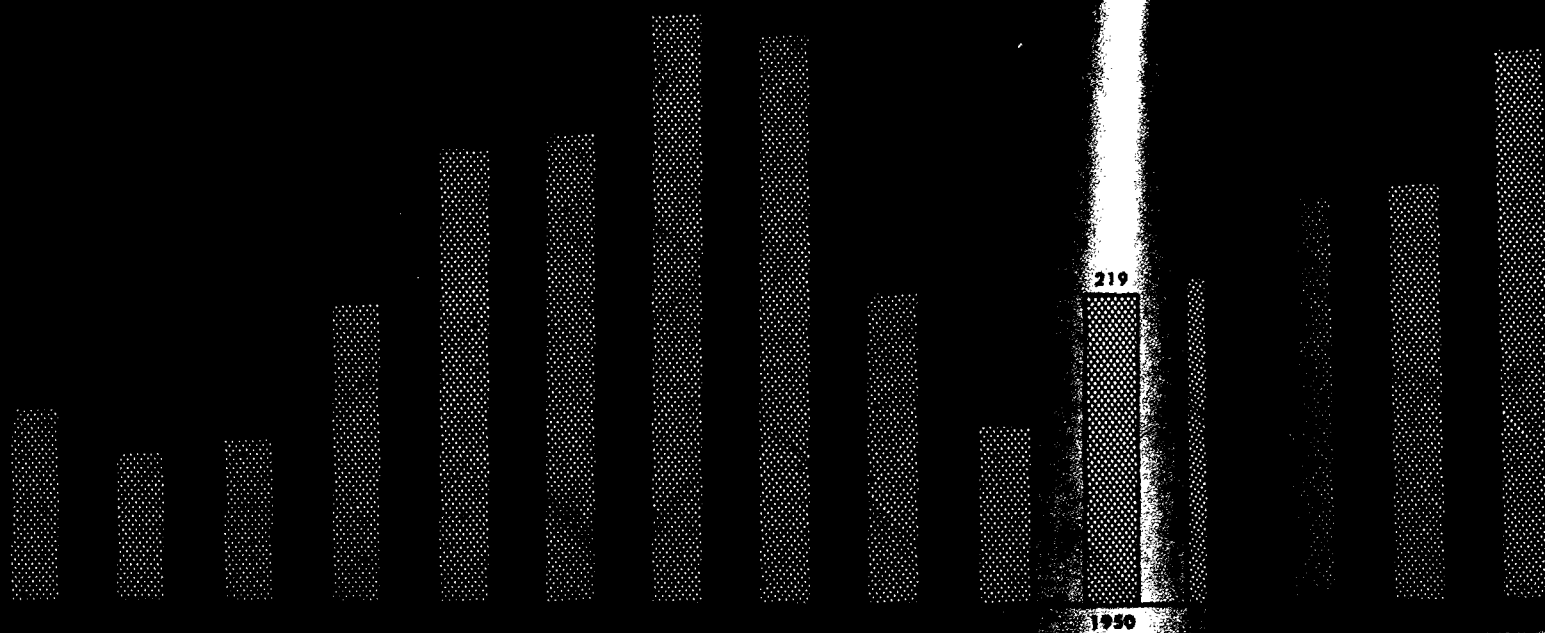


# An Outlook on Mergers



MERGER MOVEMENTS IN AMERICA HAVE COME IN DISTINCT PHASES AND FOR VARYING REASONS. THE LATEST UPSWING HAS BEEN MAKING LINES REFLECTING THE OPINIONS OF PRIVATE INDUSTRY AND GOVERNMENT. WHETHER OR NOT THE TREND IS IN THE NATIONAL INTEREST, IT IS IMPORTANT THAT WE KNOW WHY AND HOW MERGERS TAKE PLACE AND WHAT EFFECT THEY MAY HAVE ON THE ECONOMY. HERE IS A REVIEW OF RECENT DEVELOPMENTS.

EDWARD F. HOWREY  
*Chairman\*, Federal Trade Commission*

**S**INCE WE ARE immersed in what has been described as a flood tide of mergers, it may be of some value to attempt an objective analysis of the present-day merger trend. It is, of course, economically—as well as intellectually—frustrating to suggest that mergers—by which I also mean corporate acquisitions and consolidations—are either unlawful or entirely benevolent. Like most other business practises, mergers take on economic and legal coloration in the market context in which they arise.

The classic American merger movements, at the end of the century, in the 1920's, and now, are distinguished in distinctive historical settings. They are closely analogized at the time of their understanding of their

merger wave of the 1920's (which prompted enactment of the Securities Exchange Commission Act and the Public Utilities Holding Company Act) was raised on an inflated base of speculation and stock manipulation. By contrast, I think it is fair to say that the present wave of mergers, beginning about 1946-47, has been largely impelled by what purport to be rational managerial decisions: quick expansion to exploit new or burgeoning markets; diversification of product line to spread capital risk and to broaden market outlets; integration forward to provide distributional economies or backward to ensure efficient flow of source materials; consolidation of hard-pressed small producers in oligopolistic markets to wage more effective competition.

I have used the word "purport" with design, for even the most impassioned business advocate will recognize that rational management decisions may be distorted in the stress of competition.

certainly susceptible to a kind of economic stigmatism. It can certainly be said that the present merger wave, however enigmatic, is motivated far less by considerations of personal aggrandizement than were the earlier movements. This, of course, though relevant in any appraisal of the economics of mergers, is hardly exculpatory if the merger in fact tends to affect competition in some way proscribed by the anti-trust laws.

For the past two years I have lived daily with the problems of mergers: the real and present dangers which the monopolistic tendencies of some mergers produce, the imagined perils regularly conjured up by a few frantic observers, and the unresolvable competitive problems which mergers inevitably pose for the future. As I leave the Federal Trade Commission to return to the private law, I look back on a period which has been professionally the most

\* 1947-1950 (which  
is now Federal

rewarding of my life; one, more sharply reaffirmed my faith in the strength of the American economy. We have learned a great deal about mergers these years which we never knew before. We take place, how they take place, and the effects they have on our economy. I think we have also learned that vigilance against abuses cannot be relaxed, but that vigilance need not become panic. And we have learned that sufficient Government resources are available to strike down the economic excesses of mergers without hamstringing the workings of our entire economy.

### Is There Any Danger?

What are the dimensions of this merger movement which have given rise to so much "fustian clamor," as one commentator puts it? And what are the actual anti-trust risks—beyond partisan bombast—which potential corporate mergants run? Certainly, these questions must be foremost in the minds of business executives, weighing the merits of future mergers, who sincerely wish to guide their enterprises within lawful bounds.

The answers are not entirely clear, but recent developments increasingly illumine our understanding.

In any discussion such as this, it is important to bear in mind the anti-trust implications of mergers. America's faith in the ultimate validity of a free enterprise economy was early translated into wise generalities of the Sherman Act, which banned contracts, combinations, and conspiracies in restraint of interstate commerce and monopolization of or attempts to monopolize interstate commerce. Later the Clayton Act added prohibitions against specific incipient monopolistic practices, including certain bans against corporate acquisitions. Both statutes theoretically were available to attack unlawful mergers: The Sherman Act to strike down mergers which amount to restraints of trade or monopolization, the Clayton Act to cut off mergers which may substantially lessen competition or tend toward monopoly.

As a practical matter, however, the courts restricted the Sherman Act's effect on mergers to a point where it is of doubtful practical use. Prior to 1950, this was equally true of the Clayton Act which was limited in its effect to acquisitions of stock in competing companies. A series of court decisions had held that where stock acquisitions were used to effect transfer of physical assets before the Government moved to invalidate the acquisition, the courts and the Federal Trade Commission were powerless to order divestiture of the acquired assets.

However, the Anti-Merger Act of 1950

In the Federal Trade Commission Building in Washington, tabs are kept on the who, the why, and the how of business mergers. Any company, contemplating merger action or other form of acquisition, needs to keep one legal eye on the opinions of FTC and the other on the decisions to come from federal courts.

(amending Section 7 of the Clayton Act) widened the Act's application to include acquisitions of assets as well as stock, to eliminate the previous requirement that the acquired and acquiring companies be in competition, and substantially to broaden the Act's geographic reach. To-day it is this provision—Section 7 of the Clayton Act—which is the basic anti-trust inhibition against unlawful mergers. Yet the amended act raises many questions. Section 7 bars a corporate acquisition "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." But what, in pragmatic market terms, is the relevant line of commerce and the appropriate section of the country? When does a merger "substantially" lessen competition or tend toward monopoly? And what standards are to be applied in measuring the oblique market effects of the many types of mergers?

Both the Federal Trade Commission and the Department of Justice are aware that these and other interpretative problems can only be settled finally in the courts. The process of securing authoritative judicial interpretation is now well under way. The Federal Trade Commission has presently issued complaints against five corporations alleging unlawful mergers. The Department of Justice similarly has brought three civil suits in the federal courts seeking to bar merger activity.

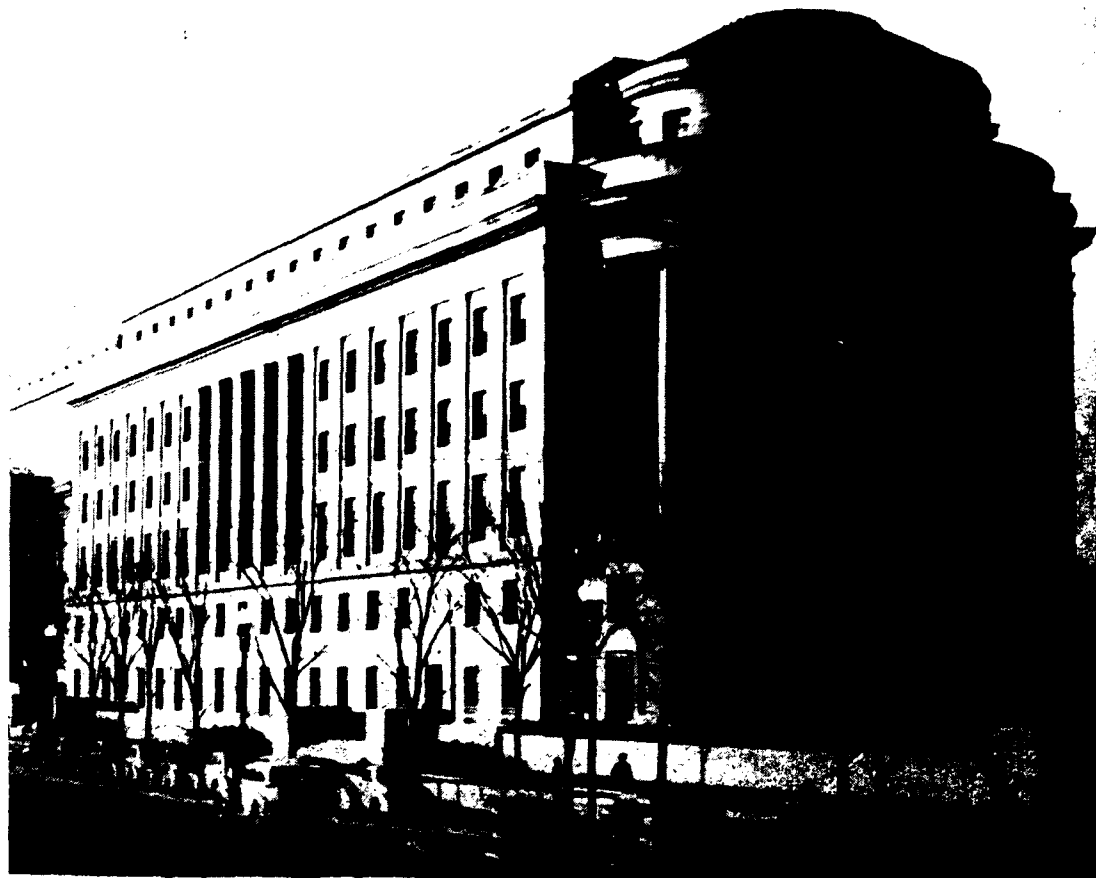
Federal Trade Commission complaints charge Pillsbury with unlawfully acquiring Duff and Ballard, two leading competitors in the sale of flour and flour-base mixes; Luria Bros., the nation's largest scrap iron and steel dealer, with

unlawfully acquiring a number of competing dealers; Crown-Zellerbach with unlawfully acquiring St. Helen's Pulp and Paper Company, its chief West Coast rival in the sale of kraft paper products; Farm Journal, the nation's largest farm magazine, with unlawfully acquiring Better Farming, the number two farm magazine; and Union Paper Corporation with unlawfully acquiring a substantial minority stock bloc in Hankins Container Company which allegedly assures Union of orders to supply the container-board requirements of Hankins.

Court cases instituted by the Department of Justice include an action seeking to enjoin consummation of the merger between Schenley Industries, the nation's largest whiskey producer, and Park and Tilford, a smaller but vigorous competitor; a suit seeking to require the divestiture by General Shoe Corp. of the stock and assets of competitors acquired in a series of transactions over a five-year period which allegedly have weakened competition as a result of their cumulative effects; and a suit designed to break up the merger of the Hilton Statler chain of hotels, alleging particularly unlawful lessening of competition in conventional business in a number of major cities.

These cases, and others to follow, should lead far toward interpolating explicit definitions into the Clayton Act's general bans. Despite protestations of a few chronic dissidents that the Clayton Act is a *per se* statute—that is, one which bars all mergers without considering their market effect—I do not believe that any serious student of the law doubts that only some mergers, those which cause the injurious competitive impact barred by Section 7, are unlawful.

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million or more. In contrast, companies with assets of less than \$1 million accounted for less than 8 per cent.

The largest number of acquisitions during 1948-1954 were in the non-electrical machinery industry with 249 mergers and in the food products industry with 243. Together, they accounted for more than one-fourth of the mergers in manufacturing and mining. The next eighteen industry groups in number of mergers were: chemicals, 168; fabricated metals, 161; transportation equipment, 125; textiles and apparel, 117; electrical machinery, 111; non-manufacturing, 96; mining, 81; primary metals, 78; stone, clay and glass, 70; paper and allied products, 60; professional and scientific instruments, 47; lumber and furniture, 40; petroleum and coal products, 35; printing and publishing, 24; rubber products, 23; leather products, 21; miscellaneous manufacturing, 20; and tobacco manufactures, 4.

The study also draws a comparison in the size of acquiring companies during the 1948-1954 period with those acquiring properties during 1940-1947. During the earlier period, companies with assets exceeding \$10 million accounted for 57.9 per cent of all acquisitions. During the later period, the percentage rose to 65.5. Nearly all of the gain came from companies with assets ranging from \$10 to \$49 million, since the proportion for companies with assets above \$50 million was about the same for both periods.

The second statistical study covers some 2,100 mergers and acquisitions (including companies acquired only in part) in the manufacturing, mining, trade and certain service industries. These took place during the 43 months following enactment of the Anti-merger Act of 1950.

Of these mergers, the report shows, one-third involved properties valued at \$750,000 or more, with well over 50 per cent in which the property acquired was valued at \$10 million. Among the acquiring companies, one-fifth had assets of \$50 million or more, and about 1,000 had assets of at least \$1 million.

Among the acquisitions recorded by the staff of the Commission, large companies are revealed as having acquired more medium-size properties than were acquired by medium-size companies and more small properties than were acquired by small companies.

### Who — How — Why?

The report examined the "who-how-why" of current merger activity.

The "who" is generally the acquiring company, and promotion of this type, the report says, is the most important. Mergers originating with the acquiring company also are common, particularly when smaller companies wished to sell out to other companies. Promotion by a divesting company is frequent in cases where it seeks a buyer for part of its property or business. Still another important agent is the outside financial or other interest who finds it to his advantage (because of stock ownership, interest in products or services to be provided, or fees to be collected, or promotional assistance) to see that the combinations or acquisitions are made. Of less frequency is the merger promoted by the joint effort of both parties to it.

The report states "that more and more firms representing outside interests are becoming engaged or involved in the business of promoting or playing the other vital role in merger formation."

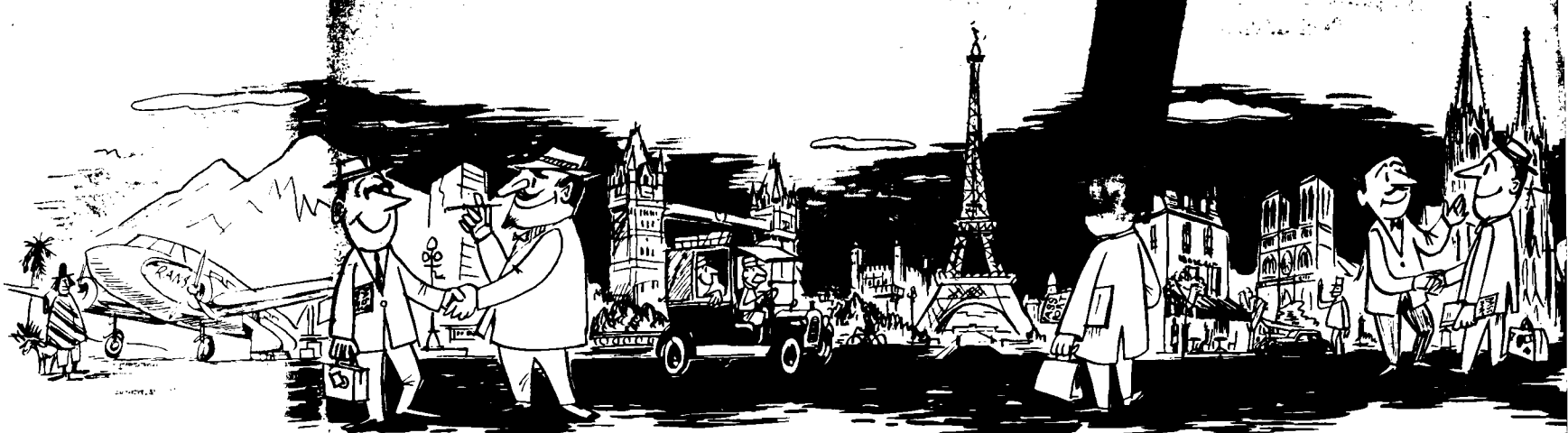
Dealing with the "how" of mergers, the report describes the plans most often used in important acquisitions: the exchange of stocks between companies, and the purchase of stock of the acquired company from individuals and firms either privately or in the open market. The report also describes the several forms of organization used in acquisitions and mergers.

Turning to the "why" of mergers, the report lists five reasons (involving competitive factors) which seem to occur most frequently. These are: additional capacity, accounting for two out of five acquisitions; diversification of products accounting for one out of four; backward vertical mergers looking toward sources of supply, one out of eight; forward vertical mergers looking toward ultimate markets, one out of eight; and mergers located in new areas, one out of eight.

Structural and other factors, however, are not mentioned.

*Continued on page 130*

Whether the business be big or small, industrial or commercial, mergers will have an effect upon it. The effect will be reaching, extending down the line to the workers, stockholders, as well as to the management. It is not a matter of growth.



# PLEASURE, PROFITS

**RICHARD LURIE**  
*Editor, American Exporter*

COMBINING PROFITS WITH PLEASURE IS THE AIM OF AMERICAN BUSINESS MEN AS THEY BOARD FOREIGN-BOUND PLANES AND SHIPS, PASSPORTS IN HAND. BUT TO GET THE MOST FROM THESE JOURNEYS, THEY

ONE YOUNG executive recently asked his vice-president which city he had liked best on a recent European business trip. "Stockholm," was the prompt reply.

"Why?" said the junior—somewhat facetiously as he expected the typical answer, "The best smorgasbord I ever tasted and some of the most beautiful women I have ever seen."

Instead, came this surprising reply, "Because my shirts were done whiter at the Grand Hotel than at any other European hotel."

When I repeated this to another business man, recently returned from a similar European trip, his reply was, "The Metropole in Brussels will beat the Grand. You get your shirts back in two hours, each individually wrapped in cellophane."

Both of these business men may have had a profitable foreign trip, but did they enjoy them-

meter, it was waste baggage. He didn't even have time to take it out of the case.

This sort of travelling will not leave a particularly good impression on potential customers. And what's more important, it isn't necessary at all.



Chances for your taking a business trip abroad in 1956 are better than they have been for several years. There are four reasons for this:

(1) Our exports in 1955 to the rest of the world will top \$14 billion—a 7 per cent rise over 1954. This figure represents commercial exports. Military aid is not included.

(2) Our imports this year are expected to hit \$11 billion, an all-time record high.

(3) More and more American manufacturers are franchising their foreign counterparts to make specified products. A noticeable trend towards this has taken place in Japan, Italy, France, Australia, and England.

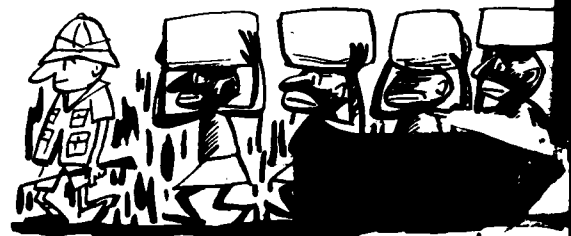
(4) To overcome tariff walls and other foreign trade restrictions, the move towards establishing direct subsidiaries abroad is increasing. In this way American manufacturers can compete with the locally-made products. As an example: Since the end of World War II, more than 50 American manufacturers have established Dutch subsidiaries.

Remember, you *can* make a profitable business trip abroad—seeing everyone you want to see—and you will still enjoy yourself. In fact, if you plan your trip correctly, you will have a much better time than any tourist. You will be spending your free time with the *national* of the country—not with a *tourist*. The key, therefore, to the success of your trip is *thorough advance planning*.

Planning not only means determining the countries you want to visit and what hotels to stay at—it means organizing a whole host of details, important to the business man rather than the tourist. Here are some of the things to watch and plan for.

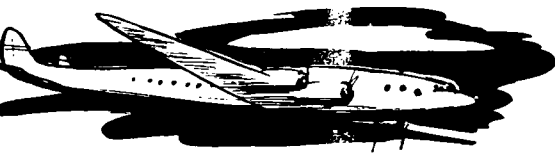
The very first step is to start planning your trip at least *three to four months* in advance of your departure.

When to travel is perhaps the most important question to be answered. You will not find



many top-flight European business men in their offices during July and August. Try to avoid the rainy season from March to August in most of Latin America. Remember, that South of the Equator, the seasons are in the reverse of our. For example, the best time to visit Argentina would be in the Latin American Fall months—March, April, and May.

Contact your business friend, agent, diary



selves? Indications are they did not have as good a time as they might—after all, their foremost memories seem to be of European hotel laundries! They sounded as if they had completed a harried, hurried business trip abroad; particularly to Europe where this is all-too easy to do as the countries lie cheek-to-jowl.

One of the above executives visited five countries in eight days. He transacted most of his business at the airport with his local distributor. He might have had time for a fast trip into town—but not to see the sights. He hardly had time to unlimber his camera. And for his light-



# I Could Kick Myself!

"Yes sir. When I think of the money we could have been saving the past few years, I could kick myself. One day the Detrex man pointed out that metal cleaning and surface preparation accounted for 1/4 to 1/3 of all operations performed in the average metalworking plant. That started the gears in motion, and after checking, I was quite surprised to find that over 25% of our operations were of that type. Sure, I knew that we had some metal cleaning operations here and there in our plant, but I never realized the extent of the overall operation until we actually made a survey.

"As a result, savings that appeared insignificant from an individual basis, became very important from the overall standpoint. It certainly changed my thinking regarding chemicals and equipment for metal cleaning and surface preparation. I was looking for a way to save money and I found it."

operations to see what could be done to improve our operation and cut costs. The result—we now are using the Detrex Soniclean Process. We always had difficulty getting certain parts really clean because of their shape and contour. Now we clean them by using sound waves. No matter how inaccessible certain spots are, the Soniclean process cleans them thoroughly.

"I suppose I'm not the only man that wasn't too impressed with the importance of metal cleaning from the overall operational standpoint. Perhaps you're like me. Maybe you've never taken a good look at the importance of these operations in your plant. If so, you'll be surprised at the total number of operations involved and the extent to which savings can be realized.

"It isn't going to cost you a thing to let the Detrex man make the same survey in your plant. The results will speak for themselves. You have everything to gain and nothing to lose. Give him a crack at it today."

*Savings with a Saving!*

## AN OUTLOOK ON MERGERS

Continued from page

the only forces underlying acquisitions. The report lists such other factors as: (1) inability of smaller companies to command adequate financial resources for expansion and modernization; (2) surplus cash in the hands of acquiring companies; (3) aging owners wanting to retire or adjust their estates; (4) tax savings under provisions of the Internal Revenue Act granting more favorable rates on capital gains, tax free exchanges of stock, and tax advantages from carrying forward past operating losses as credits against future earnings.

Case studies, the report reveals, indicate that when a manufacturer desires to expand his capacity, his first decision must be whether to build or buy. If he builds he creates additional capacity and competition; if he buys he reaps not only the advantage of increasing his capacity but acquires the market previously served by a competitor.

"The analysis," the report says, "of the economic forces discernible in acquisitions . . . indicates that where satisfactory existing facilities are available for purchase at a price even approximating their new construction cost, the balance is strongly weighed in favor of purchase."

Competitive considerations, the report continues, are especially important if a manufacturer is diversifying into new products, supplying new markets with existing products, or supplying existing markets where he sells at a freight rate handicap. They also apply if the proposed expansion is vertical in nature, such as increasing capacity to produce raw materials, supplying the manufacturer with component parts, or expanding his operations to produce and distribute end products.

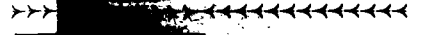
Listed as examples of acquisitions offering quick economies of scale, diversification, and stability in both production and distribution without competitive struggle are the following:

- Consolidated Foods' integration and diversification in the production and wholesale distribution of food products;
- Avto Manufacturing Company's production of a wide variety of

B... Mills' expansion over the... a company engaged in... manufacturing rayon... manufacturing and... yarns and fabrics... synthetic fibers, cotton... textures of synthetic and... wool... synthetic and... natu...

T... said that in discussion... FTC staff members... and acquired companies... pointed out that tax savings... a frequent factor in acquisitions... the report then referred to... merger of Willys-Overland and Kaiser-Frazer in the automobile field. "Willys-Overland report noted, "in becoming a major asset in the merger, Kaiser-Frazer's past losses for... credits against its future earnings...

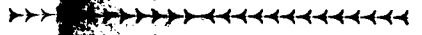
"T... not to imply, of course, that... incentives have inspired the... large number of mergers... in the automobile industry,"... report continued. "The Nash-Kellogg, Kaiser-Willys, and Studebaker-Packard mergers have posed... dilemma for anti-trust



### The AUTHOR

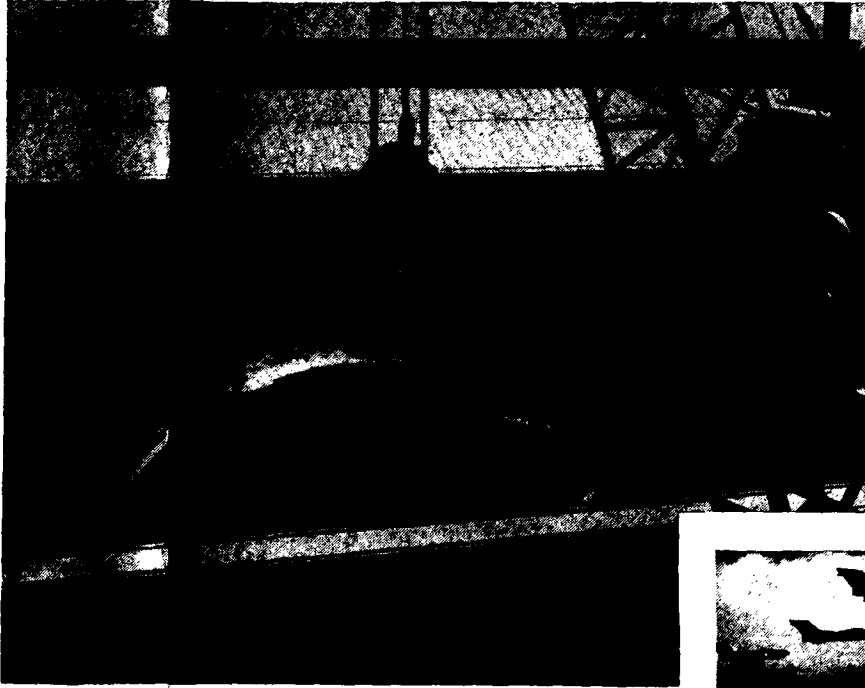
EDWARD... HOWREY was confirmed by the Senate as Commissioner of the Federal Trade Commission on March 23, 1953; took office April 1, 1953. Educated at the University of Iowa and George Washington University, he is a member of the law firm, Sanders, Gravelle, White and Howrey, of Washington, D.C. His Government service also includes the period 1929-1931 with the Department of Justice in anti-trust investigation of the automobile industry.

Mr. Howrey is a member of several state bar associations, the American Bar Association, and the Academy of Political Science.



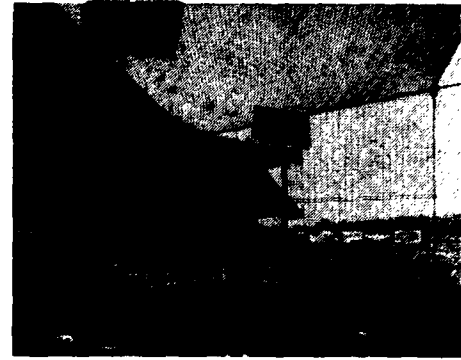
agents... is the public interest... by... thereby... to... position... them... pend... com... even... some... draw... ma... per...

# Only STEEL can do so many jobs so well

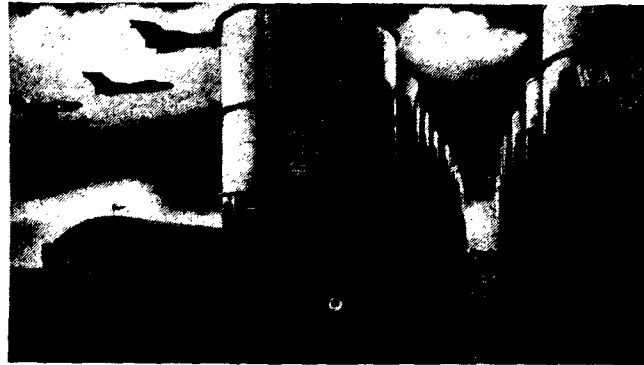


**It Goes In There.** This junkyard baling press gobbles up two cars or one truck at a time, and squeezes them into a tight bale of scrap steel.

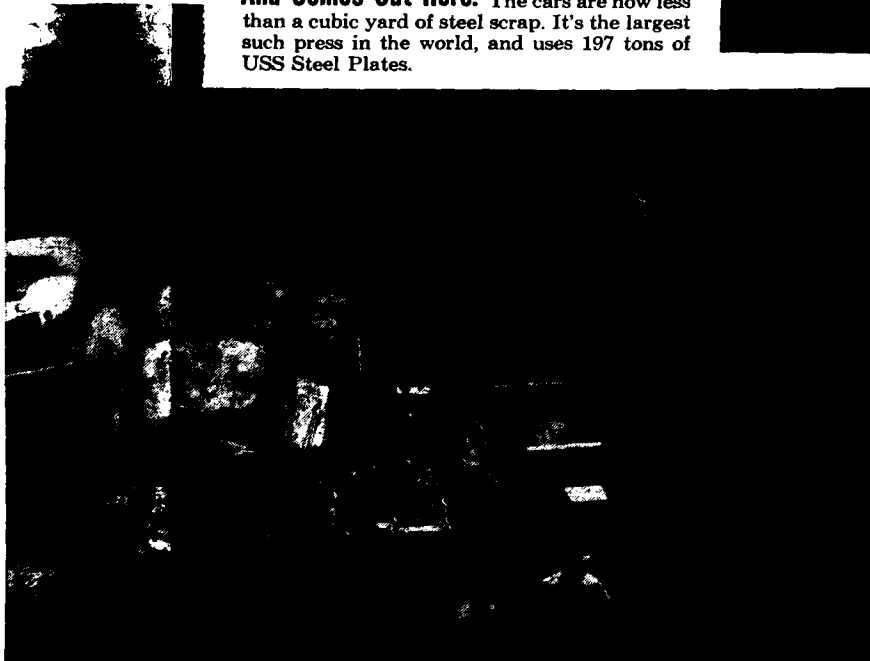
**And Comes Out Here.** The cars are now less than a cubic yard of steel scrap. It's the largest such press in the world, and uses 197 tons of USS Steel Plates.



**The Bambino Was Here.** This is Yankee Stadium, home park of the late Babe Ruth, the "King of Swat." The patrons are protected from misthrows and foul balls by a USS Welded Wire Fabric Screen made from thin, strong wire that does not impair the view. USS Tiger Brand Wire Rope holds the fabric up.



**They Pamper Jet Engines.** Military aircraft engines are shipped and stored all over the world in USS COR-TEN Steel containers. This steel is 50% stronger than ordinary steel, and it has 4 to 6 times the corrosion resistance. The containers are kept under pressure, and the air inside is dehydrated to prevent moisture and corrosion.



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 UNITED STATES STEEL HOMES, INC. • UNION SUPPLY COMPANY • UNITED STATES STEEL EXPORT COMPANY • UNIVERSAL ATLAS CEMENT COMPANY

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ability to...  
 three."  
 The rest of the report analyzes the 1950 Act, and explores the uses and limits of economic information in determining the probable competitive consequences of acquisitions and mergers.

**Pertinent Facts**

Among the necessary facts to be considered in evaluating probable consequences are: (1) the character of the acquiring and the acquired companies; (2) the character of the markets affected; and (3) changes in the acquiring company and in the adjustment of other companies in these markets.

An acquisition which reduces the opportunity or incentive of sellers or buyers to enter new markets, to experiment with new channels of distribution, or to exercise choice among products and prices, may substantially lessen competition.

"All of such facts cannot and need not be investigated in each case," the report observes. "Only those facts which are relevant in particular market contexts, and can be obtained at reasonable cost, should become a part of the record. In certain cases the facts that can be obtained at reasonable cost may leave gaps in the information that would be helpful in reaching great certainty as to the competitive consequences of an acquisition. While sufficient data to support a conclusion is required, sufficient data to provide certainty as to competitive consequences would nullify the words, 'where the effect may be'

them into...  
 After...  
 involved in the use of... information as legal evidence—including the need to protect third parties from disclosure of confidential information—the report says:

"Although the use of market information in the administration of Section 7 of the Clayton Act raises special problems, refusal to use such information will not solve these problems. Conclusions concerning the competitive consequences of particular acquisitions cannot be reached on the basis of rule-of-thumb, they must be reached on the basis of the market facts relevant for an understanding of such consequences."

The expansive range of present antimerger activity—Federal Trade Commission complaints, court cases instituted by the Department of Justice, and economic studies—offers business men, respectful of anti-trust prohibitions, some insight to future prospects. Government in 1955 recognizes that responsible regulation lies in a middle ground between indiscriminate condemnation of all mergers and indifference to the real competitive hazards of some mergers. Mergers can only be assessed in competitive context, on a case-by-case basis. Certainly those mergers which transgress anti-trust boundaries will be vigorously challenged. But dynamic enterprise, operating within lawful limits, remains America's great strength. There is no occasion yet to fear irresponsible governmental harassment.



Now, I'll take the peasboater."

...sets Big... standards  
**ENGINEERING MAKE... DIFFERENCE!**



GEORGE SALL METALS PLANT, INC.  
 PHILADELPHIA  
 THE KULJIAN CORPORATION, DESIGNERS AND CONSTRUCTORS

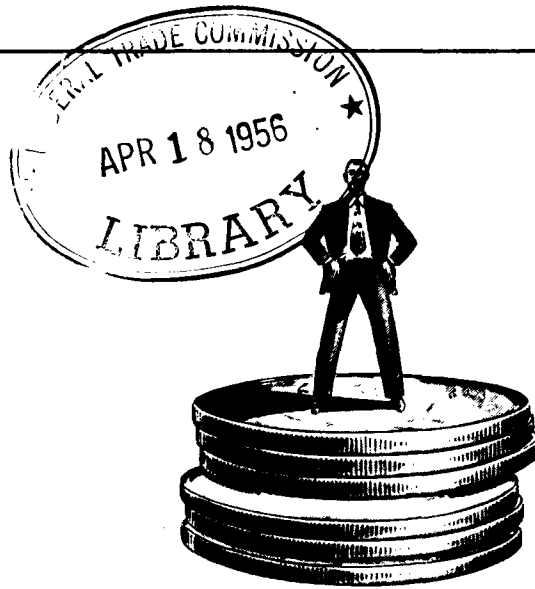
Completely new and streamlined throughout, the George Sall Metals plant typifies the look-ahead planning and progressive company management. Advanced design and engineering techniques, including "automatic" processing of scrap metal, now make it unique in the field of metallurgy. It is the only new secondary smelting plant east of the Mississippi to offer users of non-ferrous metals a single source of supply for every alloy in which aluminum, copper, tin, nickel, lead, zinc, antimony, and silicon are used.

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