

MERGER ENFORCEMENT IN THE 1990'S  
A CHANGE IN FASHIONS?

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before the

With the beginning of the 1990s we have seen

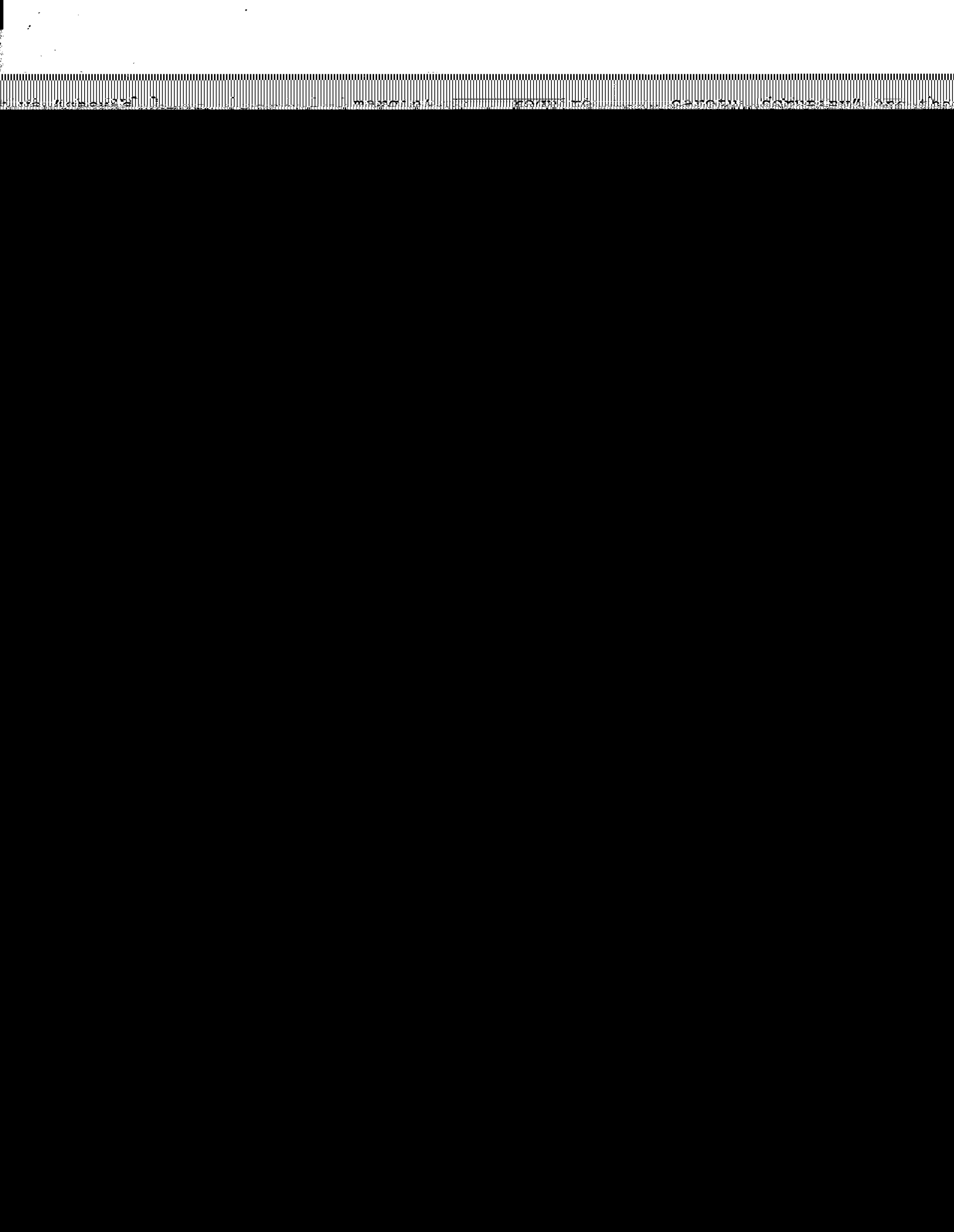
With this administration we have seen what you can do with a  
in our profession we have seen the importance of forecasting with our  
under Section 7 of the Clayton Act.

I hope today to provide an overall perspective on merger  
and to alert you to a few basic guideposts  
through the complexities of analyzing  
demonstrated repeatedly that no amount of prior information  
secure instant insight on whether a given transaction will pass  
provide easy predictability but rather to help you avoid  
inefficient and possibly counterproductive  
the wrong travels and perhaps to keep you from straying down  
path altogether.

the disclaimer that the views I necessarily those of the  
This is a good time to make express today are my own and not  
of the Commission, enhanced perhaps by  
the views of the Commission.

perspective. I begin with a somewhat historical background  
first change that I have noticed and this  
Adam Smith tie. You will remember Adam Smith, the eighteenth century Scottish economist who  
The best government is the laziest government. You also  
remember the Adam Smith tie, a regular business nec





Some of the criticisms of our enforcement record apparently stems from a misunderstanding of how we have defined antitrust markets in particular cases and, in light of this, the

we seek to identify the smallest group of products for which a collusive price increase would be profitable. The task

of product market definition is extremely fact intensive and the

concentration of product market definition is extremely fact intensive and the

Second, Coedrich is interesting because of the conditions of

1976 1978, it is unclear that there can be a inference, because  
consideration interests with a high concentration of 10

the legal presumptions based on them. Concentration data  
remain important in Section 7 cases. High concentration may be a

A corollary to misperception about entry barriers is the

entry has been

abandoned. This is a common misconception of a

question of potential entry pervades competition cases. The

because of that

competition in the relevant market is an anticompetitive price

increase would occur. Indeed, it is to emphasize one

point above all in your analysis of proposed transactions under

the relevant provisions of the antitrust laws.

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certainly is true that we look for and are receptive to well-

in the Commission's 1985

and each of the efficiencies described

do not focus on efficiencies that are relevant to Section 7

to efficiency, as would

adequately. Although we are receptive

ely carry the day.

rare

The efficiencies that count in our analysis are those that

ame extent except through the

unlikely to be achieved to the

efficiencies may reduce overall

proposed merger. Some asserted

Some asserted efficiencies might be achieved by less  
anticompetitive means, such as internal expansion, contract or a  
overhead, for example, may be created but may not be merged  
contract as if through merger. Unaffected savings from  
on combining research and development facilities can be very

the same under common ownership does not necessarily achieve

size of the

to the output from a single plant and not to the

uction

firm. It could be a different story if the prod

s of the two plants were to be combined in some cost

capabilities

when complementary activities are obvious

Of course

...the...  
...recently, we have insisted on provisions in... of vestiture. More  
...consent agreements to increase these... We require more  
...trusteeship clauses that provide for a forced sale of the