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**“Business Mergers—Helpful or
Harmful?”**

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The Announcer: Freedom of discussion, the freedom of all Americans to hear all sides of important issues and decide accordingly.

The National Broadcasting Company presents America's leading discussion program, founded and produced by Theodore Granik, THE AMERICAN FORUM.

Today, the AMERICAN FORUM presents another timely discussion of importance to you: "Business Mergers . . . Helpful or Harmful?"

And here to introduce our speakers is your moderator, Stephen McCormick. Mr. McCormick—

Mr. McCormick: Hello! Welcome once again to the AMERICAN FORUM.

I'd like you to meet our guests, today, Mr. Edward F. Howrey, Chairman, Federal Trade Commission, and Mr. Wendell Berge, lawyer and former assistant Attorney General of the Anti-Trust Division, Department of Justice.

We will begin our discussion in a moment, but first, this message of importance.

(Announcement)

Mr. McCormick: In recent months, there has been a considerable increase in business mergers, in the banking, automobile and chemical industries, and other fields. Since the coalition of companies in many fields may affect the free enterprise system and America as a whole, this is a timely question, "Are mergers helpful or harmful?"

Our guests, today, are authorities on this question and to question them is a group of experts, with Mr. Borkin having the first question.

MR. BORKIN: There have been a lot of mergers among the automobile manufacturers. Do you view with alarm or do you point with pride, or is it a matter of no concern, that this movement seems to be taking place?

MR. HOWREY: I don't do one or the other. The Federal Trade Commission or the Department of Justice did not object to the Kaiser-Willys, the Nash-Hudson or the Studebaker-Packard merger.

I have a little chart, here, and I would like to explain that in detail, but I think first I should give my friend Wendell Berge a chance to answer the question.

MR. BERGE: I think the outstanding misfortune of the automobile industry is the predominant power of General Motors. I think that Government agencies concerned with the monopoly problem would do well to give serious study to the question of whether or not some action should be taken against General Motors.

As far as the merger of the smaller companies goes, Nash, Studebaker, Packard, it may be that those particular mergers will strengthen competition by putting them in a better position to compete with the giants.

MR. HOWREY: I wonder if I may add a little bit—since this is one of the most interesting questions we have in the whole merger field—I prepared a little chart, here, which I hope you can see.

You will notice that No. 1—that is General Motors—had 52.5

percent of the passenger car production. That is, in the first eleven months of 1954.

No. 2 is Ford; No. 3 is Chrysler, and now, No. 4 is Studebaker and Packard combined and they have only 2.2 of the passenger car production, in the first 11 months of 1954.

Then American Motors—that is Hudson and Nash Kelvinator combined—have only 1.9, and Kaiser-Willys have .3 of one percent.

We were confronted with the question, whether we should prevent the merger of 4, 5 and 6. We felt that they were losing position volumewise, they needed dealer distribution throughout the country, they needed better access to materials and supply, and they needed to fill out their product line. For instance, Kaiser and Willys, Kaiser didn't have a station wagon and a Jeep and Willys didn't have a full line of passenger cars, so, while we didn't like to do it, certainly the Commission did not deny and I would be the last to deny, that there is an unfortunate concentration of production in the automobile field. But that was an existing situation which nobody can do anything about. That is as far as these three mergers were concerned.

MR. HILL: Do you think, then, there might very well be some anti-trust proceedings with respect to the automobile industry rather than an attempt to strengthen the weak people so they can compete with the big ones?

MR. HOWREY: I know of none pending. We are not now investigating the automobile industry. The Department of Justice may be, I don't know.

MR. BERGE: Under the Sherman Act, the Government has power to proceed to break up monopolies, and if General Motors has reached the place where it has the power to exclude competitors from the market and was doing it and had unfair competitive advantage because of its size and was abusing that power, there is, in the Sherman Act, power to seek dissolution or a divestiture, and accomplish effective relief.

MR. KREBS: I believe General Motors has an advantage of 150 to 1 over the smallest of those combinations. How much of a predominance has to exist before we have a monopoly situation?

MR. HOWREY: One judge said 90 percent was too much; 60 percent might be dangerous, but I think he said 30 percent was all right. I believe that was Judge Learned Hand in the ALCOA case, but those are figures which apply to a particular industry. What they might be in some other industry, nobody can tell.

MR. MCGOVERN: Do I understand from that chart that you just presented to us, there, that as long as there is one predominant company in the field, that you feel that the merger of the smaller companies is not unwise from the standpoint of the public?

MR. HOWREY: No, I don't particularize as to any one industry. We looked at the automobile industry and we said in that industry there were these three giants, if you want to call them that, and that it was wise under the particular circumstances and facts which confronted us, to let the six smaller companies combine into 3.

We didn't for a minute consider letting General Motors combine

with anyone else. That question wasn't before us and I think I could almost say in advance that we would not approve a merger of any of the smaller companies with one of the larger companies.

MR. KREBS: Within the last year or so, hasn't General Motors taken over Euclid Road Machinery Company?

MR. HOWREY: I don't know.

MR. BORKIN: We are not concerned with whether you would permit General Motors to merge, but as a result of the failure of these companies to merge, they might be in a position where they could not compete and most of us are concerned with the fact that theirs is a weakened condition due to the enormous strength of General Motors. I would like to know the area in which you would permit mergers to occur.

MR. HOWREY: In the steel industry, for example, the Department of Justice refused to permit—I think it was the No. 2 company and the No. 6 company to merge, Bethlehem with Youngstown. If you can cast your eye on that chart, gentlemen, you will see Bethlehem had 15.1 percent and Youngstown is 5 percent. There, they thought that such a merger would be bad. It would be an unfortunate concentration of two very substantial companies. That merger was disapproved, on facts and circumstances in that case.

MR. BERGE: I don't think that the percentage of control in the industry is the only test. I think it is pertinent, certainly, but I think there are other things. There might be in one industry, 30 or 40 percent control, coupled with near monopoly over the natural resources necessary, which would create a monopolistic situation. In another industry where two or three companies have approximately 30 percent each, but with a state of competition, it would be all right.

I think there are many factors that have to be taken into account in weighing whether or not a large company has monopolistic power, and I think, Chairman Howrey, that your opinion in the Pillsbury Mills case in which you outlined all the various factors that go into weighing monopoly situations, on the whole, states the law pretty well. The only thing was I wasn't clear from that whether you take into account only the amount of competition left after the merger is consummated but whether you also consider the amount of competition that is taken from the market and I think that both are pertinent factors.

MR. HOWREY: I agree with that, and would consider that and many other factors as well. The Commission is making an economic investigation of mergers and we are trying to find out what the moving causes are behind the merger movement.

I don't want to make a speech, here, but I think it would be interesting to add that there have been two other major merger movements in this country, one at the turn of the century which was the great trust-forming era, and another in the 1920's, and there they really had some mergers. I think this third movement is perhaps a little less significant than the other two. You will recall in the former that the bankers put them together and some of them used to

say "We'll put Worthington Pump and International Nickel together and get pumpernickel."

MR. KREBS: Your comparison with previous trends of trust building or mergers is interesting because I have noticed a couple characteristics of this current one that haven't apparently appeared in others. One is the trend toward diversification. The trend taking over types or lines completely outside its regular line.

Do you think that is a significant change?

MR. BERGE: I would think that it might be, although, I haven't really considered that particular question.

I would like to ask Mr. Howrey, if I may, whether these previous merger trends that he spoke of in the 20's and in the early 1900's, could possibly have been consummated, as they were, if there had been the anti-merger act on the book and if it had been enforced. The anti-merger act is an amendment to the Clayton Act, which says that any merger which substantially lessens competition or tends to create a monopoly is illegal.

MR. HOWREY: I don't think they could have. I think that the new law is going to be very helpful and it goes right to the point also that Mr. Krebs raised. The new law prevents not only the horizontal merger—that is the merger between competitors in the same line and in the same area, but it prevents vertical mergers, "backward" mergers for sources of supply, and "forward" mergers for outlets and retail stores, but also conglomerate mergers which are mergers of different types of business. My observation is that there have probably been, in sheer number, more conglomerate mergers, that is, diversification of products in order to spread the risk and not have all the eggs in one basket.

MR. HILL: One thing that interests me with respect to the 1950 act is that it continues in the law its language to substantially lessen competition, so there is a great deal of room for variation as to how that particular law will be administered. Do you think that the enforcement of the anti-merger law is going to be strengthened within the immediately foreseeable future, by the present administration?

MR. HOWREY: I most certainly do. I think the new law, the new tools we have to work with, will strengthen it very materially. We have three cases pending now.

MR. BERGE: Mr. Howrey, I am advised and I think you are, too, that Senator Kefauver intends to introduce a bill which would give the Federal Trade Commission the duty to pass on mergers in advance.

Now, it seems to me there is a good deal of merit in that. It is a good idea not to scramble eggs rather than to unscramble them after they have been scrambled.

It is very hard for lawyers in good conscience, and who really want to advise their clients to keep within the law, to advise whether or not a particular merger will meet with the favor or disfavor of your Commission and the Department of Justice after it is consummated. I am inclined to favor that law. I wonder what you think about it?

MR. HOWREY: That is a very difficult question. It puts me

squarely on the spot, because Senator Kefauver asked me the same question in writing and I replied in writing that the Attorney General's Committee was studying the question and I would withhold comment. I think I'd better withhold comment, now, except I would point out that it does meet one requirement the Congress laid down, namely that the Commission should try to stop these mergers before they happen. If we had to issue a certificate of convenience and necessity, so to speak, before they could merge, it would certainly do that.

The other side of the coin is that we have a private, capitalistic, competitive enterprise system, and if the Federal Trade Commission has to issue a license to a businessman before he can merge, in a case where a merger would vitalize competition, as we think the automobile mergers probably have done, then Government would really be getting into business. I would reserve judgment now on whether I would want to do that.

Mr. McCormick: When will the Attorney General's Committee submit its recommendations?

MR. HOWREY: The Attorney General's Committee, of which Mr. Berge and I both are members—and I may say he is a very hard working member of it—will make its report in February or March.

MR. BORKIN: We are disturbed about the other side of the coin: If the merger of Republic and Bethlehem is contrary to public policy because of the percentage they would equal, then what I am concerned about is that U. S. Steel has more than they have right now.

General Motors has more than almost all the rest of the automobile industry combined, including Chrysler and Ford.

On the other side of the coin, if we are discussing mergers, I think we ought to think in terms of dissolutions. Don't you think we should have a right of dissolution?

MR. HOWREY: I don't know of any existing law under which we could dissolve General Motors, or dissolve U. S. Steel, unless it is found that they have violated Section 2 of the Sherman Act; that is, that they are already a monopoly, or are monopolistic.

I think that the new anti-merger act doesn't deal with that. Perhaps, it should, but it doesn't.

MR. BERGE: It seems to me that more dissolution suits are called for by the facts of our current economic situation than are being brought.

We talked a lot about General Motors. I think there is one other advantage there that should be mentioned and that is the great integration of General Motors and the fact, for example, of its close connection with DuPont. The automobile industry is a large consumer of chemicals. The Government brought a suit to separate the DuPont interests from General Motors. DuPont—I believe the facts were undisputed—owned about 23 percent of the stock and I guess one of these issues would be whether that constitutes control. Ordinarily in a large corporation that would constitute control because of the diversification of holdings that are listed as General Motors is, but I am concerned with whether or not the Government is going to

appeal that case because I don't think a matter of such public interest as this is, where so much money and time, both for the Government and defense, have been spent on a trial, that the final solution of it should rest on the opinion of one man. I certainly hope the Government appeals the DuPont-General Motors case and I believe that public opinion will convince the Department of Justice that it should be. In fact I predict without any authority for doing so other than my own hunch and having been a member of that Department for some years, that that case must be appealed.

MR. MCGOVERN: Getting back to the automotive situation, again, I was going to ask whether or not Mr. Howrey, you would agree that inasmuch as General Motors has less than one-half of the total production in the industry, if these three companies which have recently merged, could not survive in the coming year and sought to merge, since in the aggregate they would have less than five percent, wouldn't you say they were entitled to merge?

MR. HOWREY: I don't know. That is one thing that is very difficult to foresee or prophesy.

I insist, and I wrote an opinion outlining this, that every case must be examined on its own merits. We must look at the relevant economic and competitive factors existing in that market, in that industry, at that time. To just go out and say, "Let's dissolve General Motors," "Let's dissolve U. S. Steel," can't be done that easily in this country with its big business, its big labor unions, and its big Government. I don't believe in concentration. Some think GM is too big and if U. S. Steel has 30 percent it may be too big, but that has happened since 1900 and we can't wipe them out overnight without serious thought.

MR. MCGOVERN: If General Motors is so large that in your judgment it represents the justification for the little companies merging, little companies like Nash and Hudson, who have a history going back farther than General Motors, isn't General Motors too large in that sense of the word?

MR. HOWREY: Saying it is too large is one thing, but what are we going to do about it? The remedy is the most difficult problem of all. Being a Government official, I have to study that side of it: What can we do and what should we do about it? That is the reason we are making this economic investigation. We think we must carefully apply general principles of law to the economic facts of life.

We have to determine why these mergers take place—whether they are intended to lessen competition, whether they want prestige and power or whether it is the desire of a small firm to grow and compete with its large competitor, whether there are tax losses or financial problems. When we find out about these things, we will know what to do.

MR. KREBS: Didn't your Commission issue a detailed report in the last six months concerning the changing of the concentration of power in the economic system?

MR. HOWREY: We issued one on concentration as such but it

didn't deal with the merger movement or the causes and motives behind it.

Mr. McCormick: This committee is something new or something that happens regularly?

MR. BERGE: Are you speaking of the Attorney General's Committee previously referred to?

Mr. McCormick: Yes.

MR. BERGE: That was appointed in the late summer of 1953 consisting of close to 60 men mostly from private life—Mr. Howrey and Secretary Weeks, I believe, and Judge Barnes of the Anti-Trust Division, were the only Government officials. Most of the men are practicing lawyers and perhaps a dozen were professors.

They were appointed as a Commission to survey the whole anti-trust field and recommend what legislation may be necessary to implement the anti-trust laws. Also, to give their recommendations as to enforcement policies.

It was really a working committee. There wasn't much of a staff. The men met frequently in groups, each were assigned different subjects, and ultimately the group reports of the different working groups were combined into a draft of the committee report. It has been revised several times. The committee met for four days early in December and as Mr. Howrey has stated there will probably be a final report in a couple months.

MR. BORKIN: There are 10 people on that committee not like Wendell Berge. We talk about giving the folks the right for the fox to guard the hen house and we are worried about it. Along that line, we are concerned with other things that have happened. The fear of the Administration to enforce competition in attempting to get the Dixon-Yates contract.

Mr. McCormick: We have enough trouble perhaps to talk about just that.

MR. HOWREY: Dixon-Yates is not in my field and I have no comment to make on it.

MR. BERGE: There is a good article in the January Atlantic Monthly on the Dixon-Yates deal and I recommend to everybody listening that they read it.

MR. HOWREY: I would like to comment on this committee. Mr. Borkin is so far off base if we let it go too far somebody might believe him. That is the statement of having 10 like myself and one Wendell Berge. I admit Wendell Berge could make five of normal people but not 10.

That Attorney General's Committee is a wonderful cross-section of brains and philosophy and ability. And for anyone to suggest that it is loaded or packed or that there is anything different than what it is, he just doesn't know what he is talking about and that includes you, Mr. Borkin.

MR. BERGE: I agree with Mr. Howrey.

MR. BORKIN: I am concerned about a number of other things. SEC is attempting to eliminate competitive bidding on the financing of public utilities. That was a battle we won back in 1940. Since

\$19 billion dollars of financing has gone by competitively.

As a spokesman for the anti-trust principle in the present Administration, are you willing to say a word about it, maybe to prevent the elimination of that idea?

MR. HOWREY: I will have to ask you to restate it. You have said the SEC.

MR. BORKIN: The SEC has proposed operating companies within states to do their own financing without regard to competitive bidding.

I would say the public has gained a half billion dollars in the last 10 years by competitive bidding.

I think the administration seems to be a little frightened of competition.

MR. HOWREY: I don't know what you are talking about, really, because I don't know about the SEC, but I can assure you that the theory of competitive bidding is so deeply imbedded in our anti-trust philosophy that we will never give it up.

But, let's get back to mergers for a minute.

MR. KREBS: I would like to question the Administration's policy on mergers inasmuch as the Attorney General, when he made the decision in Bethlehem and Republic, he stated that while the law prevented the merger he considered the law much too tough and would be in favor of amending it to soften it.

Now, what is the Administration's policy?

MR. HOWREY: I know the statement of which you speak and I did not so read it. I think that interpretation is not his interpretation and it certainly isn't mine. They don't think the law is too tough. They think the law is going to be difficult to administer, but I don't believe for a minute that we are going to weaken, or ask that Section 7 of the Clayton Act be weakened.

I would like to add this, that the rash of mergers in this country are in the paper, textile, dairy, chemical and primary metals fields. We haven't discussed any of those and I would like to add that we have brought more anti-trust suits and Federal Trade Commission suits than any previous administration. We have not grown soft.

MR. BERGE: Though I served in a previous administration, I want to give high commendation to Judge Barnes, the present head of the Anti-Trust Division, who I think, notwithstanding many difficulties, is doing a wonderful job.

Mr. McCormick: We certainly thank you for coming here today, Mr. Edward Howrey and Mr. Wendell Berge, and thank you, gentlemen of the panel.

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