Von's Grocery Co., 384 U.S. 270 (1966); United States v. Philadelphia Nat'l Bank, 374 U.S. 321 (1963).

ing from the scene and no longer represents an enforcement problem for the Federal Trade Commission. However, there has been a corresponding rise in conglomerate mergers for which boundaries of legality have not yet been determined. As stated by Federal Trade Commissioner Reilly:

> It seems to me that to continue to emphasize action against horizontal mergers would be like mounting a vast hunting expedition for stalking the dinosaur. He just isn't there anymore. On the other hand it seems difficult to deny that enforcement activity is lagging in the major problem area, conglomerate mergers.[49]

According to Commissioner Reilly, it is the conglomerate merger that should be at the center of policy planning for merger enforcement.[50]

If the Commission is seeking to establish authoritative guidelines for conglomerate mergers, it must *prosecute* conglomerate mergers. Since there is very little established conglomerate merger policy, the Commission may be expected to prosecute those cases in which it can take maximum advantage of the very strict standards that are applied to horizontal mergers. This is the context in which *Procter & Gamble* must be viewed.

General Foods Corp., in which the Commission struck down a product-extension acquisition by General Foods of the S.O.S. Co., provides an example of the manner in which the Commission intended to use *Procter & Gamble*.[51] The majority of the Commission ruled that General Foods' acquisition of S.O.S. was a product-extension merger "identical in all respects" to the Procter & Gamble acquisition of Clorox, and listed the same anti-competitive effects that it had relied on in *Procter & Gamble*, drawing parallel conclusions in each instance. At the conclusion of its opinion, the Commission set forth an appendix entitled "Comparison of Operative Facts in the General Foods and Procter & Gamble Cases," which indicated thirty-seven points of similarity between the two cases.[52]

Commissioner Elmen, dissenting, stated that he could not regard this case as a "mere replica" of *Procter & Gamble*.[53] The Commissioner refused to ignore the differences between the two cases, argu-

[49]Address by FTC Commissioner Reilly, 5 Trade Reg. Rep. ¶ 50, 147 at p. 55, 179 (1966).

[50]*Ibid.*

[51]General Foods was the largest producer of packaged food in the United States; S.O.S. controlled 51% of the household steel wool market. 3 Trade Reg. Rep. ¶ 17,465 (1963).

[52]3 Trade Reg. Rep. ¶ 17,465 at p. 22,732 (1963).

[53]*Id.* at 22,745.

ing that, although both acquisitions could be generally described as product-extension mergers, the label cannot resolve the question of legality.[54] The Commissioner distinguished the two fact situations on the general basis that there were no horizontal implications in *General Foods*, and refused to regard the two cases as analogous.[55]

To obtain an effective tool for dealing with fact situations such as General Foods, which have no horizontal effects, the Federal Trade Commission characterized the Procter & Gamble merger, with its horizontal effects, as conglomerate. By so doing the Commission has necessarily rejected any notion that conglomerates are a legally distinct merger class. The Commission describes the *Procter & Gamble* fact situation as a product-extension acquisition which, while falling in the general class of conglomerate mergers, is really only a variation of the conventional horizontal merger.[56] Thus, the classification of a merger as conglomerate, while perhaps useful as an economic definition, imports no legal distinction under section 7.

The United States Court of Appeals for the Sixth Circuit, in upholding Procter & Gamble's acquisition, rejected each basis upon which the Commission attempted to predicate a violation of section 7. The court attributed Clorox's dominant market position to widespread acceptance and preference of its *product*, rather than to extensive advertising.[57] The court pointed out that the product "had to be good" to obtain repeat-purchases by housewives.[58] It emphasized that Clorox, not Procter & Gamble, had the know-how in the HLB business, as evidenced by Clorox's success.[59] Furthermore, Clorox's finances were entirely adequate to compete in its field.[60] Procter & Gamble *could* obtain discounts in advertising and promotion, but "the fact that a

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[54]There are product-extension mergers and there are product-extension mergers; and they are not all exactly alike. I agree that, for purposes of general descriptive classification, the acquisitions in both this case [*General Foods*] and in *Clorox* could be called product-extension mergers. But *the label cannot resolve the question of legality*. It no more follows that every product-extension merger is illegal than that every such merger is legal.

Id. at 22,746. (Emphasis added.)

[55]Unlike the product-extension merger in this case, the one before us in *Clorox*, as the Commission's detailed analysis abundantly demonstrated, had many of the same effects on competition as a conventional horizontal merger. . . . In a fundamental sense, the merger in *Clorox* eliminated direct (one might even call it horizontal) competition between Procter and Clorox. . . .

Ibid.

[56]FTC Dkt. No. 6901, at 25,400 (1966).

[57]Procter & Gamble Co. v. FTC, 358 F.2d 74, 79 (6th Cir. 1966).

[58]*Ibid.*

[59]*Id.* at 80.

[60]*Ibid.*

merger may result in some economies is no reason to condemn it."[61] The court refused to consider Procter & Gamble as a potential competitor because it found no evidence that Procter & Gamble had planned to enter the liquid bleach market on its own.[62]

Looking at post-acquisition evidence offered by Procter & Gamble, the court emphasized that, in the four years following the merger, other producers were "selling more bleach for more money than ever before."[63] There had been no significant change in Clorox's market share,[64] and Procter & Gamble had not changed over from Clorox distributors to its own salesmen.[65]

In conclusion, the court expressed its opinion that the size of Procter & Gamble, which "pervades the entire opinion of the Commission," appeared to be the motivating factor which influenced the Commission to invalidate the merger.[66] The court recognized that the case presented a challenge " 'to devise tests more precisely adjusted to the special dangers to a competitive economy posed by the conglomerate merger' "[67] but was of the opinion that "these tests should [not] involve application of a per se rule."[68]

Three aspects of the court's opinion deserve special consideration. Firstly, although the Federal Trade Commission went to great lengths to fully explain the significance of its characterization of this merger as a *product-extension* conglomerate, the court made no attempt to distinguish this merger from any other in the general class of conglomerate mergers. No investigation was made as to the possible significance of such a distinction. Secondly, although the Federal Trade Commission relied upon the close functional relationship between the products of Procter & Gamble and those of Clorox as an essential feature of each of its contentions that the merger violated section 7, the court disposed of each contention without once referring to this alleged relationship. Thirdly, the Federal Trade Commission, both in its final order and in its brief before the Court of Appeals, expressly disclaimed any contention that this merger should be judged by a size per se standard. The Commission argued that the violation of

[61] *Id.* at 81. The Court refused to assume that Procter & Gamble would use its huge advertising and promotion resources to wipe out its competition in the household liquid bleach market. *Id.* at 81, n.1.

[62] 358 F.2d at 79.

[63] *Id.* at 80.

[64] *Ibid.*

[65] *Ibid.*

[66] *Id.* at 84.

[67] *Ibid.*

[68] *Ibid.*