Other Acquisitions

5. Respondent made three other acquisitions in the State of Wyoming. Only one of these involved a corporation. Complaint counsel concede that the record fails to establish that any of the three companies was engaged in commerce. The only corporation in the group was Worland Creamery Company, which respondent acquired in May 1959 for a consideration of $37,000. Worland had sustained a loss on its operations in each of the two years prior to its acquisition (CX 358-N, R). The other two companies acquired were: Meredith Dairy, which respondent acquired in December 1951 for a consideration of $8,500 (CX 69-A), and Yellowstone Dairy, which respondent acquired in May 1954 for $65,000 (CX 110-A).[131]

Z-1. *Rose Lawn Dairies of Arkansas, Inc.*

The Acquisition

1. Rose Lawn Dairy operated as both a corporation and a partnership. The principal location of the business was in Muskogee, Oklahoma, and was operated by a partnership. There were two Rose Lawn distribution branches. One was in McAlester, Oklahoma, which the partnership operated. The other was in Fort Smith, Arkansas, which was operated as an Arkansas corporation, whose stock was wholly owned by the partnership. The partnership had originally manufactured its own ice cream and processed its own milk, which were distributed both from Muskogee and the two branch locations. However, in 1952 it ceased manufacturing ice cream because of financial difficulties and began purchasing its ice cream requirements from Swift & Co. In 1954, the continuation of its financial difficulties caused the company to cease processing milk, and it became a distributor of fluid milk purchased from respondent's plant at Tulsa, Oklahoma. In January 1955, when Rose Lawn was unable to repay respondent for milk and dairy products purchased from it, respondent took over the McAlester and Fort Smith branches, in partial repayment of the debt. Respondent did not acquire the principal business of the partnership at Muskogee. After operating the branches for a year, respondent offered to resell them to Rose Lawn, but the latter declined the offer (CX 21; CX 117).

2. Rose Lawn Dairies of Arkansas, Inc., had net sales in the seven-month period from April 1, 1954 to October 31, 1954, of $227,477, on which it sustained a loss of $30,026 (CX 21-G). The record does not disclose any breakdown of the operations of the partnership, as be-

[131] See p. 567, *supra*, for a discussion of Yellowstone Dairy's market position in a portion of the area served by the Utah Division of Creameries of America.

tween the Muskogee and McAlester operations. In the 10 months up to October 31, 1954, the partnership had net sales of $1,156,564, on which it sustained a loss of $14,000 (CX 117–I). The record contains no data as to the gallonage sold by the Fort Smith branch operated by the corporation. The gallonage sales of the McAlester branch operated by the partnership were approximately 750 gallons of milk per day (CX 117–E).

Market Conditions

3. The branch operated by the corporation at Fort Smith distributed fluid milk and related products in the city of Fort Smith and adjacent territory (CX 21–D). These products were received from respondent's plant in Tulsa, Oklahoma. Respondent concedes in its answer that the Rose Lawn corporation was engaged in commerce. The branch at McAlester distributed fluid milk and related products in the counties of Pittsburg, Latimer and part of Pushmataha in the State of Oklahoma (CX 117–E). Respondent did not distribute any milk products in the areas in which its distributor sold. There were seven other dairy companies distributing dairy products in the area served by the Fort Smith branch (CX 21–D), and four in the area served by the McAlester branch (CX 117–E).

4. Complaint counsel have proposed no specific area, as being the relevant geographic market with respect to either the Fort Smith branch or the McAlester branch. In the absence of more definitive evidence than appears in the record, no finding can be made as to the relevant geographic market areas. The record contains no market share data with respect to the area in which the Fort Smith branch, operated by the corporation, sold. There is evidence that the market share of the Rose Lawn operation conducted by the partnership in McAlester was in the order of magnitude of 11 to 13% (CX 451).

Z–2. *Dahl-Cro-Ma, Ltd.*

The Acquisition

1. As heretofore mentioned (p. 569, *supra*), in December 1954 respondent acquired Dahl-Cro-Ma, Ltd., a Hawaiian corporation. The acquisition was actually made by Dairymen's Association, Ltd. (the name under which respondent's subsidiary, Creameries of America, operated in Hawaii). Under an agreement entered into December 27, 1954, Dairymen's acquired the business and assets of Dahl-Cro-Ma, including its trade name "Blue Bonnet." The transfer took place February 1, 1955, and the consideration paid was approximately $100,000 (CX 24 A–E). Dahl-Cro-Ma was engaged in the manufacture and sale of ice cream and other frozen desserts. In the fiscal

year ending June 30, 1954, Dahl-Cro-Ma's ice cream sales amounted to $119,064, consisting of approximately 60,000 gallons (CX 24–Z 1). Its gross profit on ice cream sales was $39,144, and its net profit on all sales, including frozen foods, was $2,472 (CX 24–Y).

Market Conditions

2. Dahl-Cro-Ma's plant was located at Hilo on the Island of Hawaii, and its area of distribution was limited to that island (CX 24–X). So far as appears from the record, it did not distribute on the Island of Oahu, on which Honolulu is located. As heretofore mentioned, Dairymen's had a processing plant at Hilo and distributed frozen products on the Island of Hawaii in competition with Dahl-Cro-Ma (CX 16–Z 9). Although there were a number of other ice cream companies on the Island of Oahu (CX 24–Z), Dahl-Cro-Ma's only competitor on the Island of Hawaii was respondent's subsidiary, Dairymen's (CX 16–Z 9).

3. Complaint counsel contend that the "Island State of Hawaii" is the geographic market relevant to the Creameries of America acquisition (Reply Findings, p. 13). However, they propose no specific area as being the appropriate market area with respect to the Dahl-Cro-Ma acquisition. It is the conclusion and finding of the examiner that the Island of Hawaii is an appropriate market area in which to consider the impact of the Dahl-Cro-Ma acquisition. Dairymen's annual frozen products sales on Hawaii were approximately 100,000 to 120,000 gallons (CX 16–Z 9). Dahl-Cro-Ma's sales were approximately 50,000 to 60,000 gallons annually (CX 16–Z 9; CX 24–Z 1). On this basis, Dairymen's accounted for approximately two-thirds of the frozen products sold on Hawaii and Dahl-Cro-Ma accounted for approximately one-third. Following the acquisition, Dahl-Cro-Ma's operations were consolidated with Dairymen's Hilo plant (R. 1341). Dairymen's is at present the only company distributing ice cream at wholesale on the Island of Hawaii (CX 412).

Z–3. *Other Acquisitions*

1. The complaint as amended charges respondent with having acquired 175 dairy companies, of which 77 are alleged to have been corporations engaged in commerce. Complaint counsel have conceded, in their proposed findings, that the record establishes engagement in interstate commerce by only 37 of these companies.[132] Appropriate

[132] The 37 companies actually involve 29 different groups of companies, since some of the acquisitions involved multiple corporations which were commonly controlled. Thus, the Tro-Fe Dairy acquisition involved two corporations, an Alabama corporation and a Tennessee corporation; the Dairyland acquisition involved its affiliate company, Valdair; and the Dothan Ice Cream acquisition involved seven affiliated corporations, plus a partnership.

findings have been hereinabove made with respect to each of the corporations which complaint counsel contend were engaged in interstate commerce.[133] In order to provide a fuller picture of market conditions in the areas where respondent made acquisitions of corporations claimed to be in commerce, the examiner has briefly discussed the facts relating to respondent's acquisition of 83 other companies (corporate and non-corporate) in these areas. The 55 remaining companies which have not been hereinabove discussed or mentioned are either corporations with respect to which complaint counsel concede the record fails to establish engagement in commerce, or are non-corporate businesses which, in most instances, were also not in commerce. For the most part, these were small companies which were acquired for a consideration of $25,000 or less.

2. The companies with respect to which findings have not been previously made were located in the States of Colorado, Nebraska, Kansas, Oklahoma, Wisconsin, Michigan, Tennessee, Kentucky, Maryland, South Dakota and Oregon. Only nine of these companies had annual sales of $250,000 or over. These companies and their approximate sales were: Superior Dairy of Pueblo, Colorado ($250,000); Sutter Dairy, Inc., of Grand Island, Nebraska ($450,000); Weibel Dairy, Inc. of Enid, Oklahoma ($413,000); Eckles Ice Cream & Dairy Co., Inc. of Baltimore, Maryland ($446,000);[134] Princeton Creamery, Inc. of Princeton, Kentucky ($735,000); Kentucky Ice Cream Co. Inc. of Richmond, Kentucky ($840,000); Model Farms Dairy of Louisville, Kentucky ($2,950,000); Daniel's Dairy & Ice Cream Co. of Paintsville, Kentucky ($518,000); and Medo-Land Creamery Co. of Eugene, Oregon ($4,200,000). Complaint counsel have conceded that the record fails to establish that those of the above-named companies which were corporations were engaged in commerce.

III. OTHER ALLEGED ILLEGAL PRACTICES

A. Customer Assistance

1. While this proceeding is aimed principally at respondent's acquisition of other dairy companies, the complaint, in Paragraph

[133] These have been grouped under 27 separate headings. Each of the acquisitions of multiple, commonly controlled corporations has been grouped together. In addition, the acquisition of two small Ohio companies claimed to be in commerce, viz, Gray & White and Linton & Linton, has been discussed under the heading "Other Ohio Acquisitions".

[134] The Eckles acquisition involved the acquisition by respondent of 32.4% of Eckles' preferred stock and 40% of its common stock. The company continued to operate as a separate entity in Baltimore. There is no indication in the record that, by this stock acquisition, respondent acquired control of Eckles.

Eight, alleges that respondent has engaged in a number of business practices, most of which involve various types of assistance to customers, or discrimination in favor of certain customers. These include, the loaning of money or equipment to customers, the performance of special services, and the granting of rebates or discriminatory prices. Most of these practices were the subject of a number of proceedings brought against nine of the principal manufacturers of frozen desserts, including respondent in this proceeding (Docket Nos. 6172–6179, and 6425). After extensive hearings, the complaints were ultimately dismissed on the ground that the record in such cases did not "support a finding that these practices have produced the requisite degree of competitive injury to support an order to cease and desist" (Order Dismissing Complaint, Docket No. 6174, May 23, 1962) [60 F.T.C. 1274, 1620]. Complaints have also been issued against some of the same companies, charging them with the granting of discriminatory prices, allegedly in violation of Section 2(a) of the Clayton Act, as amended by the Robinson-Patman Act. Such a proceeding is now pending against respondent (Docket No. 7599).

2. At a pre-hearing conference held in this proceeding on January 17, 1957, counsel supporting the complaint agreed that they would not seek an order requiring respondent to cease and desist from engaging in any of the acts and practices set forth in Paragraph Eight of the complaint (see Pre-trial Order, February 8, 1957). The purpose in alleging such practices in the complaint herein was not to secure a re-trial of the earlier cases, but to provide a basis for offering evidence to show the economic power possessed by respondent vis-a-vis its smaller competitors, so as to provide a background for determining the competitive impact of the challenged acquisitions (R. 6, 18).

3. Complaint counsel have submitted a number of proposed findings with respect to some, but not all, of the allegations in Paragraph Eight. The examiner does not consider it necessary to make extensive findings with respect to these allegations. It is sufficient to note that the record does establish that respondent has made loans to some of its wholesale customers and that it has expended substantial sums in furnishing equipment to such customers. However, there is nothing in the record to show that respondent's practices in this regard are any different from those of dairy companies generally, or that their expenditures for such purposes are greater than that of other dairy companies, in proportion to the amount of

business done by them. The record also establishes that respondent has granted rebates or volume discounts to wholesale customers. However, there is nothing in the record to establish that respondent's practices differ from that of the other dairy companies or that their practices may result in substantial injury to competition.

B. "Market Leverage"

4. Although not charged in the complaint as an illegal practice, counsel supporting the complaint contend that respondent has deliberately sold milk or ice cream in certain areas at unreasonably low prices, while making abnormally high profits in other areas. Complaint counsel assert that respondent has used its economic power or "market leverage" to "act individually in specific market areas so as to give it a competitive advantage over a local single-product company or a local multi-product company" (Findings, p. 19). In support of this contention complaint counsel cite a number of instances in which various of respondent's plants operated at a loss in either the milk or ice cream product line.

5. Respondent does not deny that its profit and loss statements, which are in evidence, purport to show that it sustained losses in certain of its plants. It contends that some of these losses were mere bookkeeping losses, as where a branch plant which did not manufacture ice cream was charged a price above the cost of the manufacturing plant. In such instances, if the records of both plants are combined they show an overall profit. In other instances where the records disclose a loss on one product and a profit on another, respondent contends that this resulted from the arbitrary assignment of indirect expenses to a particular product, and that if such expenses were ratably divided, the records would reveal a profit on all products. Respondent concedes that in some instances its plants did in fact operate at a loss, but contends that this was not due to any deliberate policy on its part. Certain of such plants, which were not considered to be efficient plants, were later closed.

6. The examiner considers it unnecessary to make extensive findings with respect to the contention that respondent used its economic power or market leverage unfairly. It is sufficient to note that the record is lacking in substantial evidence to support a finding that respondent deliberately incurred losses in one area or in one product and/or obtained abnormally high profits in other areas or with respect to other products. However, while the charge that respondent engaged in what complaint counsel refer to as "predatory" pricing

practices is not sustained by the record, there is no question but that it enjoyed considerably greater market leverage than did its smaller competitors. As the Commission noted in the *Proctor & Gamble Co.* case, Docket No. 6901, November 26, 1963 [63 F.T.C. 1465], a multi-product firm operating in many markets enjoys "greater flexibility in pricing" than its smaller single-product or single-market competitors. This may lead to "below-cost selling of a particular product" even "without predatory motive." The likelihood of this occurring is particularly pronounced in the dairy industry, which is highly competitive and where profit margins are narrow.[135]

Conclusions

I. As to the Acquisitions

A. Applicable Legal Principles

1. This proceeding involves principally a question of the legality of a series of acquisitions by respondent of the stock or assets of a number of other dairy companies. The only statute specifically dealing with the matter of acquisitions is Section 7 of the Clayton Act, as amended and approved December 29, 1950. Section 7 prohibits the acquisition by a corporation engaged in interstate commerce of the stock or assets of another corporation engaged in interstate 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." The constituent elements of a Section 7 violation are, (a) that the acquiring company be engaged in interstate commerce, (b) that the acquired company be engaged in interstate commerce, and (c) that the effect of the acquisition may be substantially to lessen competition, or to tend to create a monopoly in any line of commerce in any section of the country.

Engagement in Commerce by Acquiring Company

2. There is no substantial issue raised here as to the acquiring company's engagement in commerce. Respondent admits in its answer that it and its subsidiaries are engaged in commerce, with the exception of "its inactive subsidiaries" and seven named subsidiaries. Since, with one possible exception, the acquisition of other corporations engaged in commerce were made directly by respondent, rather than through a subsidiary, it is unnecessary to consider further at

[135] During the period from 1951 to 1958 respondent's profit on sales, after taxes, ranged from a low of 1.7% to a high of 2.3% (CX 418, pp. 18–19).

this time the question of whether the particular subsidiary was engaged in commerce and, if not, whether the acquisition would, nevertheless, fall within the scope of Section 7 since the parent company was admittedly engaged in commerce.

Engagement in Commerce by Acquired Company

3. Two issues have been raised with respect to whether certain of the acquired companies were engaged in commerce within the meaning of Section 7, (a) whether the acquired company must be engaged in interstate commerce in the line of commerce in which the adverse competitive impact required to be shown by the statute occurred, and (b) whether a company which sells entirely within a State, but which purchases dairy supplies from outside the State, is engaged in commerce. With respect to the first issue, the Commission has already held in the *Foremost Dairies, Inc.* case, Docket No. 6495, April 30, 1962 [60 F.T.C. 944], that it is sufficient to meet the jurisdictional requirements of Section 7 if the acquired company is engaged in interstate commerce in any line of commerce in which it does business, and that it is unnecessary to show that it was engaged in interstate commerce in the line of commerce claimed to have been adversely affected by the acquisition. As a hearing examiner of the Commission, the undersigned is bound by this precedent. With respect to the second "commerce" issue raised by respondent, it was likewise held in the *Foremost Dairies* case that a company which regularly purchases dairy supplies from outside the State is engaged in interstate commerce, even though its sales take place entirely within the State. The cases cited by respondent, such as *Higgins v. Carr Bros.*, 317 U.S. 572, are in nowise contrary to the holding in the *Foremost* case. They involve principally the coverage, under the Fair Labor Standards Act, of employees engaged in activities which occurred after the out-of-State goods had come to rest within the State. They do not hold that the ordering and receipt of goods from out of the State does not constitute engagement in commerce.

4. In connection with the issue of whether the receipt of goods from out of the state constitutes engagement in commerce, respondent makes the further contention that, even assuming such transactions are in commerce, complaint counsel have failed to establish that such out-of-state purchases were of more than de minimis proportions. Respondent cites a number of cases arising under the Fair Labor Standards Act, in which employees spending only a small fraction of their time in the handling of interstate goods were held to fall within the de minimis rule. As respondent notes, the Supreme

Court in *Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178, subsequently held that the de minimis doctrine had no application to the Fair Labor Standards Act because the Act is made specifically applicable to the shipment in commerce of "any" goods produced in violation of its provisions. However, while stating that there was no warrant for assuming that "regular shipments in commerce are to be included or excluded dependent on their size," the Court, nevertheless, acknowledged that "sporadic or occasional shipments of insubstantial amounts of goods were not intended to be included" in the Act's coverage. Unlike the Fair Labor Standards Act, the Clayton Act does not speak in terms of the shipment of "any" goods in commerce. It is reasonable to assume, therefore, that the ordinary de minimis rule would apply in connection with establishing whether an acquired company was engaged in commerce. While the examiner is not aware of any cases arising under Section 7 of the Clayton Act in which the rule has been held to be applicable, it has been held to apply under the Robinson-Patman Amendment to the Clayton Act, which likewise uses the phrase "engaged in commerce." *Skinner* v. *U. S. Steel Corp.*, 233 F. 2d 762, 764 (CA 5, 1956).

The Product Market

5. The competitive impact of a merger or acquisition must be determined with reference to some "line of commerce." It is now well established that the phrase "line of commerce," as used in Section 7, refers to a "relevant product or services market." *U. S.* v. *Philadelphia National Bank*, 374 U.S. 321, 356. Complaint counsel propose, as the relevant product markets, "dairy products" generally, and various specific types of dairy products, such as bottled fluid milk and ice cream. They also propose the manufacture and sale of certain specific dairy products through different channels of distribution, such as wholesale and retail, as separate product markets.

6. It has been held that the "outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it," but that "within this broad market well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes." *Brown Shoe Co.* v. *U.S.*, 370 U.S. 294, 325. The record in this proceeding does not disclose any such "interchangeability of use" or "cross-elasticity of demand" between the various specific products of the industry, as to justify a finding that dairy products as a whole constitute an appropriate product market. Companies which produce and distribute products derived from fluid milk are con-

sidered, in the broad sense, as being in the dairy products industry. Companies in the dairy industry are classified even more broadly by the Bureau of the Census, as being in the "Food and Kindred Products" industry. However, the products of this broad industrial grouping are divided into separate industry categories such as "Fluid Milk," "Ice Cream and Ices," "Creamery Butter," "Natural Cheese," etc. (CX 424). While there are some companies which produce most of the products that can be broadly classified as dairy products, the vast majority of the companies process and distribute only certain specific types of dairy products. For example, there are a great many companies which process and distribute only fluid milk products, such as bottled fluid milk, cream, skim milk and chocolate milk. There are a number of companies which manufacture and distribute only ice cream and other frozen desserts. There are a number of specialty companies producing such products as cheeses or butter.

7. It is the conclusion and finding of the examiner that the relevant product markets in this proceeding are, the processing and distributing of bottled fluid milk (including whole milk, cream, skim milk, buttermilk and flavored milk); the manufacturing and distributing of ice cream and other frozen desserts (including ice milk, sherbets, ices, mellorine and frozen novelties); the manufacture and distributing of frozen dessert mixes; the processing and distributing of butter; the processing and distributing of cheese; and the processing and distributing of condensed and evaporated milk. The fluid milk product line may be further subdivided into distribution through wholesale and retail channels, although the economic significance of this division has largely dwindled since most companies distribute through both retail stores and home delivery. The frozen dessert product line involves principally distribution through wholesale channels since there is little home delivery by manufacturers. There are some companies which sell through their own retail stores frozen desserts manufactured on the premises. However, none of the corporations engaged in commerce which were acquired by respondent fall in the retail classification.

The Geographic Market

8a. The product market in which competitive impact is to be determined must also be related to a "section of the country" or, as it has been differently described, to a "relevant geographical market." *U. S.* v. *Philadelphia Nat. Bank*, *supra*, at 356. As in the case of a product market, which may be divisible into product submarkets, "so may a geographic submarket be considered the appropriate 'section

of the country.'" *Brown Shoe Co.* v. *U. S.*, *supra*, at 336. Furthermore, the approach to defining a relevant market is "a pragmatic, factual" one and "not a formal, legalistic one." [*Ibid.*] Since it is competition which Congress was trying to preserve, a delineation of the geographic market area does not depend merely on "where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate." *U. S.* v. *Philadelphia Nat. Bank*, *supra*, at 357. The scope of this area "depends upon 'the geographic structure of supplier-customer relations'" [*ibid*] or, as the Court stated "in a related context 'the area of effective competition in the known line of commerce must be charted by a careful selection of the market area in which the seller operates, *and to which the purchaser can practicably turn for supplies.*' *Tampa Electric Co.* v. *Nashville Coal Co.*, 365 U.S. 320, 327 (emphasis supplied)." [*Id.* at 359.]

8b. Applying these principles to the dairy industry, in which distribution patterns are local or regional, rather than national, the scope of the appropriate geographic markets must be determined not merely in terms of the area in which the acquired and acquiring companies operated, but with reference to the pattern of supplier-customer relations in the area which will be affected by the acquired company's departure as an independent business entity. The acquired company's distribution area is merely a point of departure for determining the sources to which its customers can practicably turn for supplies. Since the ultimate question to be determined is one of effect on competition resulting from the acquired company's departure, it is necessary to draw a line which will encompass the distribution areas of the companies with which it principally competed and to which its customers could turn as alternative sources of supply. In determining the area of effective competition, an appropriate balance must be made between the distribution patterns of the competing local companies which Congress was seeking to preserve as competitive entities, and those of large national or regional companies which distribute into more than one market. To the extent that the latter companies have consolidated their production facilities in the interest of achieving the economies of large-scale production, but distribute into remote areas through separate subplants or distribution branches, they may be regarded as operating in multiple markets.

Competitive Effect

9. Given the necessary jurisdictional prerequisites, the test of the legality of an acquisition under Section 7 of the Clayton Act is

whether "the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly" in any product line in any geographic market. The "effects" clause in the statute is couched in general, non-specific terms. However, its meaning may be gleaned from its legislative history, and especially from recent court decisions interpreting that history and applying it in specific factual situations.

10. Any attempt to interpret the general language of the statute must be made against the background of the "dominant theme pervading congressional consideration of the 1950 amendments [which] was a fear of what was considered to be a rising tide of economic concentration in the American economy." *Brown Shoe Co.* v. *U.S.*, *supra*, at 315. Accompanying this concern was an affirmative conviction as to "the desirability of retaining 'local control' over industry and the protection of small businesses." *Ibid.* In addition to giving recognition to the congressional mood which was responsible for the amendment to Section 7, it is also necessary to bear in mind that Section 7 of the Clayton Act was enacted because of what was considered to have been the ineffectiveness of the Sherman Act "in halting the growth of 'trusts' and monopolies." *U.S.* v. *Bethlehem Steel Corp.*, 168 F. Supp. 576 (SD NY, 1958). In using the words "*may* tend substantially to lessen competition" (emphasis supplied), Congress was thinking in terms of the "reasonable probability" of competitive injury, and not the "certainty" thereof. *Brown Shoe Co.* v. *U.S.*, *supra*, at 323, n. 39. It recognized that: "A requirement of certainty and actuality of injury to competition is incompatible with any effort to supplement the Sherman Act by reaching incipient restraints." *Ibid.* At the same time, it indicated that the amendment would not apply to "the mere possibility" of competitive injury. *Ibid.*

11. Despite the foregoing expressions of congressional intent, there has been considerable argument concerning the quantum and type of evidence which, while falling short of establishing actual competitive injury or the certainty thereof, does establish the reasonable probability of such injury and not the mere possibility thereof. While it has been generally agreed, in theory at least, that a full-blown showing of monopoly conditions, of the type sufficient to meet the "Rule of Reason" requirements of the Sherman Act, is not necessary in a Section 7 case, there has been considerable disagreement as to just how far it is necessary to go to establish the "reasonable probability" of an adverse competitive impact. Such disputes have tended to polarize between the advocates of a "quantitative substantiality" test and those advocating a "qualitative substantiality" test. See *U.S.* v.