

STATEMENT

by

COMMISSIONER EVERETTE MACINTYRE

on

CONGLOMERATE MERGERS AND ANTITRUST LAWS

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CONGLOMERATE MERGERS AND ANTITRUST LAWS

Today, we are considering conglomerate mergers and the questions they present under the antitrust laws. Of

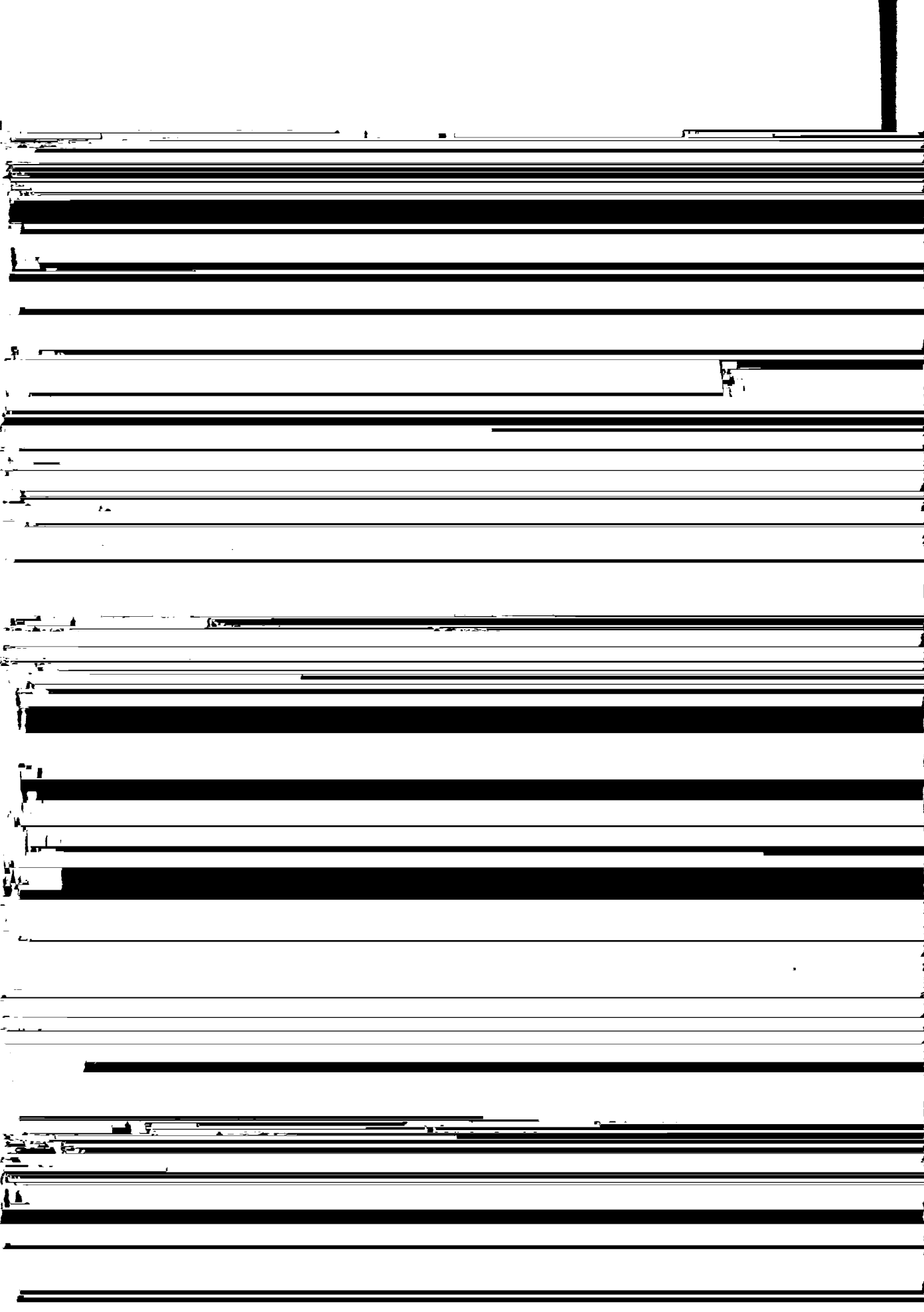
A quick reference to the statements of Senators Hart and Hruska, who have both been active in the recent hearings on economic concentration conducted by the Senate Subcommittee on Antitrust and Monopoly, will serve as an introduction to this dispute.

Senator Hart has concluded that the present antitrust



Senator Hruska, from a somewhat different perspective,
also views current developments with alarm fearing that the

_____ were holding of the Senate hearings on _____



better able to withstand the vicissitudes of competition under modern conditions. 6/

Antitrust Agencies and Concentration

The problem then boils down to the question: What is the structure of the economy like at the present time and should the antitrust agencies concern themselves at all with the size and shape of economic markets? The antitrust laws are based on the premise that competition in the marketplace most

bargaining process in the market. 8/ Concentration has been singled out as a possible indicator of where significantly noncompetitive markets may be found. 9/ This proposition is one to be considered seriously in the establishment of public policy.

The difficulty for application of antitrust standards

dispersion of economic power within particular industries or

case, taking a number of yardsticks, the extent of

computation of the 500 largest industrial corporations' percentage of the sales, assets and net profits for all manufacturing corporations in 1965 yields the following figures:

TABLE 11/

The 500 Largest
Industrial Corporations
Ranked by Net Sales

Percentage of All
Manufacturing Corporations

	<u>Sales</u>	<u>Assets</u>	<u>Net Profits</u>
1-50	30.20%	35.63%	40.89%
51-100	9.01%	11.43%	10.18%
101-150	5.62%	6.02%	5.69%
151-200	3.98%	4.08%	3.96%
1-200	48.81%	57.16%	60.72%
1-500	60.56%	70.09%	73.71%

Footnote 10/ Continued:

On the other hand, Dr. M.A. Adelman, who made a study for the period 1931 to 1960, found that overall concentration of the largest manufacturing firms had remained quite stable over a period of 30 years and, in fact, found a decline in the share of the 117 largest firms of total assets from 40.5 percent in

Overall concentration, to a large degree, it appears, has been a function of business' drive for diversification 12/ and some commentators directly ascribe the increase in aggregate concentration to the conglomerate merger. 13/ Joint ventures also evidently bear some responsibility for this phenomenon. 14/ The implications of the conglomerate merger movement for antitrust policy is demonstrated by the increase in mergers of this category to a percentage of 71

when the percentage of horizontal mergers

declined to 12 percent of the total. 15/

The significance to antitrust of increasing aggregate concentration resulting from the conglomerate merger movement

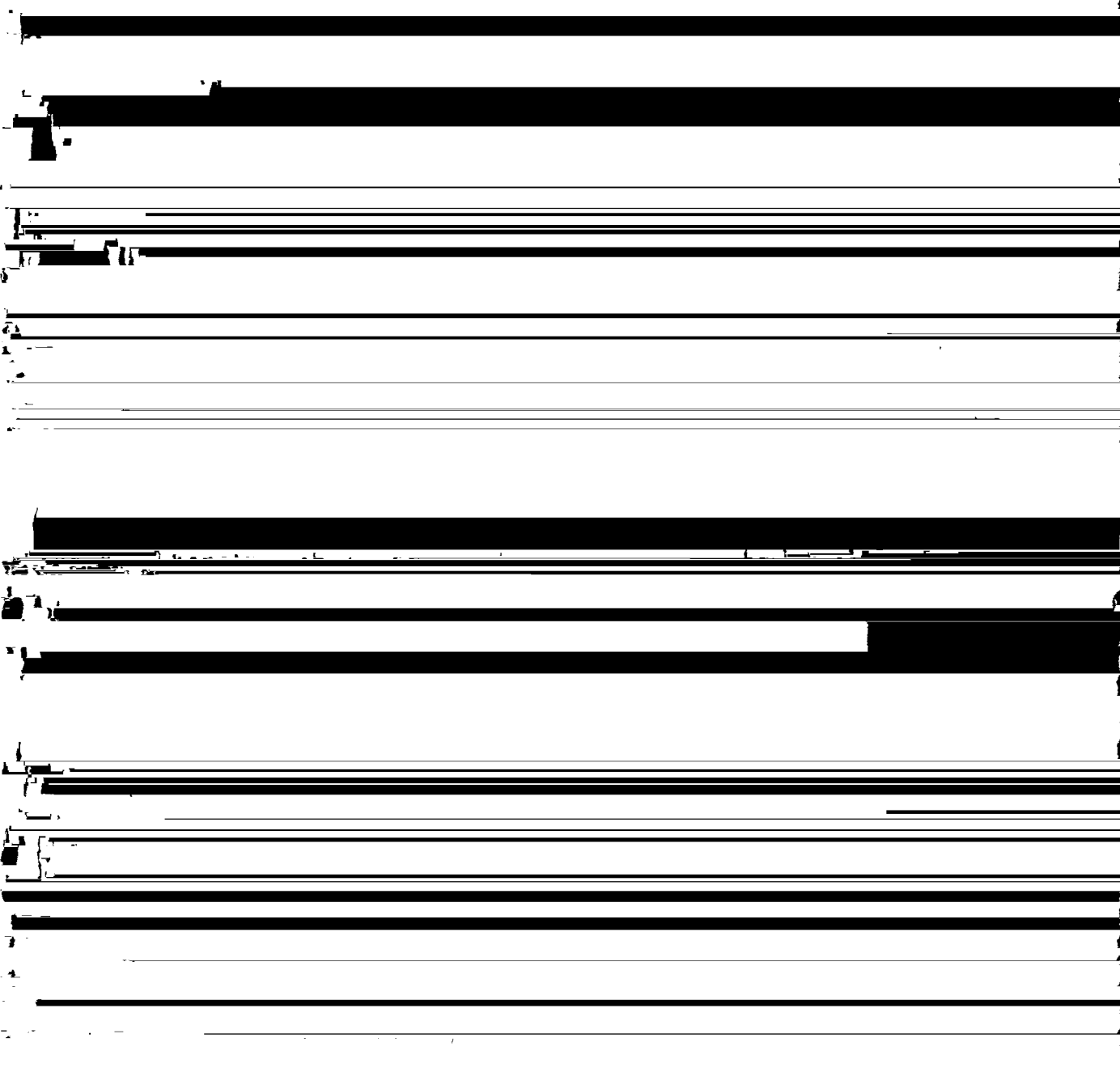
The large, diversified company's ability to withstand the discipline of a particular market may stem simply from its financial resources and the fact that two or more conglomerate enterprises meeting in many markets may tend to soften their competitive tactics with respect to each other, while, on the other hand, smaller enterprises, depending entirely on their success in a single market, may tend to compete less aggressively with a large, diversified, multimarket company. Furthermore, if a multimarket firm possesses market power in some markets, this power may become a

example, the large, diversified firm may use its financial power derived from a number of product or geographic markets to subsidize its expansion in additional areas. 20/ There

field in which the conglomerate merger had overtones of a product extension. 24/ There is also the Consolidated Foods Corp. case involving the first significant conglomerate merger

by applying broadly three possible standards: the elimination of a potential competitor, reciprocity, or the raising of barriers to new competition.

Another important market structure variable pertinent to the evaluation of conglomerate mergers is the concept of barriers to the entry of new competition. These measure the obstacles to entry of potential competitors into



might be usefully brought under this heading. 27/

Barriers of economies of scale arise from the fact that a firm may not secure the lowest possible production costs until it has achieved a certain share of the market which it is to enter. Since it may be anticipated that any firm entering a new market may well have to start with a less-than-optimum market share, this factor will obviously impede entry. On the other hand, the presence of absolute cost barriers indicates that the potential entrant will not

at any rate of output -- for example, the established firm

may have patents which prospective entrants can secure

differentiation, already noted, is a third source of barriers to entry. When this condition applies, the established firm has a reservoir of customer goodwill which its advertising and sales promotion need only to maintain.

on this factor for future antitrust policy is underlined by
an item in The Kiplinger Washington Letter, dated October 14,
1966. There it is stated:

"The administration is readying two blockbusters for
business. The first is aimed at advertising law."

MUCH a company spends . . . This is being kept
quiet for now lest the furor start too soon, but
we can assure you that top officials are giving it
close attention."

I might add parenthetically at this point that I have no
personal knowledge of this and that I am not one of the top

officials giving this matter close attention. The
states that the Government has decided that sheer volume of

situation which would be the very antithesis of antitrust.

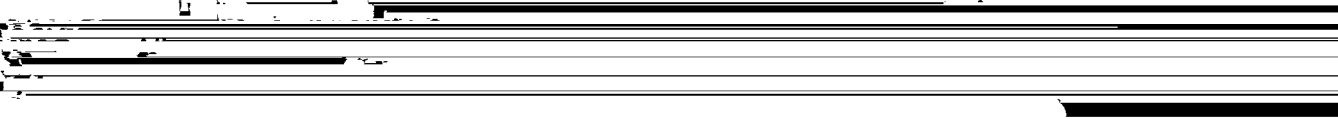


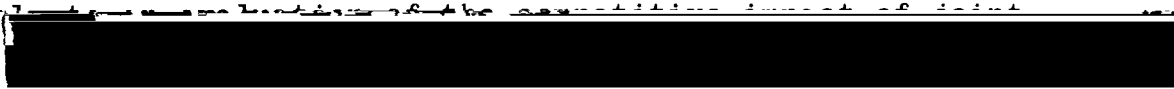
As such it undoubtedly would be severely criticized.

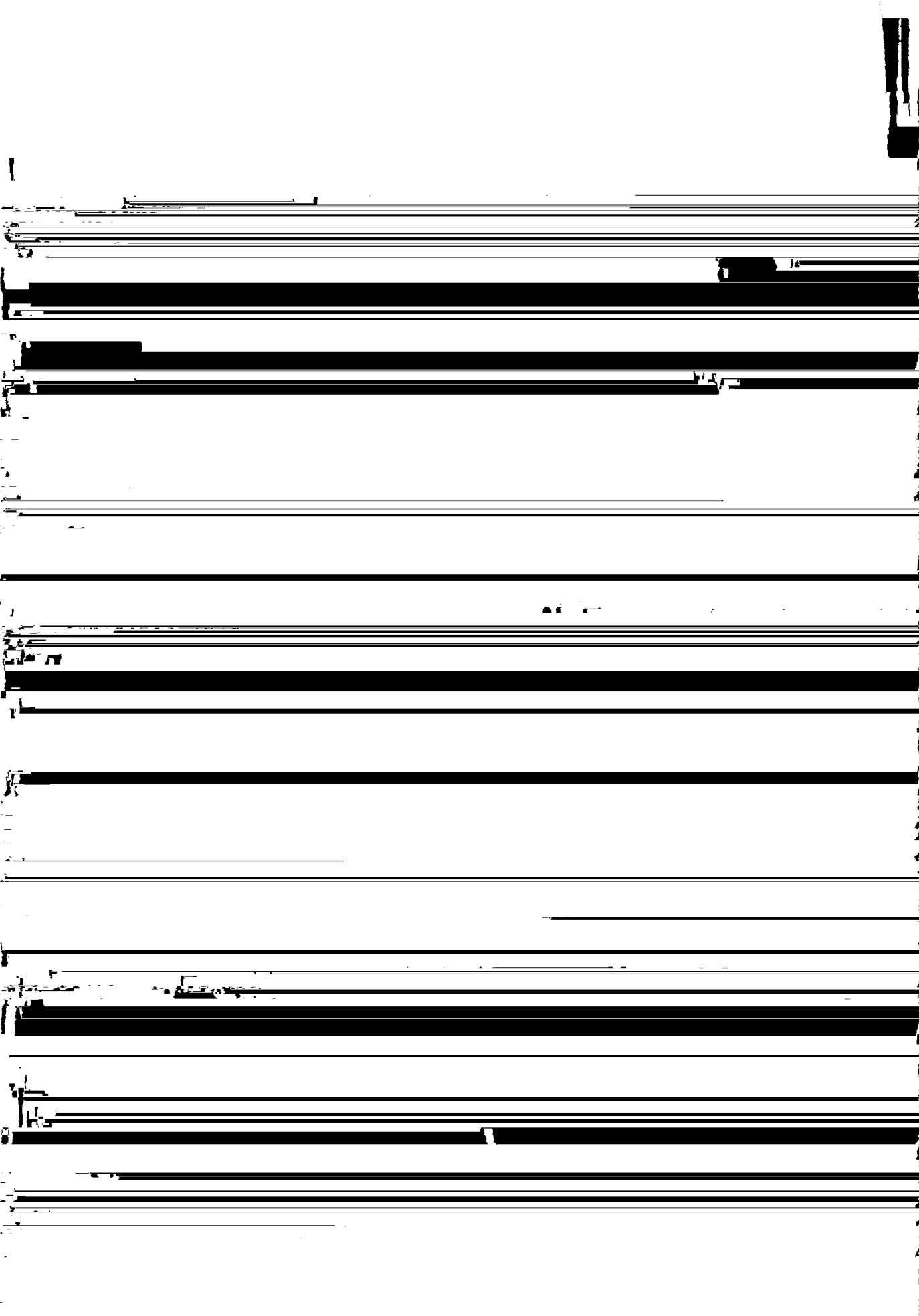
Indeed ~~as noted in Business Week~~ of November 5, 1966

in the case of horizontal mergers. 32/ Accordingly, it is an interesting question whether Mr. Bains' theory on "Barriers to New Competition" will be translated into antitrust law as the courts consider conglomerate merger cases brought by the Department of Justice and the Federal Trade Commission. It is significant that by accepting the concept that "'Potential competition . . . may compensate in part for the imperfection characteristic of actual competition in the great majority of competitive markets'", the Supreme Court accepted one of the premises basic to that theory. See United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964).

Many of these considerations, in my opinion, also

~~Let us now turn to the question of the effect of joint~~





markets. 34/ In addition, there should be more
~~studies to determine the relationship between price cost~~

While I believe that conglomerate acquisitions should be dealt with where the probability of anti-competitive effect can be demonstrated in specific markets and industries, it is my view the Sherman and Clayton Acts were not designed to cope with the problem of overall concentration as such. 36/ There is merit to the suggestion that if Government is to concern itself with the problem of superconcentration, then it should be done under a statute designed expressly to cope with that problem. 37/

Footnote 35, continued:

level of market concentration and profit rates. That is to say, firms selling in highly concentrated markets earn substantially higher profit rates than those selling in less concentrated markets." "The Structure of Food Manufacturing", supra note 26, at 212.

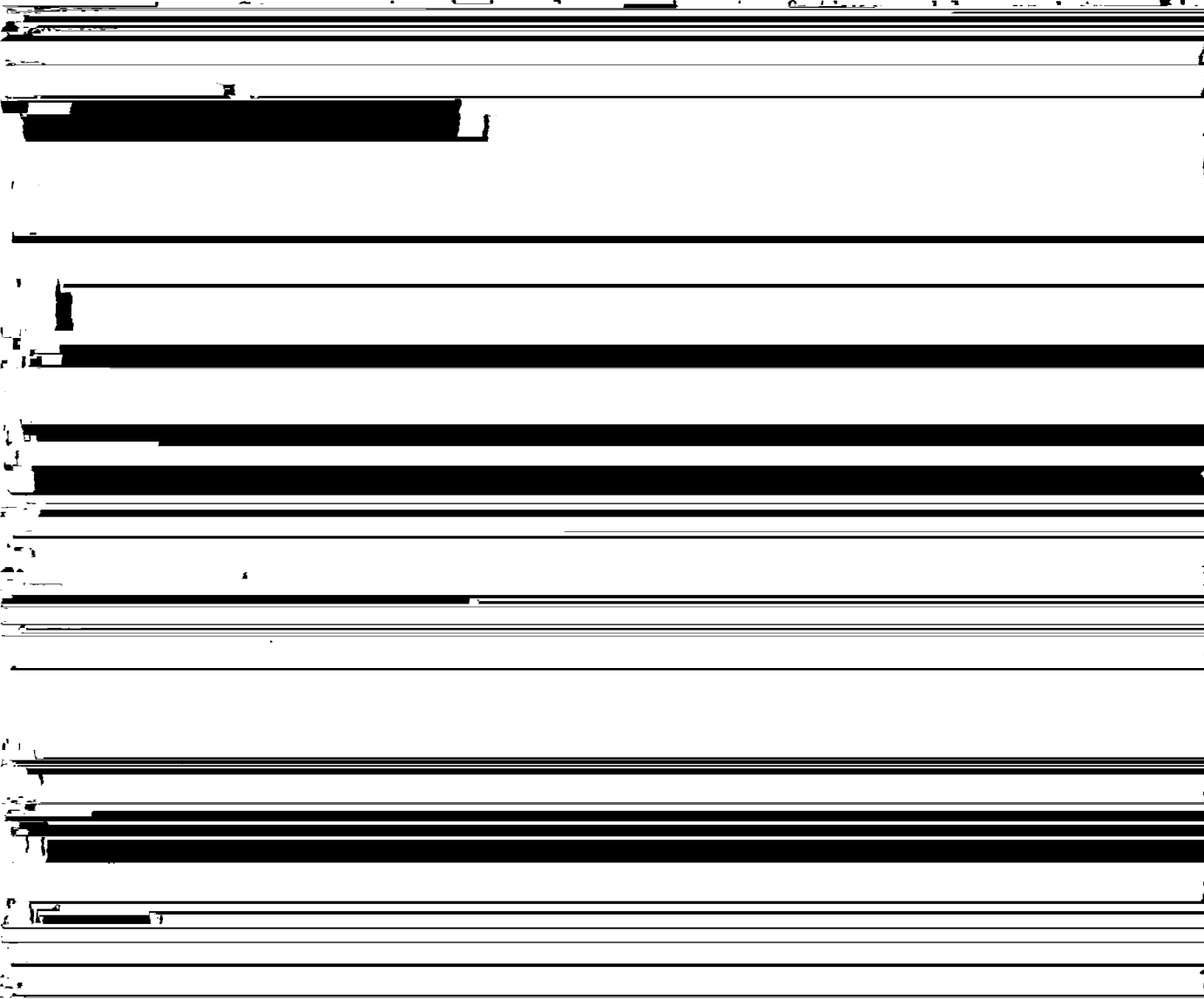
36/ Professor Corwin Edwards, despite his suggestion that Section 7 should be applied in the case of conglomerate mergers wherever possible, concedes that it is difficult to bring the antitrust laws to bear on these amalgamations. Testimony of Professor Edwards, Concentration Hearings, supra note 10, at 44, 45.

37/ It is interesting to note that Donald Turner, Assistant Attorney General in charge of the Antitrust Division, has suggested the possibility of dealing with overall concentration by legislation specifically designed to curb growth by way of acquisitions in the case of certain of the largest corporations. Mr. Turner, on this occasion, specifically disclaimed having reached the conviction that there is a trend toward superconcentration, and stated that he did not want to be understood as proposing a

To tackle the problem of overall concentration

head-on would be an attack on mere bigness, for which

all of these bills are concerned with the effect of concentration in "any line of commerce". Therefore, whatever restructuring of the economy is contemplated in these bills would probably be confined to particular markets or industries. In any event, a radical break from past antitrust policy to deal with the issue of aggregate concentration by the enforcement agencies is not appropriate



tive performance of the economy. Obviously, this was the view of Congress when it enacted legislation specifically focusing on anticompetitive practices such as price discrimination. It would be unwise to de-emphasize enforcement of those antitrust statutes designed

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