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## The Bigness Mystique and the Merger Policy Debate: An International Perspective

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# PERSPECTIVES

## The Bigness Mystique and the Merger Policy Debate: An International Perspective

*Walter Adams\**

*James W. Brock\*\**

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## I. INTRODUCTION

The *nouvelle vague* among prominent U.S. public policy spokesmen is the facilitation of corporate mergers and acquisitions, the promotion of corporate bigness, and the emasculation of the anti-merger law. They claim that this kind of bold new departure is needed to enable firms in the United States to challenge large foreign rivals and regain global competitiveness.

"We are simply living in a different world today," proclaimed the late Commerce Secretary Malcolm Baldrige. "Because of larger markets, the cost of research and development, new product innovation, marketing, and so forth . . . it takes larger companies to compete successfully."<sup>1</sup> While U.S. firms have been restrained from consolidating, he argued, their foreign competitors have outmerged, outrun, and out-dominated them: "For example, in 1960 twenty-seven of the thirty largest industrial companies in the world were United States firms—over ninety percent. In 1984, only ten of those top thirty world-wide industrial companies were United States companies—just one-third. That is a drop of nearly sixty percent."<sup>2</sup> The United States, he concluded, must throw itself into the race for corporate bigness. It must "not be stopped by those who are preoccupied with outdated notions about firm size"<sup>3</sup>—this on

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<sup>1</sup> Baldrige, *The Administration's Legislative Proposal and Its Ramifications*, 55 ANTITRUST L.J. 29, 34 (1986).

<sup>2</sup> *Id.* at 31.

<sup>3</sup> *Merger Law Reform: Hearings on S. 2022 and S. 2160 Before the Senate Committee on the Judiciary*, 99th Cong., 2d Sess. 18, 22 (1986)(statement of Hon. Malcolm Baldrige, Secretary, Dept. of Commerce). In the United States, claims about the alleged link between firm size and interna-

the authoritative precept (enunciated by James C. Miller III, the erstwhile chairman of the Federal Trade Commission) of fashioning public policy "within the context of the latest and most persuasive theory and evidence."<sup>4</sup>

Reportedly, some top United States business executives agree. They, too, boldly affirm the "new learning" that corporate "combinations strengthen U.S. companies and help them withstand pressure from foreign competitors."<sup>5</sup> If "our industries are going to survive," they warn, "there have to be additional consolidations to achieve needed economies of scale."<sup>6</sup> Corporate consolidation and bigness, they also conclude, are "perhaps the only answer to saving a maximum number of jobs for this country."<sup>7</sup>

These pronouncements, and the *Weltanschauung* which they reflect, are hardly novel. In form and substance, they are an uncanny (and not very imaginative) reincarnation of the mindset that governed economic policy making in Europe in the 1950s and 1960s. Then, as now, bigness was believed to be an essential prerequisite for global competitiveness. Then, as now, policymakers believed their domestic industries

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tional competitiveness are not new. For example, some ten years after the formation of the U.S. Steel Corporation, George W. Perkins, a prominent promoter and director of the corporation, told the Senate Committee on Interstate and Foreign Commerce: "We have been infinitely more successful in expanding our foreign trade than would have been possible under competitive conditions." L. BRANDEIS, *BUSINESS, A PROFESSION* 226 (1933). If U.S. Steel were broken up, would the successor companies be as efficient as the steel giant? According to Perkins, "Not as efficient. If I were asked to put my finger on one disadvantage [of the hypothetical successor companies] greater than the other, it would be its effect on foreign trade. You take ten such companies and go out and compete with Germany. It is self-evident that we could not begin to do it as effectively as with one large company." *Id.* at 232-33.

However, as Louis Brandeis observed at the time, "The facts show that the organization of the Steel Trust [in 1901] arrested the development of the American export trade in steel." *Id.* at 226. Citing the analysis of T. Good, Brandeis wrote:

From the moment that the Steel Trust got to work the American iron and steel industry was diverted from natural to unnatural developments. Costs and prices of raw material were inflated; progress toward economy was arrested; retrogression set in and American's rosy chances of annexing the world's export trade were shattered. . . . It is, indeed, a demonstrable fact that the trust has done more harm than good from an American point of view, that it has burdened and handicapped the American steel trade, and incidentally given Britain, Germany and other countries better chances in the race. Last year, 1910, the British iron and steel exports were further in advance of those of America than they were in 1900, the year before the Steel trust got down to business; while German exports, which were about thirty per cent below those of the United States in 1900, are now something like three hundred percent above them.

*Id.* at 227.

<sup>4</sup> *Antitrust Policy and Competition: Hearings Before the Joint Economic Committee*, 98th Cong., 1st Sess. 1, 5 (1984)(statement of Hon. James C. Miller, III, Chairman, Federal Trade Commission).

<sup>5</sup> *Executives Support Large Mergers To Counter Foreign Competition*, Wall St. J., Mar. 9, 1984, at 33, col. 4 [hereinafter *Executives Support Large Mergers*].

<sup>6</sup> Greenhouse, *Making Mergers Even Easier*, N.Y. Times, Nov. 10, 1985, § 3, at 1, col. 2.

<sup>7</sup> *Executives Support Large Mergers*, *supra* note 5.

to be helpless before the onslaught of giant foreign companies. Then, as now, consolidation and megamergers were believed to be a critical tool for combating *le defi americain*.

The original European bigness manifesto was issued by J.J. Servan-Schreiber. The largest corporations, he wrote, "are the ones most likely to undertake the investment and research activities essential to successful competition. . . ." Large size, he proclaimed, "permits the development of an advanced scientific potential" and "pushes the firm into new areas and thereby places it in a position of leadership." If Europe deprived itself of the "dynamism, organization, innovation, and boldness that characterize the giant American corporations," he warned, it would "fall even further behind" in the global competitive race. The challenge for European governments, he concluded, was clear: "Creation of large industrial units which are able both in size and management to compete with the American giants," and "choosing fifty to one hundred firms which, once they are large enough, would be the most likely to become world leaders of modern technology in their fields." Like some U.S. policymakers today, he too derided extant European policies which posed obstacles to the corporate mergers and consolidations necessary for attaining world bigness. He, too, argued that there was no place for an anti-merger policy in what he conceived to be the "new age."<sup>8</sup>

In academic circles, this position was most forcefully articulated by Professor André Marchal, the doyen of political economy in France and a widely respected adviser to European policymakers. The objective of public policy, he said, was threefold: to adapt firm size in the Common Market to the requirements of an extended European and world market; to protect Europe from foreign (primarily United States) domination; and to assure the future economic cohesion of a united Europe. According to Marchal, encouragement of mergers and concentration—the restructuring of Europe into a market of oligopolies—was the only means to that end.<sup>9</sup>

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<sup>8</sup> J. SERVAN-SCHREIBER, *THE AMERICAN CHALLENGE* 24, 53, 67, 153, 159, 160 (1968). See also D. SWANN, *COMPETITION AND INDUSTRIAL POLICY IN THE EUROPEAN COMMUNITY* (1983).

<sup>9</sup> The report by Professor Marchal was presented to a Colloquium on Cooperation, Concentration and Mergers in the European Economic Community ("EEC"), held at the University of Paris, Oct. 26-28, 1967, and was reprinted as Marchal, *Rapport*, *REVUE DU MARCHÉ COMMUN* 25, 30-31 (Jan.-Feb. 1968) (Authors' translation from the French). To be sure, there were dissenters from this view. For example, Hans von der Groeben, member of the EEC Commission in charge of Competition Policy, wrote that it is imperative "to put principal reliance on competition as the guiding force of economic affairs in the Community." The European Treaty, he continued, "has assigned to competition the fundamental role of directing, coordinating, and stimulating economic activity in the Common Market," and has prescribed (in Article III) "a mechanism to assure that competition will be protected from subversion." *Id.* at 26 (loosely translated from the German).

Substantially increasing firm size, Marchal said, was an indispensable prerequisite for enhancing productivity. In contrast to the typical firm under "atomistic" competition, he argued, the giant firm enjoys economies of scale: it can reduce costs by using the most advanced techniques of production; it can maximize the benefits of the division of labor; it can distribute fixed costs over a mass production volume of output; it can combine the factors of production in the most efficient manner; it can protect itself against fluctuations in production and price. In the factor market, the giant firm can purchase in large quantities at favorable prices, obtain preferences in transportation rates, and attract the most skilled workers and the best managers. In the product market, it is in a superior position to conduct market research and to increase sales by massive advertising expenditures.<sup>10</sup> Above all, however, the giant firm has the wherewithal to finance research and development and thus serve as the harbinger of technological progress. Accepting the Schumpeterian hypothesis,<sup>11</sup> Marchal believed that the giant firm is the prime motive force in long-run economic growth and development.<sup>12</sup>

Marchal concluded that, unless Europe chose to be permanently condemned to a David-against-Goliath struggle, there was really only one viable alternative: to emulate the size of the United States' corporate giants and to match their prowess in productivity, organization, and finance. To underscore his point, Marchal cited the following size comparisons among European and United States firms. In 1963, the largest German corporation would have ranked only twenty-seventh among U.S. giants, the largest Italian corporation only thirty-third, the largest French firm only fiftieth. A successful firm like Volkswagen would have ranked no higher than twenty-sixth, and Siemens would have been much further down the list. Unless this trend was reversed—and this could have been accomplished only through massive mergers and concentra-

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<sup>10</sup> Marchal, *supra* note 9, at 31 (Authors' translation from the French).

<sup>11</sup> J. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 81-106 (1942).

<sup>12</sup> Marchal, *supra* note 9, at 34. At the time, Pieter Verloren van Themaat, professor at the University of Utrecht and Director-General of Competition Policy of the EEC Commission, strongly dissented from this analysis. Noting the serious lacunae in scientific knowledge about concentration, and warning that contemporary theories run the danger of being contradicted by tomorrow's reality, van Themaat focused particular criticism on the theories of Schumpeter and Galbraith which correlate concentration with invention, innovation, and efficiency. He cited evidence from hearings before the U.S. Senate Antitrust and Monopoly Subcommittee in 1964 and 1965 to support his contention that individuals and small and medium-sized businesses still play a significant role in invention and innovation (e.g. rockets, television, jet engines, dacron, DDT, bakelite, and cellophane). "The American findings," he concluded, "should serve as a warning that the generally accepted hypotheses about the advantages of giant firm size do not necessarily conform to reality." *Diskussionsbeitrag*, REVUE DU MARCHE COMMUN 92, 94 (Jan.-Feb. 1968) (loosely translated from the German). Van Themaat's observations were a distinct minority view at the Paris colloquium, however.

tion—Marchal feared that Europe would inevitably fall victim to colonization by United States world-class super-firms.<sup>13</sup>

In its famous Memorandum of April 1966, the EEC Commission embraced this position:

The large European market which is being created and the growth of trade and competition with the rest of the world make it necessary . . . for many European firms to expand either through internal development or through amalgamation with other enterprises. In many cases, the economic structures in Europe do not yet match the latest trends in the world.

Concentrations which increase productivity are all the more desirable if they are effected across national boundaries and are thus oriented toward an integration of the markets. It is therefore necessary to take a generally positive attitude toward such concentrations.<sup>14</sup>

In the Commission's view, the restructuring of European industry was a dire necessity, not only because of "steadily increasing international competition on world markets" but because of the growing competition from disparately large foreign enterprises—"particularly American and Japanese"—which had established themselves in the Common Market.<sup>15</sup>

On June 29, 1966, underscoring the policy thrust of the Memorandum, the president of the EEC Commission informed the European Parliament that "competition within the Common Market and competition from outside the market, as well as the need to promote technological progress, make an increase in firm size not only desirable, but indispensable for survival." Therefore, he said, "the Commission will actively encourage the principal means of achieving that goal by supporting the necessary mergers, concentration, intercorporate stock ownership, joint ventures, etc."<sup>16</sup>

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<sup>13</sup> Marchal, *supra* note 9, at 38-39. Marchal cited the trend of United States direct investment in Europe as an index of progressive colonization: \$637 million in 1950; \$1,680 million in 1957; \$3,104 million in 1961; \$3,722 million in 1962; and \$4,471 million in 1963. He deemed it significant that, between 1950 and 1963, United States direct investment in Europe increased by 602%, while the corresponding rate in Latin America was only 95% and in Canada only 263%. *Id.* at 40.

<sup>14</sup> *Concentration of Enterprises in the Common Market*, 26 COMMON MKT. REP. (CCH) 9 (Memorandum of the Commission of the European Economic Community to the Governments of the Member States)[hereinafter EEC Memorandum]. Lest the Memorandum be subject to differing interpretations, Willy Christian Schlieder, Chief-of-Staff of the Commission, sought to remove any remaining uncertainty. To reassure the European business community, he declared flatly that, as a matter of law, Article 85 of the Treaty was *not* applicable to mergers; that Article 86 could be applied only to mergers of monopolistic dimensions, and only if accompanied by an abuse of power; and that, as a matter of policy, the Commission *shall* encourage all "economically justifiable mergers." *Rapport*, REVUE DU MARCHE COMMUN 215, 220, 225 (Jan.-Feb. 1968).

<sup>15</sup> EEC Memorandum, *supra* note 14, at 8.

<sup>16</sup> Marchal, *supra* note 9, at 28. This mindset—what can best be called the bigness complex—electrified European policymakers:

In the early sixties the sentiment spread within the [European Community] that the concentration process could not be stopped and should not be stopped. . . . [T]he penetration of foreign

In that era, Professor Henk de Jong reported, Europeans had come to believe that it was "the task of industrialists to concentrate; it was the task of authorities to facilitate the movement."<sup>17</sup> Anti-merger statutes were weakened and unenforced, as most European governments proclaimed consolidation to be the business executive's patriotic duty.<sup>18</sup>

The result was a sustained period of unprecedented corporate consolidation across Europe, beginning in the 1950s, and reaching historic peaks in the 1960s. "A fascination with giantism, a mania for mergers, call it what you will," *Fortune* reported in 1970, "but Europe's leading businessmen are infected with it. They are merging companies with such haste and sweep that no label seems quite adequate."<sup>19</sup> The impact on economic structure was apparent, and sizable. As Table 1 shows, aggre-

Table 1

Shares of the Largest EEC Firms in the Gross Domestic Product of  
Extractive and Manufacturing Industries.

Size class	1960	1965	1970
1- 4	5.8%	6.8%	8.1%
1- 8	10.4%	11.8%	14.6%
1-20	20.9%	22.6%	29.0%
1-50	35.1%	35.1%	45.7%

Source: Jacquemin and de Lichtbuer, *Size Structure, Stability and Performance of the Largest British and EEC Firms* 4 *EUROPEAN ECON. REV.* 393, at 394 (1973).

companies (mainly American) which were said to threaten Europe with "economic colonialism" led to cries for "truly European companies" and started the propaganda campaign for mere size. The European Association of National business groups ("UNICE") produced a document which compared the sizes of European companies with those of American and unfailingly found that General Motors' profits [were] larger than the total sales of Volkswagen [and that] the Belgian budget could be financed from the profits of the four largest American companies. . . . The main branches of industry were compared with American branches and all European companies were found to be below the required measure. The document pointed regretfully to the thousands of mergers taking place [abroad] during the late fifties and early sixties, against which the EEC mergers lagged far behind. The invasion of American firms into the European market was regarded as a distinct threat and various advantages of giant firms were stressed (research and development, automation, management, sales strategy).

*Economic Concentration: Hearings Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, part 7, Concentration Outside the United States*, 90th Cong., 2d Sess. 3627-28 (1968)(statement of Professor Henk de Jong, Univ. of Amsterdam, The Netherlands)[hereinafter *Economic Concentration Hearings*].

<sup>17</sup> *Economic Concentration Hearings*, *supra* note 16, at 3628.

<sup>18</sup> Geroski and Jacquemin, *Large Firms in the European Corporate Economy and Industrial Policy in the 1980s*, in *EUROPEAN INDUSTRY: PUBLIC POLICY AND CORPORATE STRATEGY* 343, 345 (A. Jacquemin ed. 1984); Linge, *Europe Touts Mergers as Means to Face Increasing Competition in World Markets*, *Wall St. J.*, Feb. 21, 1968, at 34, col. 1.

<sup>19</sup> Siekman, *Europe's Love Affair with Bigness*, *FORTUNE*, Mar. 1970, at 95.



gate concentration across Europe escalated substantially during the 1960s.

But did merger-induced corporate giantism provide salvation for European industry? Did it promote world-class competitiveness? Was it a success and a model of industrial policy worthy of emulation? Or, as a persuasive body of empirical evidence suggests, has bigness proved to be a liability, rather than an asset, for European industry?

In this context, we shall explore these questions and trace the European experience with merger-induced giantism. Proceeding on a country-by-country basis, the rationale undergirding the corporate consolidation policies and their impact on economic performance will be reviewed. For comparative purposes, the Japanese experience (which runs counter to current popular mythology) will be contrasted with that in Europe. Finally, in our conclusion we shall discuss some implications of our analysis, one of which is that merger-induced giantism is *not* the key to increased competitiveness.

## II. UNITED KINGDOM

Beginning in 1964, corporate bigness and consolidation in British industry were consciously promoted as a matter of government policy. The underlying rationale was perhaps best articulated in 1966, in legislation creating the Industrial Reorganization Corporation ("IRC"), a government body charged with encouraging mergers. The IRC's enabling legislation cited the "need for more concentration and rationalization to promote the greater efficiency and international competitiveness of British industry." It contended that many "production units in this country are small by comparison with the most successful companies in international trade, whose operations are often based on a much larger market." It expressed the belief that "the typical company in Britain is too small to achieve long production runs; to take advantage of economies of scale; to undertake effective research and development; to support specialist departments for design and marketing; to install the most modern equipment or to attract the best qualified management." What was needed, the IRC reasoned, was an industrial structure "which will enable us to make the most effective use, in the years ahead, of our resources of skill, management and capital." Mergers, consolidation, and corporate bigness, it concluded, would "secure a lasting improvement in the structure and competitive strength of British industry."<sup>20</sup> Two years later, in 1968, Prime Minister Harold Wilson called for a restructuring of British

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<sup>20</sup> DEPT. OF ECON. AFFAIRS, CMND 2889, 1, 4 (HMSO 1966).

industries "on a scale and at a speed such as we have not seen in this century," including a rethinking of Britain's traditional hostility to monopolies and mergers.<sup>21</sup>

Thus aided and abetted by government, British industry proceeded to exercise its penchant for merging. But the results for economic performance, the evidence shows, have been dismal and, in some key industries, catastrophic.

#### A. Automobiles

In the automobile industry, Britain's "national champion" was to be British Leyland. As Chart 1 shows below, a succession of mergers, acquisitions and consolidations had, by the mid-1960s, concentrated British automobile production in the hands of two firms, British Motor Holdings (including Austin, Morris, and Jaguar) and Leyland Motors (including Rover and Triumph). In 1968, when these two companies fell victim to financial difficulties, the government promoted a merger between them to create British Leyland. The consolidation—creating a monopoly of production in the United Kingdom market, and the fifth largest automotive manufacturer in the world at the time<sup>22</sup>—was justified as essential if Britain were to remain in the world league of automobile production.<sup>23</sup>

Contrary to these hopes, however, the performance of the British Leyland combine persistently deteriorated thereafter. By the early-1970s, British Leyland exhibited declining sales, escalating unit costs, a productivity drop that placed it at the bottom of European volume car producers, and lost export sales. By 1975, financial losses amounted to £300 million.<sup>24</sup> Internal company documents, prepared in 1973, identified a number of disabilities of British Leyland's giant size, including loss of managerial authority and control, lack of information and miscommunication of corporate policy, and the uncertainties and adverse morale effects of successive mergers and consolidations.<sup>25</sup> More generally, "central management grappled with the overwhelming problem of having too many plants, with too many workers producing product ranges with too many models."<sup>26</sup> Seven years following its formation, an outside director of the firm summarized British Leyland's situation in 1975 as "a bloody

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<sup>21</sup> *Economic Concentration Hearings*, *supra* note 16, at 3683.

<sup>22</sup> P. DUNNETT, *THE DECLINE OF THE BRITISH MOTOR INDUSTRY* 101 (1980).

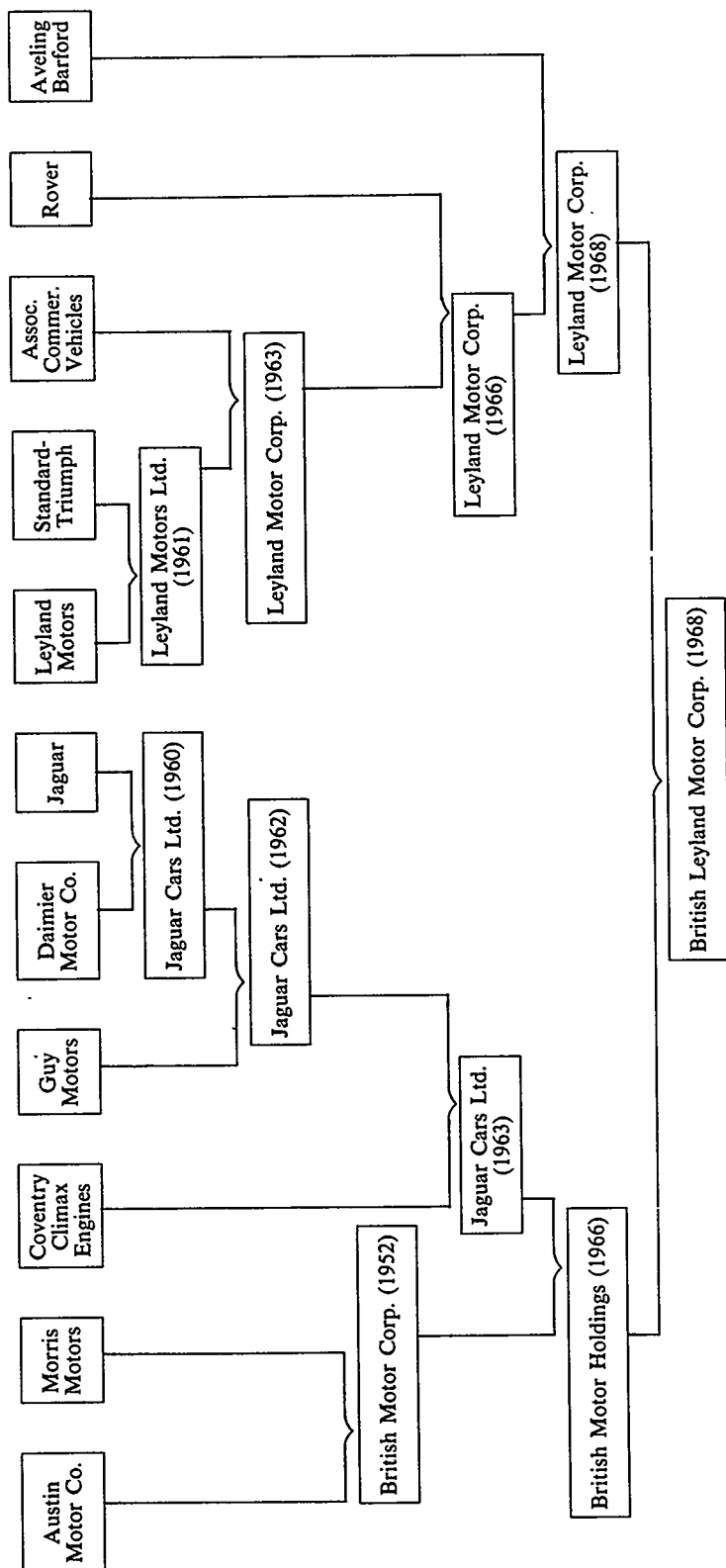
<sup>23</sup> Hart, *British Industrial Policy*, in *THE POLITICS OF INDUSTRIAL POLICY* 147 (C. Barfield & W. Schambra eds. 1986).

<sup>24</sup> P. DUNNETT, *supra* note 22, at 130, 133; R. PRYKE, *THE NATIONALISED INDUSTRIES: POLICIES AND PERFORMANCE SINCE 1968* at 222-23 (1981).

<sup>25</sup> R. WHIPP & P. CLARK, *INNOVATION AND THE AUTO INDUSTRY* 96 (1986).

<sup>26</sup> *Id.* at 97.

Chart 1  
Genealogy of British Leyland



Source: Siekman, *Europe's Love Affair With Bigness*, FORTUNE, March 1970, at 97.

awful mess.”<sup>27</sup>

When banks refused to continue to lend to British Leyland in 1975, the firm confronted a cash crisis. The government bailed out British Leyland, rescued it from bankruptcy, and effectively nationalized it. However, government control continued to be premised on the bigness mystique. As described by industry analyst D.T. Jones, government further compounded the problems of British Leyland management by centralizing decision making and creating one large car division employing over 100,000 people. . . . The [government] solution was, in effect, a continuation of the thinking used to justify the original merger in 1968, i.e., emphasizing the potential economies of scale in an integrated production operation rather than tackling the problems of achieving that scale through improved productivity.<sup>28</sup>

Clearly, British Leyland's performance over the decade following 1975 has been less than auspicious: production has plunged from more than 900,000 cars in 1972, to 410,000 in 1986; its share of the United Kingdom new-car market has dropped from 40% in 1968 to less than 18% (see Table 2); and since 1979, the firm has accumulated losses totaling \$2.29 billion.<sup>29</sup> In fact, for the British auto industry, bigness has translated into more, not less, dependence on government for financial sustenance. According to one account, government support for British Leyland totaled \$5.4 billion over the years since 1975—support which owing to the firm's size and employment has transcended philosophical differences between Labourites and Conservatives.<sup>30</sup>

In sum, as *The Economist* points out, “merger after merger . . . was supposed to create a creature strong enough to stop the rot, to realize economies of scale and face up to foreign competition. Then another one was needed.” But the strategy failed. The history of British Leyland is a parable of how such lumping together of good with bad is no match for winnowing out the bad and running the good competitively. Its successive mergers and reorganisations produced a ragbag range of cars that never

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<sup>27</sup> Carley, *British Leyland Offers Textbook Case of Ills Afflicting U.K. Firms*, Wall St. J., Apr. 11, 1975, at 1, col. 6. Particularly hard-hit was the Rover division: “Had Rover remained independent, its fate might have been happier. In 1967, it was profitable, had a successful range of models, and had plans for products that, with hindsight, would probably have sold well.” *Rover Chained*, THE ECONOMIST, July 19, 1986, at 74. For a detailed examination of Rover's unfortunate fate in the British Leyland bureaucracy, see, R. WHIPP & P. CLARK, *supra* note 25. Others have pointed out that the initial British Leyland consolidation was itself necessitated by the failures of the firms that had been merged and acquired prior to their consolidation into British Leyland. See *Economic Concentration Hearings*, *supra* note 16, at 3695.

<sup>28</sup> D. JONES, MATURITY AND CRISIS IN THE EUROPEAN CAR INDUSTRY: STRUCTURAL CHANGE AND PUBLIC POLICY 47-48 (1981).

<sup>29</sup> Hemp, *Rover Pins Hope on U.S. Love of Luxury*, Wall St. J., Feb. 19, 1987, at 32, col. 1.

<sup>30</sup> *Id.*; Lucas, *British Aerospace Buys Rover for \$280 Million*, AUTOMOTIVE NEWS, Apr. 4, 1988, at 64.

Table 2  
British Leyland and Import Shares in the UK Auto Market

<u>Year</u>	<u>British Leyland</u>	<u>Imports</u>
1968	40.2%	7.1%
1969	39.7	8.8
1970	37.6	12.3
1971	na	na
1972	39.4	17.1
1973	31.0	25.3
1974	31.9	25.7
1975	30.8	29.8
1976	27.6	34.6
1977	24.5	41.0
1978	23.5	49.3
1979	19.6	56.3
1980	18.2	56.7
1981	19.2	55.7
1982	17.8	57.7

Sources: PRYKE, *THE NATIONALISED INDUSTRIES: POLICIES AND PERFORMANCE SINCE 1968*, 220 (1981); WILKS, *INDUSTRIAL POLICY AND THE MOTOR INDUSTRY*, 70, 206 (1984).

settled down to win market share from the car companies of America, Japan, France, West Germany and Italy.<sup>31</sup>

The recent success of Jaguar is an instructive counterpoint to the British Leyland fiasco. Once it was spun off from British Leyland and privatized in 1984, Jaguar became a profitable company.<sup>32</sup> This lends credence to the resolution of British Leyland's problems suggested by *The Economist* in 1977: The firm's problems are too large for the management to handle, the magazine's editors observed. Their solution? "Split British Leyland back into its component parts."<sup>33</sup>

## B. Steel

In pursuit of the economies of large scale, the British government merged (and nationalized) the country's largest steel companies in 1967 to create the British Steel Corporation ("BSC"). At the genesis of BSC, the combine was massive. It represented a consolidation of fourteen parent companies controlling 145 subsidiaries and 47 foreign affiliates with plants on more than sixty major sites. In the first year of operation, BSC

<sup>31</sup> THE ECONOMIST, Mar. 15, 1988, at 12.

<sup>32</sup> See Marcom, *Jaguar's Comeback Is Getting a Boost From Latest Model*, Wall St. J., Apr. 17, 1987, at 8, col. 4.

<sup>33</sup> THE ECONOMIST, Mar. 5, 1977, at 88.

controlled 92% of British steel production, employed 270,000 workers, and produced more than 23.3 million tons of steel, making BSC the world's third largest steel concern.<sup>34</sup>

Yet in steel as in automobiles, bigness proved to be a trap, not a panacea. A decade after its formation, the corporation confessed (in its own words) to being "unable to produce sufficient steel, in many instances to meet required delivery times, or make steel of the right quality."<sup>35</sup> Its delivery time for buyers grew longer and more unreliable. The quality of its products deteriorated. And, as British Steel's major customers told a select committee, they had turned to other sources of supply because BSC was unable to meet their requirements.<sup>36</sup>

In 1980, Aylen's analysis of innovation found British Steel's record deplorable. He reported the United Kingdom to have one of the lowest shares of modern oxygen-furnace steel output of any of the world's major steel producing nations. British steel was slow to adopt modern continuous casting plant techniques, he found, and in blast furnaces, he reported that "Britain ha[d] lagged behind in adopting new blast furnace technology, both in construction of new large furnaces and in adoption of improved burden preparation design, and working practice at existing furnaces." In hot wide strip mills, he found "British strip mills ha[d] a lower rate of adoption of both quality-enhancing innovations . . . and output-enhancing innovations. . . ." Aylen noted that, as a result, most of Britain's North Sea oil pipeline had to be imported from abroad.<sup>37</sup>

British Steel's unenviable performance is reflected in its financial results from its inception in 1967 up to 1983. As Table 3 shows, the Corporation recorded positive profits in only four of sixteen years. Its cumulative losses over the period amounted to \$4 billion.<sup>38</sup>

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<sup>34</sup> *Economic Concentration Hearings*, *supra* note 16, at 3865; Hart, *supra* note 23, at 141.

<sup>35</sup> R. PRYKE, *supra* note 24, at 196.

<sup>36</sup> *Id.* Diseconomies of excessive size became increasingly apparent. According to one account, centralization of orders and their allocation to mills meant that many customers were supplied from works with which they had not dealt previously; and, as a result of an inability to directly contact the mill processing their orders, customers perceived a further decline in the quality of service. Cockerill, *Steel*, in *THE STRUCTURE OF BRITISH INDUSTRY* 146 (P. Johnson ed. 1980).

<sup>37</sup> Aylen, *Innovation in the British Steel Industry*, in *TECHNICAL INNOVATION AND BRITISH ECONOMIC PERFORMANCE* 209, 212, 216, 219 (K. Pavitt ed. 1980).

<sup>38</sup> See also Y. MENY & V. WRIGHT, *LA CRISE DE LA SIDERURGIE EUROPÉENNE 1974-1984* (1985).

Table 3  
British Steel Corporation Losses and Declines in Market Share,  
1967-1983

Year	Profit/Loss (millions of £)	Market Share (%)	Import Share (%)
1967/1968	(19)		
1968/1969	(23)		
1969/1970	12		
1970/1971	(10)	70.4	5.6
1971/1972	(68)	66.0	9.6
1972/1973	3	63.7	12.1
1973/1974	39	62.2	13.2
1974/1975	73	58.0	15.7
1975/1976	(255)	55.7	18.2
1976/1977	(95)	55.0	19.1
1977/1978	(443)	54.8	20.4
1978/1979	(309)	54.1	19.4
1979/1980	(545)		
1980/1981	(668)		
1981/1982	(358)		
1982/1983	(1330)		

Note: Figures in parentheses are losses.

Source: Hart, "British Industrial Policy," in Barfield and Schumbra eds., *The Politics of Industrial Policy*, 143 (1986).

Ironically, the independent sector of the British steel industry—comprising small, nonintegrated "minimills", and considered inconsequential and ignored at the creation of British Steel Corporation—has performed remarkably well. A 1978 study revealed that over the preceding three years, all but six of the sixty independent steel firms were profitable (in contrast with the huge losses recorded by British Steel).<sup>39</sup> In fact, as Table 4 shows, the increased shares of imported steel in the British market came completely at the expense of British Steel Corporation. The smaller mills in the independent sector held their own, and even increased their share of the United Kingdom market slightly. As one industry analyst concludes, "New entrants have found increased productivity easier to achieve in small, new steelworks than has BSC, with its large complexes and entrenched workforce attitudes."<sup>40</sup>

<sup>39</sup> THE ECONOMIST, Mar. 25, 1978, at 97. See also THE ECONOMIST, Feb. 7, 1981, at 76.

<sup>40</sup> Cockerill, *supra* note 36, at 142.

Table 4  
Net<sup>a</sup> Deliveries of Finished Steel to the UK Market by Source of  
Supply, 1970 and 1977

Source	1970		1977	
	(million tonnes)	(% of total)	(million tonnes)	(% of total)
British Steel Corporation	13.4	70.4	8.3	54.6
Independents	4.6	24.1	3.8	25.1
Imports	1.0	5.5	3.1	20.3
Net deliveries to UK market	19.1	100.0	15.2	100.0

<sup>a</sup> excluding semi-manufactures for further processing.

Source: Cockerill, *supra* note 36, at 135.

Reviewing two decades of evidence, one student of the industry who formerly advocated bigness profoundly revised his thinking. "The time has surely come to recognize that the central planning and management of steel, of which I was once a great advocate, has failed," writes Richard Pryke.<sup>41</sup> Structural dissolution of British Steel and smaller organizational size, he concludes, would not only enhance economic performance, but it "has the attraction that extra business might be obtained at the expense of imports."<sup>42</sup>

### C. Computers

Encouraged by government, the British computer industry was consolidated through a number of mergers and acquisitions, beginning in the late-1950s and, as Chart 2 shows below, culminating in 1968 with the formation of International Computers Ltd. ("ICL"). All told, ICL was the product of mergers involving nine British-owned producers of computers and computer-related equipment. At its genesis, ICL accounted for 41.4% of the United Kingdom computer market.<sup>43</sup>

However, ICL's performance has failed to meet expectations. Over the period 1969 to 1974, its share of the British market fell by nearly eighteen percentage points, from 49.4% to 31.7%—this despite a government procurement policy favoring purchases from ICL for state computer needs.<sup>44</sup> By 1978, one English analyst caustically commented that "the creation of a single computer company, International Computers, has resulted in persistent claims on government funds rather than a com-

<sup>41</sup> R. PRYKE, *supra* note 24, at 209.

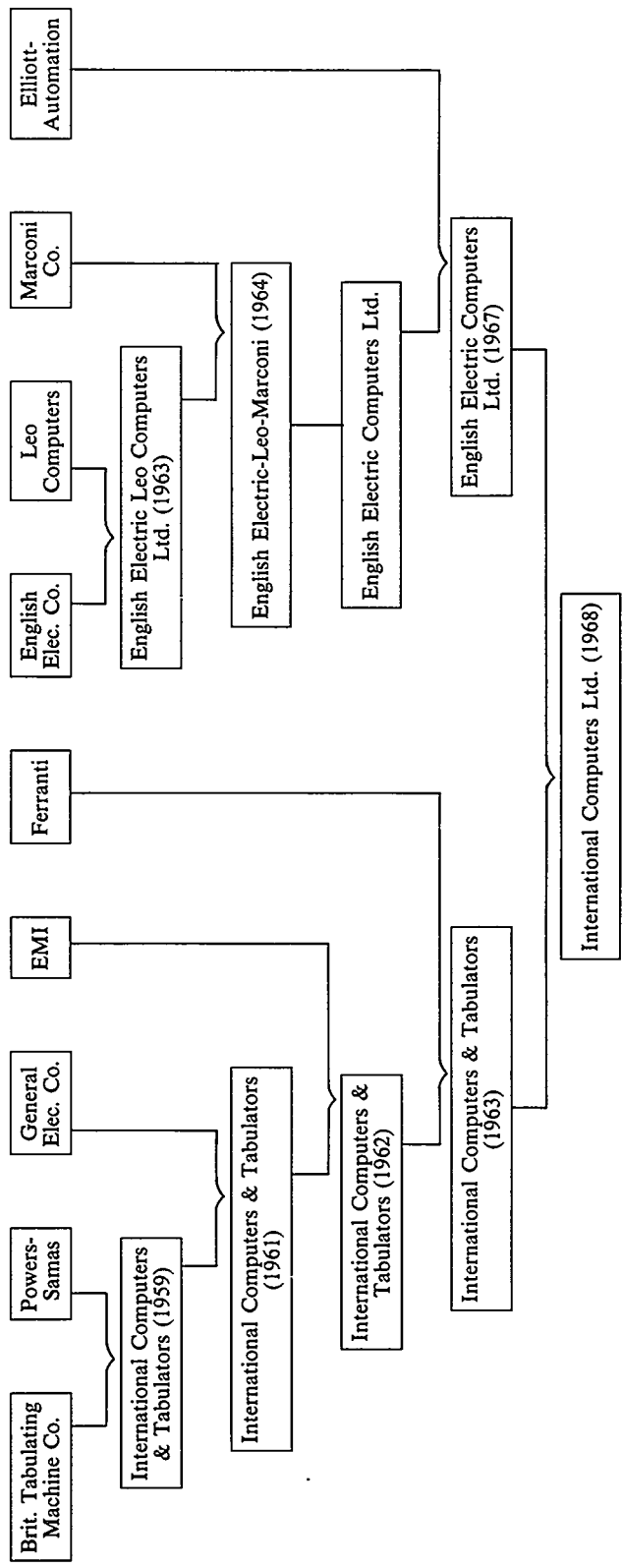
<sup>42</sup> *Id.*

<sup>43</sup> Stoneman, *Computers*, in THE STRUCTURE OF BRITISH INDUSTRY, *supra* note 36, at 160, 166.

<sup>44</sup> *Id.* Denton, *Financial Assistance to British Industry* in PUBLIC ASSISTANCE TO INDUSTRY: PROTECTION AND SUBSIDIES IN BRITAIN AND GERMANY 143 (W. Corden & G. Fels eds. 1976).



Chart 2  
Genealogy of ICL



Source: Sickman, *Europe's Love Affair With Bigness*, FORTUNE, March 1970, at 96.

pany capable of holding its own in world markets.”<sup>45</sup> In 1979, *The Economist* observed that, despite the fact that 25% to 30% of ICL’s sales were “captive sales” to British government agencies, the firm’s share of the British market had continued to fall. By contrast, the share of small computer companies offering mini and micro computers—growing fields largely ignored by ICL—had increased dramatically.<sup>46</sup>

By 1981, the disabilities of bigness were apparent: the firm had become mired in a cumbersome management system. Ostensibly the nation’s premier information processor, ICL inventory and sales data systems operated with lags three times longer than those of its smaller rivals. The firm’s costs soared, and its position deteriorated faster than its own management information systems could detect. In addition, at a time when the fastest growing area of the market comprised small and medium-sized computer models, ICL concentrated the bulk of its investment on big computers.<sup>47</sup>

#### D. Textiles

Beginning in the 1960s, in an attempt to arrest the declining competitiveness of the British textiles industry, the government permitted Courtaulds, already the United Kingdom’s largest producer of cellulose fibers, to acquire an even larger share of the domestic market.<sup>48</sup> Through horizontal and vertical integration the firm was to become competitive with imported textile products. As a result, the United Kingdom textile industry became far more concentrated than its counterparts in other industrialized countries.<sup>49</sup>

Here again, however, merger-induced giantism and high industry concentration failed to bolster industry performance. The United Kingdom’s trade balance in textiles declined rapidly throughout the 1970s, and government subsidies and protection from foreign imports expanded apace.<sup>50</sup> Indeed, the evidence suggests that bigness and concentration retarded experimentation and innovation—and success—with product-

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<sup>45</sup> Mottershead, *Industrial Policy*, in *BRITISH ECONOMIC POLICY 1960-74* at 480 (F. Blackaby ed. 1978).

<sup>46</sup> *THE ECONOMIST*, Sept. 1, 1979, at 81-82.

<sup>47</sup> *THE ECONOMIST*, July 4, 1981, at 78.

<sup>48</sup> See Shepherd, *Textiles: New Ways of Surviving in an Old Industry*, in *EUROPE’S INDUSTRIES* 26, 43-48 (G. Shepherd, F. Duchene, & C. Saunders eds. 1983). For a detailed examination of the failure of an earlier merger between Courtaulds and its leading rival, see K. COWLING, P. STONEMAN, J. CUBBIN, J. CABLE, G. HALL, S. DOMBERGER & P. DUTTON, *MERGERS AND ECONOMIC PERFORMANCE* 81-92 (1980)[hereinafter K. COWLING].

<sup>49</sup> Shepherd, *Industrial Change in European Countries: The Experience of Six Sectors*, in *EUROPEAN INDUSTRY: PUBLIC POLICY AND CORPORATE STRATEGY*, *supra* note 18, at 191, 197.

<sup>50</sup> *Id.*

niche specialization prevalent in the less concentrated, more structurally competitive textile industries of West Germany and, especially, Italy (see below).<sup>51</sup> In fact, in a significant reorientation of strategy, large British textile producers recently "have drastically slimmed down their United Kingdom textile operations and pursued a policy of greater decentralisation, partly aimed at greater market awareness."<sup>52</sup>

### E. Machine Tools

The British government also strove to consolidate the machine tool industry in the hands of a few giant concerns. The industry experienced a wave of mergers and acquisitions that raised concentration substantially: whereas the twenty largest firms together accounted for 50% of the field in 1960, a decade later the largest seven producers collectively accounted for the same share.<sup>53</sup> In particular, the government sought to create in Alfred Hebert (already the country's largest producer) the biggest machine tool company in all of Europe—this in the belief that superior size would promote superior performance.<sup>54</sup>

The anticipated results never materialized. According to a National Academy of Engineering report, "Throughout the decade of the 1970s the productivity level (output per man-hour) in the British machine tool industry dropped in relation to every major machine tool producing nation except the United States and now lags behind Japan, France, West Germany, Italy, and Canada."<sup>55</sup> British tool makers failed to retain their early technical lead in computer numerical controls as well as in flexible manufacturing systems.<sup>56</sup> The industry lost market share at home and abroad, with imported machine tools rising in market share in the United Kingdom from 28% in 1970 to 57% by 1980.<sup>57</sup> In the latter year, the industry exhibited the worst trade deficit among major tool producing nations.<sup>58</sup> Despite substantial, recurrent government financial support of

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<sup>51</sup> Shepherd, *supra* note 48, at 47-48; de la Torre, *Public Intervention Strategies in the European Clothing Industries*, 15 J. WORLD TRADE L. 124, 145 (1981).

<sup>52</sup> Shepherd, *supra* note 48, at 45.

<sup>53</sup> K. COWLING, *supra* note 48, at 112.

<sup>54</sup> Jones, *Machine Tools: Technical Change and Japanese Challenge*, in EUROPE'S INDUSTRIES, *supra* note 48, 186, 202 [hereinafter *Machine Tools*]; Daly, *Government Support for Innovation in the British Machine Tool Industry: A Case Study*, in INDUSTRIAL POLICY AND INNOVATION 52, 56-59 (C. Carter ed. 1981).

<sup>55</sup> MACHINE TOOL PANEL, U.S. NAT'L ACADEMY OF ENG'R, THE COMPETITIVE STATUS OF THE U.S. MACHINE TOOL INDUSTRY 37 (1983) [hereinafter MACHINE TOOL PANEL].

<sup>56</sup> Harrop, *Crisis in the Machine Tool Industry: A Policy Dilemma for the European Community*, 24 J. COMMON MKT. STUD. 61, 69 (1985).

<sup>57</sup> Daly, *supra* note 54, at 61; MACHINE TOOL PANEL, *supra* note 55, at 37.

<sup>58</sup> MACHINE TOOL PANEL, *supra* note 55, at 37.

Alfred Herbert, the concern's employment dropped from 15,000 in the 1960s to 5,400 by 1978.<sup>59</sup> In 1981, this putative "national champion" collapsed into receivership.<sup>60</sup> "It would seem apparent that size is not a cure for the industry's ills," a recent study of machine tool mergers concludes.<sup>61</sup>

#### F. The General Pattern

The evidence adduced in these case studies is more than anecdotal and episodic. In their exhaustive statistical analysis of mergers and economic performance in the United Kingdom, Cowling *et al.* find that

Taking a broad sweep of the results the picture is one in which it is difficult to sustain the view that merger is in fact a necessary or sufficient condition for efficiency gain. In many cases efficiency has not improved, in some cases it has declined, in other cases it has improved but no faster than one would have expected in the absence of merger. . . . More generally we have various pieces of evidence from our investigations that merger has led to no apparent improvement in international competitiveness or export performance.<sup>62</sup>

The problem with British productivity, another study finds, "seems to be that organizational diseconomies of scale . . . have become so great that they now often outweigh potential technical gains that should arise from producing on a larger scale."<sup>63</sup> Yet another study of British mergers and consolidations reports strong evidence "that the efficiency of the typical amalgamation did not improve after merger;" and that, instead, "efficiency would seem to have suffered after merger."<sup>64</sup> Indeed, the accumulating body of empirical evidence detailing the infirmities of merger-induced corporate giantism may have begun to influence economic policy thinking, if not action, at the highest levels. Speaking in 1980 in favor of government policy to encourage companies to "de-merge", Chancellor Sir Geoffrey Howe expressed the view "that there are cases where businesses are grouped together inefficiently under a single company umbrella [which] could in practice be run more dynamically and effectively."<sup>65</sup>

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<sup>59</sup> Daly, *supra* note 54, at 58.

<sup>60</sup> Jones, *Machine Tools*, *supra* note 54, at 202.

<sup>61</sup> K. COWLING, *supra* note 48, at 121.

<sup>62</sup> *Id.* at 370-71.

<sup>63</sup> Caves, *Productivity Differences Among Industries*, in *BRITAIN'S ECONOMIC PERFORMANCE* 35, 196 (R. Caves & L. Krause eds. 1980).

<sup>64</sup> G. MEEKS, *DISAPPOINTING MARRIAGE: A STUDY OF THE GAINS FROM MERGER* 33, 66 (1977). See also P. HOLL & J. PICKERING, *THE DETERMINANTS AND EFFECTS OF ACTUAL, ABANDONED AND CONTESTED MERGERS* (City Univ., London, Working Paper 1986).

<sup>65</sup> *THE ECONOMIST*, June 28, 1980, at 77.

### III. FRANCE

In the post-World War II era, French national policy centered on an abiding faith in the virtues of corporate bigness. "The large firm appears today as the most efficient unit of production," French statesman Raymond Barre asserted in 1958; "its role as a motor in growth should be underlined . . . it favors improvement of techniques and the quality of products, and excites competition by innovation. . . ."<sup>66</sup> Two years later, the Institut National de la Statistique et des Etudes Economiques ("IN-SEE") proclaimed: "concentration and general improvement of the standard of living—it is in this framework that our industrial rise is inscribed. . . ."<sup>67</sup>

This faith in bigness was formally codified in the Fifth Plan, adopted in 1966 as a statement of French national economic policy:

The Fifth Plan therefore proposes to constitute or, where they already exist, to strengthen a small number of *international scale firms or groups* capable of standing up to the foreign groups in the main spheres of competition, such as technical autonomy, dimensions of production and marketing units, versatility and balance . . . reserve strength to hit back quickly on the appearance of a new product, etc. In most major sectors of industry . . . *the number of such groups should be very limited, often restricted to one or two.*<sup>68</sup>

Bigness and concentration of industry in the hands of one or two "national champions" were to be the keys to meeting *le defi americain*. These, in turn, would require a deliberate government program encouraging consolidation. As articulated at the time by Louis Vallon, a prominent member of the French National Assembly, "French industry cannot compete with American giants without embarking on a major program of mergers."<sup>69</sup>

Imbued with the bigness mystique, government programs were enacted encouraging consolidation and concentration. This included legislation in 1965 and 1967 providing tax exemptions for capital gains resulting from merger, as well as state loans to subsidize acquisitions.<sup>70</sup>

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<sup>66</sup> J. SHEAHAN, PROMOTION AND CONTROL OF INDUSTRY IN POSTWAR FRANCE 245 (1963).

<sup>67</sup> *Id.* at 244.

<sup>68</sup> J. MCARTHUR & B. SCOTT, INDUSTRIAL PLANNING IN FRANCE 463 (1969)(Second emphasis added).

<sup>69</sup> Vicker, *Many European Firms Combine in Bid to Match the Size of U.S. Rivals*, Wall St. J., Feb. 25, 1965, at 1, col. 6 (quoting Louis Vallon). For further discussion of the picking-the-winner, "national champion" element in French industrial policy, see Green, *Industrial Policy and Policy-Making, 1974-82*, in CONTINUITY AND CHANGE IN FRANCE 139, 143 (V. Wright ed. 1984); Cotta, *Reflexion sur la Politique Industrielle de la France. Le Redeploiement Industriel*, in ETUDES DE POLITIQUE INDUSTRIELLE No. 17 (Ministère de l'Industrie, 1977); C. STOFFAES, LA GRANDE MENACE INDUSTRIELLE (1978).

<sup>70</sup> Balassa, *The French Economy Under the Fifth Republic, 1958-1978*, in THE FIFTH REPUBLIC

Corporate consolidation was also encouraged by a "marriage bureau" located in the Ministry of Industry, as well as by the creation of the Institut de Developpement Industriel.<sup>71</sup> Amalgamation of "national champions" typically proceeded within the framework of *plans sectoriels*, government blueprints for mergers in particular industries.<sup>72</sup>

Thus stimulated, consolidations among French firms escalated sharply. The average number of corporate mergers more than doubled between the 1950s and the second half of the 1960s. The value of the assets of the absorbed companies rose from an annual average of FF85 million during the 1950s to FF1 billion in 1965, and to FF5 billion in 1970.<sup>73</sup> By the mid-1970s, France displayed one of the highest corporate consolidation rates in Western Europe.<sup>74</sup>

But what of economic performance?

#### A. Steel

"The key difference between our industry and the American," a French steel executive once complained, "is that you have U.S. Steel and Bethlehem that are big enough and rich enough to make their power felt anywhere, at any time. . . . [T]here is no counterpart to these giants in the Common Market or more broadly in West Europe."<sup>75</sup>

Eventually, the grounds for this complaint were removed. Commencing in the late-1950s and continuing for two decades thereafter, a succession of mergers and acquisitions concentrated the French steel industry into three dominant groups. The first of these, Usinor, was created in 1966 by merging the first and fourth largest French steel producers. (As Chart 3 shows below, these firms, in turn, had evolved through prior amalgamations combining five formerly independent producers.) At the time of its formation, Usinor ranked as one of the largest steel makers in Europe, with 50,000 employees, sixteen plants, and five

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AT TWENTY 204, 207 (W. Andrews & S. Hoffman eds. 1981); Jenny and Weber, *France, 1962-1972*, in *THE DETERMINANTS AND EFFECTS OF MERGERS: AN INTERNATIONAL COMPARISON* 133, 142 (D. Mueller ed. 1980) [hereinafter *THE DETERMINANTS AND EFFECTS OF MERGERS*].

<sup>71</sup> Michalet, *France*, in *BIG BUSINESS AND THE STATE: CHANGING RELATIONS IN WESTERN EUROPE* 105, 109 (R. Vernon ed. 1974) [hereinafter *BIG BUSINESS*].

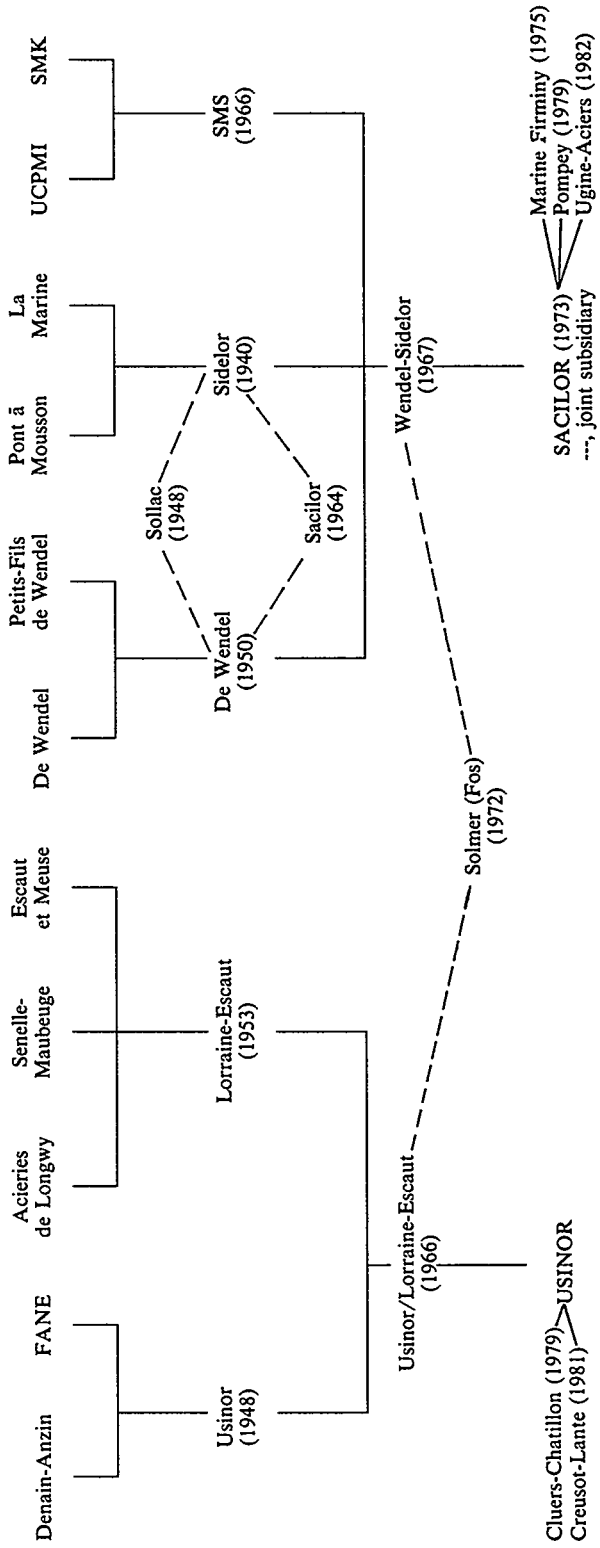
<sup>72</sup> Aujac, *An Introduction to French Industrial Policy*, in *FRENCH INDUSTRIAL POLICY* 13, 15 (William James Adams & C. Stoffaes eds. 1986).

<sup>73</sup> Balassa, *supra* note 70, at 207.

<sup>74</sup> Lauber, *The Gaullist Model of Economic Modernization*, in *THE FIFTH REPUBLIC AT TWENTY*, *supra* note 70, at 227, 231. In 1965, for example, "some 239 of the 500 largest [French] firms were involved in one or more mergers . . . absorbing some 500 companies and purchasing interests in another 120." J. MCARTHUR & B. SCOTT, *supra* note 68, at 211.

<sup>75</sup> J. MCARTHUR & B. SCOTT, *supra* note 68, at 214.

Chart 3  
Consolidation in the French Steel Industry



Source: HAYWARD, THE STATE AND THE MARKET ECONOMY, at 84 (1986).

iron mines.<sup>76</sup>

The second, DeWendel/Sidelor (now Sacilor), emerged the following year as an amalgamation of three major producers which, in turn, represented the prior combinations of six formerly independent steel firms. At its genesis, Sacilor ranked as the fourth largest steel firm in the Common Market and together with Usinor accounted for three-quarters of total French steel production.<sup>77</sup>

In a third consolidation, in 1970, two of France's largest producers of fine and specialty steels, Creusot and Loire, merged their operations to create Creusot-Loire. At the time, Creusot-Loire accounted for 60% of French specialty steel output.<sup>78</sup> In all, the number of French steel producers is estimated to have fallen by one-half as a result of mergers and consolidation over the years 1966 to 1975.<sup>79</sup>

Contrary to expectations, however, this chain of consolidations did not lead to better economic performance. During the 1970s, productivity in the industry remained lower than for any of France's major competitors. Contrary to forecasts, production levels fell from 1974 onward. France's steel giants devoted investment to capacity expansion rather than to improving productivity; they became ill-fitted mixtures of old and new plants, with higher operating costs. By 1978, most firms had accumulated sizable losses.<sup>80</sup> In that year, confronted with the industry's warning that "emergency measures were the only alternative to bankruptcy on a massive scale,"<sup>81</sup> the government was impelled to bail out the industry. In effect, the government nationalized the industry by converting a portion of its losses into state equity holdings, and by covering the remainder with state loans and guarantees.<sup>82</sup> A new holding com-

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<sup>76</sup> Hayward, *Steel*, in *BIG BUSINESS*, *supra* note 71, at 229, 267; *France's No. 1 Steel Maker Merging with 4th Biggest*, Wall St. J., Feb. 21, 1966, at 6, col. 3.

<sup>77</sup> Hayward, *supra* note 76, at 267; *Three Steel Companies in France Plan Merger*, Wall St. J., Dec. 26, 1967, at 3, col. 3.

<sup>78</sup> *THE ECONOMIST*, Jan. 24, 1970, at 64; Messerlin & Saunders, *Steel: Too Much Investment Too Late*, in *EUROPE'S INDUSTRIES*, *supra* note 48, at 52, 68.

<sup>79</sup> Messerlin & Saunders, *supra* note 78, at 68.

<sup>80</sup> See Berger, *Lame Ducks and National Champions: Industrial Policy in the Fifth Republic*, in *THE FIFTH REPUBLIC AT TWENTY*, *supra* note 70, at 292, 298; Levy, *Industrial Policy and the Steel Industry*, in *FRENCH INDUSTRIAL POLICY*, *supra* note 72, at 63, 66-67; V. PRICE, *INDUSTRIAL POLICIES IN THE EUROPEAN COMMUNITY* 96 (1981). See also Messerlin & Saunders, *supra* note 78, at 68.

<sup>81</sup> S. COHEN & A. GOUREVITCH, *FRANCE IN THE TROUBLED WORLD ECONOMY* 70 (1982).

<sup>82</sup> V. PRICE, *supra* note 80, at 96. The indebtedness of the French steel industry had risen from 70.7% of sales in 1965 to 100% in 1975, and to 111% in 1977. On January 1, 1978, the industry had a debt burden of FF38 billion, while its sales amounted to only FF34 billion. Its debt service consumed 14% of its revenues. Y. MENY & V. WRIGHT, *supra* note 38, at 22. The government's 1978 bailout plan was so generous that Laurent Fabius, the French Budget Minister described it as "le plus grand scandale financier depuis l'affaire de Panama" (the Panama Bubble scandal which had



pany was created, and the state assumed over FF12 billion of debt and added a new FF8 billion loan.<sup>83</sup>

Like its predecessors, this consolidation also failed to boost performance. During the 1980s, Usinor and Sacilor have suffered cumulative combined losses of FF54 billion; in 1986 alone, their consolidated loss amounted to \$2.1 billion.<sup>84</sup> The government was forced to declare its equity in the firms worthless, and to provide additional subsidies.<sup>85</sup> Creusot-Loire, which had embarked on an expansionist binge in the 1970s, including the acquisition of Phoenix Steel in the United States, became a perpetual money-loser to the tune of FF3 billion between 1979 and 1983. In late 1984, while ranking as the second largest private company in France, the firm declared bankruptcy.<sup>86</sup>

### B. Computers

The Plan Calcul was launched in 1966 as a *grand projet* to enhance the industry's performance and to promote national independence. Concentration and consolidation were integral parts of the plan. "In order that it may be as effective as possible," it was explained at the time, "State aid will be concentrated on the chosen company—that is to say, the one that appears in the best position, taking into account the principles and objectives of the plan. We do not have the means to disperse our efforts by sprinkling help over a whole group of firms."<sup>87</sup>

A semi-public company, Compagnie Internationale pour l'Informatique ("CII"), was designated as the "national champion" in the field, with the objective of competing head-to-head with IBM.<sup>88</sup> A decade later, in 1975, CII was merged with Honeywell-Bull, and by 1981,

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rocked the foundations of the Third Republic). *Id.* at 34. President Mitterand labelled the FF7 billion in subsidy and FF6 billion in low-interest loans granted to the industry by the (conservative) Barre government as "13 milliards pour rien" (13 billion for nothing). *Id.* at 59. For detailed statistics on government subsidies to the French steel industry, see Foll, *Les Aides Publiques à l'Industrie: Elements d'Evaluation*, ECONOMIE PREVISION No. 70 25-27 (Direction de la Prévision, Ministère de l'Economie, des Finances et du Budget, ISSN 0249-4744 1985).

<sup>83</sup> P. HALL, GOVERNING THE ECONOMY: THE POLITICS OF STATE INTERVENTION IN BRITAIN AND FRANCE 190 (1986).

<sup>84</sup> THE ECONOMIST, Sept. 6, 1986, at 63; *Sacilor and Usinor Report Combined Loss for 1986*, Wall St. J., May 5, 1987, at 33, col. 1.

<sup>85</sup> *Usinor Shareholders In Uproar As France Erases Their Equity*, Wall St. J., Nov. 5, 1986, at 33, col. 3. The industry was paid FF60 billion in state subsidies between 1978 and 1986. Hall, *supra* note 83, at 208.

<sup>86</sup> THE ECONOMIST, Sept. 8, 1984, at 66, Dec. 15, 1984, at 94.

<sup>87</sup> J. MCARTHUR & B. SCOTT, *supra* note 68, at 367.

<sup>88</sup> Delapierre, Gerard-Varet & Zimmermann, *The Computer and Data Processing Industry*, in THE STRUCTURE OF EUROPEAN INDUSTRY 257, 279 (H. de Jong ed. 1981).

the combine ranked as the largest European computer producer.<sup>89</sup> In 1982, two additional companies engaged in the production of minicomputers and peripheral equipment were merged into CII-Bull to form the Bull group.<sup>90</sup> In addition, CII-Bull was chosen as the preferred supplier for French government agencies.

CII-Bull's subsequent performance, however, has perennially fallen short of expectations. The CII/Bull merger "created serious internal conflicts, which only multiplied the problems of creating efficient and effective management."<sup>91</sup> The combine seems to have been significantly slower in developing new products than computer producers in other countries.<sup>92</sup> Concentrating all of France's computer "eggs" in the Bull basket also seems to have obstructed innovations in such areas as microcomputers. Furthermore, it has prevented the emergence of competitors who might have been more willing to exploit new avenues neglected by Bull.<sup>93</sup>

By 1981, the French computer industry had still not attained world-class status.<sup>94</sup> Instead, CII-Bull had become one of the largest consumers of French state funds. From 1981 to 1984 it lost almost \$500 million, and it amassed nearly \$1 billion in debts. When the firm tottered on the brink of bankruptcy in 1982, the government was compelled to acquire most of Bull's equity shares. The firm has survived, not because of bigness and superior economic performance, but because of government subsidies of \$600 million since 1982, and state pressure on French companies to spend at least half of their computer budgets on Bull equipment and apparatus.<sup>95</sup>

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<sup>89</sup> Stoffaes, *Industrial Policy in the High-Technology Industries*, in *FRENCH INDUSTRIAL POLICY*, *supra* note 72, at 57, 72. Bull had earlier been the leading French computer company. In the mid-1960s, acquisition of Bull by General Electric led the French government to create its own national champion in CII. Later, GE had sold Bull to Honeywell. For a devastating critique of France's effort to create a national champion in the computer field, and the cost of this effort in public subsidies, see QUATREPOINT & JUBLIN, *FRENCH ORDINATEURS DE L'AFFAIRE BULL A L'ASSASSINAT DU PLAN CALCUL* (1977).

<sup>90</sup> Stoffaes, *supra* note 89, at 57.

<sup>91</sup> J. ZYSMAN, *POLITICAL STRATEGIES FOR INDUSTRIAL ORDER: STATE, MARKET, AND INDUSTRY IN FRANCE* 152 (1977).

<sup>92</sup> *Id.* at 153.

<sup>93</sup> See *THE ECONOMIST*, Nov. 17, 1984, at 94-95. The magazine points out that French researchers developed the first microcomputer, and assembled it in 1973, but failed to recognize its commercial appeal. IBM reacted similarly. The important difference, the magazine argues, is that an outsider in the U.S., Apple Computer, was willing to take a chance on microcomputers, and proved extremely successful in opening up a vast new field.

<sup>94</sup> See *THE ECONOMIST*, Dec. 5, 1981, at 76.

<sup>95</sup> *Duck Soup*, *THE ECONOMIST*, July 16, 1983, at 85; Greenhouse, *Challenge for Honeywell Bull*, *N.Y. Times*, May 19, 1987, at D1, col. 3; *Can A Turnaround Wizard Make Honeywell Bull Work?*, *BUS. WK.*, Apr. 20, 1987, at 84.

### C. Textiles

The French textile industry was also consolidated considerably during the 1960s and 1970s. In 1961, Dollfus Mieg et Cie. was the product of a merger between the two largest spinning firms in France, Dollfus Mieg et Cie. and Ets. Thierrez et Cartier Bresson. Dollfus Mieg et Cie. and other large textile companies complained bitterly that their travails during the mid-1960s were (in the words of one of them) due to "the irrational and abnormal competition . . . of marginal firms which use outdated, largely amortized machinery in their effort to survive."<sup>96</sup> On the basis of such claims, the government encouraged and financed further consolidation of the field.<sup>97</sup> In a policy of "assainissement", the objective was to eliminate small producers who, it was believed, were obstacles to modernization and competitiveness.<sup>98</sup>

The evolution of the Agache-Willot empire epitomizes French textile consolidation policy in practice.<sup>99</sup> Willot was allowed to acquire more than 100 firms between 1954 and 1964. In 1967, Willot was permitted to merge with Agache, and two years later, the Agache-Willot combine merged with the Saint Frères firm. During the 1970s, the firm acquired two Parisian retailers, a Belgian retailer, and a furniture chain. By 1978, Agache-Willot ranked as one of the largest textile groups in France. In that year, and with government backing, Agache-Willot acquired the Boussac textile group—thereby doubling its sales and becoming the leading European textile producer. In 1979, the firm acquired the American Korvettes retail operation.

By the 1970s, after a number of other mergers and acquisitions,<sup>100</sup> the French textile industry had come to be dominated by a small number of very large firms.<sup>101</sup> Over the next decade, the number of these firms declined even further—by more than 40.<sup>102</sup> In 1981, the manufacturing arm of the Agache-Willot empire collapsed, with debts of FF2 billion and monthly losses running at the rate of FF10 to 15 million. Three months later, the entire holding company failed. This was one of the

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<sup>96</sup> Mytelka, *The French Textile Industry: Crisis and Adjustment*, in *THE EMERGING INTERNATIONAL ECONOMIC ORDER* 129, 143 (H. Jackson & D. Sidjanski eds. 1982).

<sup>97</sup> In some cases, government funds were made available for modernization only if such plans included merger and takeovers. Mytelka, *supra* note 96, at 145.

<sup>98</sup> S. COHEN & P. GOUREVITCH, *supra* note 81, at 136.

<sup>99</sup> Green, *Strategic Management and the State: France*, in *INDUSTRIAL CRISIS: A COMPARATIVE STUDY OF THE STATE AND INDUSTRY* 161, 181-85 (K. Dyson & S. Wilks eds. 1983).

<sup>100</sup> Mytelka, *supra* note 96, at 142.

<sup>101</sup> Shepherd, *supra* note 49, at 196.

<sup>102</sup> S. COHEN & P. GOUREVITCH, *supra* note 81 at 138.

largest bankruptcies in French history.<sup>103</sup>

Apparently, the consolidation strategy failed. The pace of concentration had outstripped the pace of plant modernization and rationalization.<sup>104</sup> This consolidation strategy did not prevent a dramatic import penetration of the French textile market.<sup>105</sup> It had not helped French textile producers to catch up with their more competitive European counterparts who had chosen to invest in productivity-enhancing plant and equipment rather than in merger-induced bigness.<sup>106</sup>

#### D. The General Pattern

The foregoing failures are not unique. According to one expert, French ventures in gigantism "proved to be a massive drain on the public treasury without ever achieving the levels of efficiency that would have made [the merged firms] powerful competitors even for the French market."<sup>107</sup> According to another, French infatuation with consolidation "was neither a means to increase industrial research and development nor a benign transformation in industrial structures."<sup>108</sup> Scholarly treatises were beginning to cast doubt on the proposition that had informed French industrial policy (and had not been questioned) for two decades—i.e., that mergers and corporate bigness would enhance efficiency in production, promote technological progress, and foster international competitiveness.<sup>109</sup> While success did occur in some areas—such as aerospace, and military electronics—these were exceptions to the larger number of failures across a broad front. Typically, "success" occurred in fields where government (rather than the private sector) was the main customer.<sup>110</sup>

Perhaps more important, a succession of collapsing *canards boiteux*, necessitating repeated government rescue and bailout, began to erode

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<sup>103</sup> Green, *supra* note 99, at 181-82.

<sup>104</sup> Mytelka, *supra* note 96, at 148; Shepherd, *supra* note 48, at 39.

<sup>105</sup> S. COHEN & P. GOUREVITCH, *supra* note 81, at 137.

<sup>106</sup> See *id.* By the late-1970s, the government itself seemed to concede the failure of its earlier policy and began to encourage active rivalry between medium-sized firms able to exploit sophisticated new product niches and new export markets. Mytelka, *supra* note 96, at 159.

<sup>107</sup> P. HALL, *supra* note 83, at 149.

<sup>108</sup> Mytelka, *supra* note 96, at 155.

<sup>109</sup> See William James Adams, *Firm Size and Research Activity: France and the United States*, 84 Q.J. ECON. 386 (1970); Jenny & Weber, *Profit Rates and Structural Variables in French Manufacturing Industries*, 7 EUR. ECON. REV. 187 (1976). Other studies reveal that medium-sized firms outperformed corporate colossi in export success abroad. Green, *supra* note 99, at 189, n.4.

<sup>110</sup> Stoffaës, *supra* note 89, at 44-45; DeWitt, *French Industrial Policy from 1945-1981: An Assessment*, in INDUSTRIAL POLICIES FOR GROWTH AND COMPETITIVENESS 232 (G. Adams & L. Klein eds. 1983); *Socialism Means Nationalising the Gaullists' Mistakes*, THE ECONOMIST, July 16, 1983, at 83-86.

faith in bigness among pragmatic French politicians and policymakers.<sup>111</sup> In particular, they recognized that the bailout problem was the result of the government's "national champion" consolidation strategy. "In the United States there are many companies in the electronics business," Francois de Combret recently observed.

When one goes bankrupt, the existence of the industry is not jeopardized. . . . In France, however, the number of important companies in each sector is very limited. If Bull had gone bankrupt, the future of the entire French electronics industry would have been placed in doubt. Hence the need to rescue companies in trouble.<sup>112</sup>

There are signs that French industrial theory and policy may be undergoing a metamorphosis. Nearly two decades ago, a group of researchers was struck by the disdain of French government officials for small business. They reported that "the Government officials [they] met viewed small business and businessmen in stereotypical and unsympathetic terms. Indeed, the role, competence, motives, and contribution of small businessmen was often regarded with considerable contempt and suspicion."<sup>113</sup> By 1978, however, the tone of official French thinking had begun to change: "No economy can maintain its dynamism without the continuous creation of new firms," Giscardian industrial strategy posited. "This reanimates and stimulates competition. The growth of firms is often the result of a new idea, of a new product. . . . Thus the government has recently taken significant measures to encourage the creation of enterprises, and more generally, the development of small and medium-sized firms."<sup>114</sup>

Today, sobered by the experience with giantism in the nationalized industries, "[S]mall business has begun to look beautiful to France's industrial planners. After pouring money into the big groups nationalised in 1981 and 1982, many of which are losing money, the Mitterrand government now hopes that small firms can create new jobs and investment instead."<sup>115</sup> This precept was explicitly incorporated in the latest French national economic plan.<sup>116</sup>

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<sup>111</sup> See Berger, *supra* note 80, at 294.

<sup>112</sup> De Combret, *What Can the United States Learn from the French Experience?*, in FRENCH INDUSTRIAL POLICY, *supra* note 72, at 161-62.

<sup>113</sup> Suleiman, *Industrial Policy Formulation in France*, in INDUSTRIAL POLICIES IN WESTERN EUROPE 23, 27-29 (S. Warnecke & E. Suleiman eds. 1975).

<sup>114</sup> Mytelka, *supra* note 96, at 159-60.

<sup>115</sup> THE ECONOMIST, May 7, 1983, at 85. See also, Y. MENY & V. WRIGHT, *supra* note 38, at 66.

<sup>116</sup> See Guillaume, *Implications of the New Indicative Planning*, in FRENCH INDUSTRIAL POLICY, *supra* note 72, at 119, 121-122. In a monumental study of French industrial policy, RESTRUCTURING THE FRENCH ECONOMY: BUSINESS, GOVERNMENT, AND COMPETITION SINCE WORLD WAR II (forthcoming 1988), William James Adams finds that France's post-World War II gains in productivity and efficiency are primarily attributable to the exposure of the French economy to Com-

#### IV. ITALY

The Italian industrial experience is significant in at least two important respects. First, Italian industry exhibits a "dual" structure. On the one hand, it comprises a handful of gigantic conglomerates promoted by the state. On the other, it is made up of an extensive and rapidly growing private sector of innovative small firms. Second, and especially striking, the economic performance of these two groups has differed dramatically: the giants have performed woefully, while the small firm sector has sparked the country's competitiveness, both at home and in international markets.

##### A. The Large Firm Sector

The most conspicuous firm on the Italian industrial landscape, and by far the biggest, is the Istituto per la Ricostruzione Industriale ("IRI"). This state-owned enterprise was created by Mussolini in 1933 to absorb the assets of failing firms and banks during the Great Depression, as well as to act as a driving force for Italian industrialization.<sup>117</sup> Through five decades of acquisitions and absorptions, IRI has grown to mammoth proportions. IRI encompasses over 1,000 individual firms, 471,000 workers, and accounts for 5% of total national investment, 11% of national R&D (research and development) expenditures, and 3.3% of the total national workforce (including 6% of all manufacturing employment).<sup>118</sup> IRI's operations, reaching from cast iron to ice cream, include: Finsider (the second largest steel producer in Europe, and the fourth largest in the world, controlling nearly 60% of the Italian steel industry through more than forty major iron and steel companies); Alfa Romeo; Alitalia; Stet (telecommunications and electronics); Finmare (producing 90% of Italian shipbuilding); and SME (food processing). In addition, IRI controls over sixty banking organizations, representing 17% of national banking.<sup>119</sup> Overall, IRI ranks as the third largest industrial corporation outside the United States.<sup>120</sup> Other Italian giants include Montedison (created in 1966 by the merger of Italy's two largest chemi-

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mon Market competition rather than to the government's policy of fostering industry concentration and promoting "national champions."

<sup>117</sup> V. PRICE, *supra* note 80, at 65.

<sup>118</sup> P. Bianchi, IRI: STRATEGIC ROLE AND POLITICAL CONSTRAINTS ON ITALIAN PUBLIC SHARE-HOLDINGS, 3-4 (Univ. of Bologna, Dept. of Econ.)(Sept. 1986); *The International 500*, FORTUNE, Aug. 3, 1987, at 215.

<sup>119</sup> P. Bianchi, *supra* note 118, at 21-23; THE ECONOMIST, Jan. 5, 1985, at 59.

<sup>120</sup> *The International 500*, *supra* note 118.

cal concerns),<sup>121</sup> and ENI (a petroleum combine which absorbed *inter alia* two large Italian textile firms in the 1960s).<sup>122</sup>

But mergers, acquisitions, consolidations and corporate bigness have scarcely been conducive to world-class economic performance in Italian industry. On a consolidated basis, IRI posted losses in every year from 1973 to 1985. Its accumulated debts reached \$21 billion by the end of 1978, and by 1980, its losses amounted to \$5 million *per day*.<sup>123</sup> Commenting on the firm's performance, *The Economist* has pointed out: "It is no good saying that [IRI's losses] look so bad because it is lumbered with all the heavy, basic industries that are in trouble throughout the industrialised world: it was supposed to be an efficient mechanism for adjusting such sectors to adverse structural changes."<sup>124</sup> The Italian government conceded as much in a 1981 document prepared by the Ministry of State Share-Holdings:

The crisis of the largest Italian firm shows its deepest intensity in the public-owned firms: in the last five years they lost more than 9,500 billion lira with an alarming progression that does not give any signal of decreasing. . . . The system of public Share-holdings . . . has become terribly costly in terms of collective resources absorbed, while the results are worsening every day.<sup>125</sup>

Across the board, the performance of these giant firms has been unimpressive. Finsider, the IRI-owned steel giant, recorded positive profits in only two years between 1970 and 1981.<sup>126</sup> IRI's delays, errors and inefficiencies seem to have had a negative impact on Italy's electronics industries,<sup>127</sup> while consolidation in textiles has created "an uncompetitive segment that is a burden on the public purse."<sup>128</sup>

Similarly, six years following its formation, Montedison—producing chemicals, textiles, and virtually everything from pickled pig's feet to womens underwear—was in serious financial straits. It was "a sprawling network of antiquated facilities spread around Italy."<sup>129</sup> It suffered accumulated losses of more than \$600 million. It was "a merger that mani-

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<sup>121</sup> *Merger of Italy's Two Largest Chemical Firms Is Effected*, Wall St. J., July 8, 1966, at 14, col. 3.

<sup>122</sup> P. Bianchi, *supra* note 118, at 15.

<sup>123</sup> *IRI Swings to Profit for First Time Since 1973*, Wall St. J., May 29, 1987, at 22, col. 3 [hereinafter *IRI Profit*]; V. PRICE, *supra* note 80, at 66; THE ECONOMIST, May 23, 1981, at 28.

<sup>124</sup> THE ECONOMIST, May 23, 1981, at 28, 33.

<sup>125</sup> P. Bianchi, *supra* note 118, at 17.

<sup>126</sup> FEDERAL TRADE COMM'N, THE UNITED STATES STEEL INDUSTRY AND ITS INTERNATIONAL RIVALS 424 (1977); THE ECONOMIST, May 23, 1981, at 33.

<sup>127</sup> THE ECONOMIST, May 23, 1981, at 33.

<sup>128</sup> Shepherd, *supra* note 48, at 42.

<sup>129</sup> Northrup, *Italy's Huge, Troubled Montecatini Edison Expects Profits Again Within Three Years*, Wall St. J., Jan. 12, 1973, at 15, col. 1.

festly didn't work"<sup>130</sup>—a characterization confirmed by the firm's subsequent losses and continual need for government financial aid.<sup>131</sup>

### B. The Small Firm Sector

This sector of Italian industry comprises tens of thousands of small firms, sprawling across the villages and small cities of central and northern Italy. These firms seldom employ more than 50 to 100 workers. They specialize in the production of a wide array of sophisticated goods, including motorcycles, agricultural equipment, automotive parts, and machine tools, as well as shoes and textiles. They are radically decentralized and non-integrated; they have organized cooperatives for providing accounting, tax, and marketing and purchasing services.<sup>132</sup>

The emergence of this sector occurred virtually by accident, and was quite unplanned by the state. Seeking to evade what they perceived as restrictive work rules and onerous head taxes, large Italian firms in the 1960s began subcontracting work to small firms. These small companies, in turn, gradually sought to break away from dependence upon their large patron-producers, and began to develop and market products of their own, both at home and abroad.<sup>133</sup> By 1980, 110,000 firms employed between twenty and 500 workers, a 35% increase over the decade of the 1970s.<sup>134</sup>

In sharp contrast to the failures and inefficiencies of giant firms like IRI, these small firms have attained remarkable success and have almost single-handedly contributed to a renaissance of the Italian economy in recent years. They are highly efficient and innovative—not despite their small size, but *because* of it. By farming out production to suppliers and service companies, *Business Week* reports, the smaller Italian firm

holds down capital requirements and overhead and helps to stabilize production costs because the suppliers work to fixed-price contracts. In addi-

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<sup>130</sup> *Id.*

<sup>131</sup> See THE ECONOMIST, Jan. 22, 1977, at 70-71; Spivak, *Montedison, Big Italian Chemical Firm Struggles to Regain Its Financial Health*, Wall St. J., Apr. 20, 1979, at 48, col.1; *Italy Plans to Give Chemical Industry \$4.65 Billion of Aid*, Wall. St. J., Feb. 20, 1981, at 32, col. 1.

<sup>132</sup> See Brusco, *The Emilian Model: Productive Decentralization and Social Integration*, 7 CAMBRIDGE J. ECON. 167 (1982); Piore & Sabel, *Italian Small Business Development: Lessons for U.S. Industrial Policy*, in AMERICAN INDUSTRY IN INTERNATIONAL COMPETITION 392 (J. Zysman & L. Tyson eds. 1983); Kindel and Brady, *Creative Chaos*, FORBES, Dec. 20, 1982, at 142; *What Really Keeps the Italian Economy Afloat*, BUS. WK., Apr. 14, 1980, at 42.

<sup>133</sup> Piore & Sabel, *supra* note 132, at 398, 404.

<sup>134</sup> BUS. WK., Apr. 14, 1980, at 43. Particularly prominent in the small-firm sector are the "Bresciani"—the approximately eighty small, independent steelmakers, the largest of which employs no more than 500 workers. See, *Italian Steel: The Bresciani*, METAL BULL. MONTHLY, Sept. 1978, 9, 35 [hereinafter *Italian Steel*]; Spivak, *Small Companies Fuel the Italian Economy, Thriving on Flexibility*, Wall St. J., Apr. 12, 1982, at 18, col. 2 [hereinafter *Small Companies*].



tion, the small entrepreneurs are able to move faster than large companies to exploit market opportunities, while the close personal contact between owner-managers and employees enables them to escape much of the labor strife that wracks major industries . . . [T]hey are quick to spot market openings and create products to fill them . . . [They] have carved out niches in world markets by means of their flexibility in matching products—and production runs—to the needs of special markets and individual customers.<sup>135</sup>

The small entrepreneurs adapt and utilize ultra-sophisticated equipment and manufacturing techniques.<sup>136</sup> Their wage scale averages 10% to 15% above wages paid by large manufacturers for comparable jobs.<sup>137</sup> Moreover, the regions where these small producers are located have enjoyed greater job and income growth relative to the rest of the nation.<sup>138</sup> Overhead costs are estimated to be one-third to one-fourth those incurred by large Italian producers.<sup>139</sup> The small entrepreneurs are also highly competitive in international markets: "They export a large portion of their output, in some industries, over three-quarters, without the need for political intervention, protection, or compromise. Their exports are growing rapidly, up thirty-five percent last year, and are now responsible for some forty percent of total Italian exports."<sup>140</sup> (By contrast, "the large Italian firms—Montedison, Alfa Romeo, Pirelli, Fiat Automotives, Italsider—are operating in the red, despite indirect subsidies. Their investment rates are low and heading lower, while export growth is sluggish at best."<sup>141</sup>)

The advantages of smaller corporate size are equally evident in the Italian steel industry. The giant Italian steel producers "are enormous lossmakers for IRI and stand in sharp, and embarrassing, contrast to the efficiency and profitability of the small independent steel producers in the north."<sup>142</sup> Repudiating the conventional wisdom concerning size and economies of scale in steelmaking,<sup>143</sup> the so-called Bresciani operate super-sophisticated, non-integrated "minimill" plants. Specialization in one or a few products enables them to keep plant sizes small, to keep

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<sup>135</sup> BUS. WK., Apr. 14, 1980, at 43.

<sup>136</sup> PIRE & SABEL, *supra* note 132, at 393.

<sup>137</sup> BUS. WK., Apr. 14, 1980, at 47.

<sup>138</sup> PIRE & SABEL, *supra* note 132 at 405.

<sup>139</sup> *Small Companies*, *supra* note 134.

<sup>140</sup> S. COHEN & P. GOUREVITCH, *supra* note 81, at 27.

<sup>141</sup> *Id.* at 28.

<sup>142</sup> V. PRICE, *supra* note 80, at 96-97.

<sup>143</sup> Of efforts to prove the Bresciani could not, in fact, be economically viable, one observer has said: "the Bresciani have not read Mr. Galbraith and, an even greater fault, have not read Professor Frumento—so they are not aware that they are in their death throes. These steelmakers, unaware of economic theory, have kept on producing and have been able to survive and even to drive bigger producers out of the market for some particular products." *Italian Steel*, *supra* note 134, at 27.

capital costs and overhead low, and to maintain high productivity. Small size fosters a high degree of operational flexibility in delivering "in an extremely short time the quantity, quality and sizes required" by buyers.<sup>144</sup> By avoiding high depreciation expenses and financial burdens, they have achieved "a remarkable cash-flow which eventually enabled them . . . to renew their installations using up-to-date and sometimes revolutionary concepts."<sup>145</sup> In fact, the Bresciani, not the giant steel firms, were the first to install highly-efficient continuous casting facilities. By 1978, nearly all Bresciani steel was continuously cast.<sup>146</sup> Today, they are able to produce a ton of steel in about half the time required by the average European producer.<sup>147</sup>

Initially derided by European Big Steel, the Bresciani have proven to be a potent competitive force. They have captured market share from large Italian firms in the markets where they compete. Furthermore, they have boosted their exports from 10% of production in 1967 to 30% to 40% of production by the mid-1970s. The Bresciani also have weathered (and even prospered during) recurrent steel "crises". Indeed, their efficiency and low prices have been the persistent bane of the European steel cartel and cartel efforts to fix prices high enough to allow Big Steel to survive.<sup>148</sup>

In Italy, then, smaller corporate size (*Forbes* suggests) seems to be the wave of the future.<sup>149</sup> "During the last two years," the deputy president of Italy's national business organization recently observed, "the strength of small business has been the most important support of the Italian economy."<sup>150</sup> Now, even the biggest Italian firm is implementing this new "new learning." Romano Prodi, IRI's current president and one of Italy's leading economists, is returning the giant firm to profitability—in important part by reducing IRI's size, and by divesting a number of operating divisions (including Alfa Romeo).<sup>151</sup> Prodi's credo is "*tagliare, tagliare, e ancora tagliare*" (cut, cut, and cut again).<sup>152</sup>

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<sup>144</sup> *Id.* at 33.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 15.

<sup>147</sup> *Small Companies*, *supra* note 134.

<sup>148</sup> See *Italian Steel*, *supra* note 134, at 15; V. PRICE, *supra* note 80, at 89.

<sup>149</sup> *The Wave of the Future?*, *FORBES*, Dec. 20, 1982, at 142.

<sup>150</sup> *Small Companies*, *supra* note 134, at 1, col. 1

<sup>151</sup> Symonds, *The Turnaround Sparking A New Italian Renaissance*, *BUS. WK.*, Mar. 2, 1987, at 60; *IRI Profit*, *supra* note 123.

<sup>152</sup> *LA REPUBBLICA*, Sept. 7, 1983, in Y. MENY & V. WRIGHT, *supra* note 38, at 17. Prodi announced this policy after Finsider's 1982 losses had reached 1,436 billion lire or 20 billion lire per worker. In 1983, when Finsider's production fell by 27% compared to the previous year, the political leaders in Rome agreed that "il momento della verità" had finally arrived. *Id.*

## V. WEST GERMANY

Viewed in terms of structure and policy, the salient features of West German industry can be divided into three eras. First, following the end of World War II in 1945, the Allied authorities instituted a program of deconcentration of West German industry. Although not as far-reaching as that implemented in post-war Japan, the deconcentration program was nevertheless not insubstantial. The giant chemical combine, IG Farben, was broken into three separate producers—BASF, Bayer, and Hoechst. Twelve large coal and steel firms, accounting for over 90% of the country's steel production and more than half of its coal output, were dissolved into twenty-eight independent firms. Substantial deconcentration of commercial banking was also undertaken.<sup>153</sup> Significantly, an important consequence of these structural reorganizations was to bolster economic performance. Some allies "thought they were limiting German industrial power for the future," *The Economist* stated, "but were instead increasing it, when they broke up I.G. Farben into three smaller and therefore more efficient firms."<sup>154</sup>

Second, like other European nations, the West German government during the 1960s flirted with the bigness mystique. In 1967, for example, the government announced: "Larger markets demand in many ways larger and more efficient company units. . . . The Federal government is concerned to remove obstacles which stand in the way of concentration of enterprises . . . so that the development of firms of optimum size will not be hindered."<sup>155</sup> As a result, the merger rate quickened. In the two-year period from 1969 to 1970, the number of mergers exceeded the number consummated during the entire preceding decade.<sup>156</sup> Big-firm mergers, involving companies with sales of billions of deutschmarks, escalated sharply and included horizontal mergers between firms in the same industry, as well as large conglomerate acquisitions.

Third, but in sharp contrast with events in France and the United Kingdom, West German infatuation with mergers and corporate bigness was attenuated in the early-1970s. Worried that industrial "concentration can also lead to a decline in workable competition," the Government concluded that the "number one problem of economic policy [was] the concentration of enterprises."<sup>157</sup> German cartel legislation was subsequently expanded to reach anticompetitive mergers and concentration,

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<sup>153</sup> See O. Smith, *The West German Economy* 16 (1983).

<sup>154</sup> *Big Won't Work*, *THE ECONOMIST*, Dec. 25, 1976, at 60, 61.

<sup>155</sup> Kuster, *Germany*, in *BIG BUSINESS*, *supra* note 71, at 64, 79.

<sup>156</sup> *Id.* at 79-80.

<sup>157</sup> *Id.* at 81-82.

and has since sought "to encourage competition to a degree that is unique in Western Europe."<sup>158</sup> Indeed, the *Wall Street Journal* reported in 1986 that at the very time when antitrust support was wavering in the United States, the West German antitrust agency (Bundeskartellamt) was tightening up and redoubling its enforcement efforts.<sup>159</sup>

This evolution in German thinking may have been influenced by newly available empirical evidence. One exhaustive analysis, for example, reported that mergers and acquisitions did *not* result in significant gains in economic performance in West Germany, and that they were *not* conducive either to scale economies or to improved risk-bearing capacity. Where positive results were achieved, they were due less to "exploited efficiency improvements and output gains and more indicative of increased market power."<sup>160</sup>

Experience with some notable instances of government-sanctioned consolidation may also have had an effect. Amalgamating twenty-six hard-coal mining concerns to form Ruhrkohle A.G. has necessitated continual import protection of the coal industry, at a sizable cost to German steel producers.<sup>161</sup> AEG Telefunken embarked on a large-scale program of acquisitions, became "a loss-making albatross with holdings all over the world," and by 1982 required massive government support to remain solvent.<sup>162</sup> Government-sanctioned consolidations in steel during the 1970s—including the merging of three major producers in 1974 to create the second largest steel producing concern in Europe—have not ameliorated the industry's serious performance problems. Instead, they have led to successive crises and big-firm bankruptcies.<sup>163</sup> Volkswagen's acquisition of Triumph-Adler Werke (an office equipment manufacturer) soured,<sup>164</sup> while Daimler-Benz's conglomerate acquisition spree has exacerbated the firm's economic problems.<sup>165</sup> Efforts to create "national

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<sup>158</sup> V. PRICE, *supra* note 80, at 52, 55.

<sup>159</sup> Gumbel, *West Germany's Cartel Office Tightens Its Grip*, Wall St. J., Feb. 18, 1986, at 31, col. 1. Although the number of West German consolidations continued to rise following the enactment of tighter merger controls in the early-1970s, this appears to be due to an increase in mergers involving smaller firms whose size fell below the threshold contained in German merger law. See Cable, Palfrey, & Runge, *Federal Republic of Germany, 1964-1974* in THE DETERMINANTS AND EFFECTS OF MERGERS, *supra* note 70, at 99, 101-04 [hereinafter Cable].

<sup>160</sup> Cable, *supra* note 159, at 130.

<sup>161</sup> Kuster, *supra* note 155, at 75-76; FEDERAL TRADE COMM'N, *supra* note 126, at 337.

<sup>162</sup> O. SMITH, *supra* note 153, at 281; *Banks and Bonn Set Credit Terms to Save AEG-Telefunken AG*, Wall St. J., Oct. 11, 1982, at 25, col. 5.

<sup>163</sup> *West Germany Grants Approval to Merger of 3 Steel Concerns*, Wall St. J., Feb. 19, 1974, at 7, col. 2; Hart, *supra* note 23, at 169-73.

<sup>164</sup> Lenel, *A Review of the Third Report of the Monopolies Commission of West Germany*, 28 ANTITRUST BULL. 757, 775 (1983).

<sup>165</sup> O'Boyle, *Daimler-Benz Negotiates Bumpy Course*, Wall St. J., Jan. 8, 1988, at 16, col. 1.

champions" in computers have also languished.<sup>166</sup>

Conversely, maintenance of competitive market structures has enhanced German economic performance in such fields as textiles and machine tools.<sup>167</sup> On the innovation front, the IFO economics institute in Munich has found that small German companies are more likely to exploit new inventions than large firms: "Seventy percent of new ideas were incorporated into the products of small companies—with sales of up to DM15million—within two years; within large companies only about one-third of the new ideas was used."<sup>168</sup> In sum, in Germany, as in Great Britain and France, the efficiencies and innovative vigor of smaller, entrepreneurial businesses are now being increasingly recognized, and at times consciously encouraged, as a matter of national government policy.<sup>169</sup>

## VI. JAPAN

The Japanese experience is a particularly relevant case study. In spite of much that has been written about "Japan Inc.," there is little empirical support for the proposition that Japan's economic "miracle" in the post-war era is attributable to merger-induced bigness and high industry concentration. Indeed, there is considerable evidence to the contrary.

### A. Dissolution and Deconcentration Under Post-War Allied Occupation

Typically overlooked is the fact that, under the post-war occupation, the Japanese economy was subjected to a thoroughgoing structural deconcentration and trust-busting program. The targets were the colossal industrial, commercial and financial conglomerate combines—*zaibatsus*—which dominated the economy in the decades leading up to World War II.<sup>170</sup>

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<sup>166</sup> English, *The European Information Technology Industry*, in EUROPEAN INDUSTRY: PUBLIC POLICY AND CORPORATE STRATEGY, *supra* note 18, at 227, 231.

<sup>167</sup> See Shepherd, *supra* note 48, at 47-48; Harrop, *supra* note 56, at 69; Sabel & Herrigel, *Losing A Market to A High-Wage Nation*, N.Y. Times, June 14, 1987, § 3, at 2, col. 2.

<sup>168</sup> *West Germany*, THE ECONOMIST, Dec. 6, 1986, at 19.

<sup>169</sup> See Thurow, *New Vigor is Infusing Small-Business Sector of German Economy*, Wall St. J., Aug. 28, 1984, at 1, col. 1. For an overview of German antitrust policy, see I. SCHMIDT, WETTBEWERBSPOLITIK UND KARTELLRECHT 150-69 (1987). For proposals to close the merger "loophole" in the German antitrust law and to authorize divestitures, see *Monopolkommission, Fusionskontrolle Bleibt Vorrangig* (Hauptgutachten 1978-79) 178-207 (1980).

<sup>170</sup> At the close of the war, the 10 largest zaibatsus were estimated to collectively control, directly and indirectly, fully one-third of all business enterprise in Japan. They controlled large shares of the financial sector, heavy industry and light industry, as well as other fields. See E. HADLEY, ANTI-

In a presidential directive of September 6, 1945, General MacArthur was ordered to devise "a program for the dissolution of the large industrial and banking combinations which have exercised control of a great part of Japan's trade and industry."<sup>171</sup> Specifically, the object of the U.S. government was to establish an agency to plan for "dissolving large Japanese industrial and banking combines or other large concentrations of private control," to "dissolve the control associations," to abrogate "all legislative or administrative measures which limit free entry of firms into industries," and to "terminate and prohibit all Japanese participation in private international cartels or other restrictive private international contracts or arrangements."<sup>172</sup> The aim

was to give all Japanese businessmen the opportunity to engage in the modern sector of the economy, that is, to remove those conditions which preserved this sector for the chosen few, those conditions which in fact made it a private collectivism. The aim was to broaden the basis of ownership in the modern sector from a handful of business families of giant fortunes to ownership by the many.<sup>173</sup>

True to announced intent, a massive deconcentration program was implemented: sixteen of the largest holding companies were dissolved outright; twenty-six were dissolved and reorganized; eleven were reorganized without dissolution; and nineteen companies with "excessive concentration" were reorganized and split up.<sup>174</sup> The last category included the following structural deconcentrations:

- 1) Japan Iron and Steel (company dissolved, four new firms created);
- 2) Mitsubishi Heavy Industries (company dissolved, three new firms created);
- 3) Mitsui Mining (company continued, but coal and metal operations divested);
- 4) Sumitomo Mining (company continued, three new firms created);
- 5) Oji Paper (old company dissolved, three new firms created);
- 6) Teikoku Fiber (company dissolved into three parts);
- 7) Daiken Industries (company dissolved, four new firms created);
- 8) Toyo Can (company continued, one new firm created);
- 9) Dainippon Beer (company dissolved, two new firms created);
- 10) Hokkaido Dairy Co. (company dissolved, two new firms created);

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TRUST IN JAPAN 45, 48-49 (1970). In addition, cartels were rampant, with more than 8,000 control agreements uncovered at the national and local level during the Allied occupation. *Id.* at 368.

<sup>171</sup> *Id.* at 6.

<sup>172</sup> *Id.* at 8.

<sup>173</sup> *Id.* at 19.

<sup>174</sup> *Id.* at 443.

- 11) Hitachi Manufacturing (disposal of nineteen plants);
- 12) Toshiba (disposal of twenty-seven plants and one research laboratory);
- 13) Teikoku Petroleum (divestiture of securities and petroleum exploration rights);
- 14) Japan Explosives (divestiture of securities);
- 15) Schokiku Motion Pictures (divestiture of securities); and
- 16) Toho Motion Pictures (divestiture of securities).<sup>175</sup>

In addition, eighty-three holding companies were designated for dissolution.<sup>176</sup> The two largest of these, Mitsui and Mitsubishi, were divided into some 200 successor firms.<sup>177</sup> Furthermore, an accompanying program of forced securities disposal involved the sale of possibly as much as one-half of the 1945 paid-in value of all corporate securities in Japan, and affected a total of roughly 4,000 companies.<sup>178</sup>

The structurally more competitive milieu which emerged in the wake of these programs has been an important—and frequently underestimated—factor in the subsequent Japanese “miracle.” As Eleanor Hadley points out:

With much of the world marveling at the Japanese economy's extraordinary post-1954 performance, it is impossible to conclude that [the deconcentration reforms] injured the economy. In fact, it may well be argued that they have been an integral part of the exceptional pace of recent growth. The unrestrained rivalry for market position appears to be an essential part of the explanation of the extraordinary levels of investment; the temporary breakup of the two giant trading companies has been an element in the greater diffusion of foreign technology; and it would seem that part of the vigor of these recent years comes from greater vitality in management, from allowing corporations to act in their own best judgment rather than confining decision-making to the councils of top holding companies.<sup>179</sup>

#### B. Subsequent Concentration and Merger Trends

Through the 1960s, market concentration in Japan generally drifted downward. Over the period 1949-1962, as well as over the shorter period 1955-1962, the three-firm concentration ratio fell in fourteen major Japanese industries, rose in two, and remained unchanged in three industries. Particularly pronounced trends toward less concentration and more competitive market structures occurred in motor vehicles and steel. In motor vehicles, the combined share of the three largest producers fell from 98.9% in 1949, to 66.9% by 1962. For blast furnaces, three-firm

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<sup>175</sup> *Id.* at 178-79.

<sup>176</sup> *Id.* at 70.

<sup>177</sup> *Id.* at 148.

<sup>178</sup> *Id.* at 182, 190.

<sup>179</sup> *Id.* at 442.

concentration fell from 89.9% to 65.7%, and for steel mills, from 58.3% to 49.8% over the same period.<sup>180</sup> More broadly, evidence suggests a general deconcentration trend occurred in major Japanese industries in the years 1960-1977.<sup>181</sup> A subsequent comparative study found markets to be noticeably less concentrated in Japan than in the United States.<sup>182</sup>

In fact, one expert argues that the emergence, growth, and success of small business, and the concomitant deconcentration and decentralization of manufacturing, are the foundation for what he calls Japan's "misunderstood miracle." During Japan's high-growth postwar period, David Friedman points out, "the structure of its manufacturing industries appears to have broadly *diverged* from that of the United States. Japanese production increasingly took place in smaller firms, which employed the vast majority of the country's manufacturing work force and accounted for close to 60 percent of the national value added. In the United States, by contrast, the number of small firms stabilized as the largest producers employed most of the work force and accounted for close to 65 percent of manufacturing value added."<sup>183</sup> Indeed, the genesis of Japan's thriving small-firm sector is similar to that in Italy: initially sprouting up to serve the subcontracting needs of large firms, small Japanese manufacturers subsequently developed their own sophisticated products and evolved away from dependence on large patron-producers. In the Sakaki region of Japan, for example, small-firm manufacturing initially was ignited by automotive subcontracting. But these small firms pioneered their own products and product niches, with many coming to dominate world markets: "By the early 1980s one local firm, Nissei, held 65 percent of the global market for blood pressure testers; another, Nakajima All Precision, captured 20 percent of the world market for manual typewriter keyboards and 35 percent of the U.S. market for elec-

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<sup>180</sup> *Economic Concentration Hearings*, *supra* note 16, at 3543-44. According to one first hand investigator, an important factor behind declining industrial concentration was post-war antimonopoly policy: "The largest firms were broken up under the Act on the Exclusion of Excessive Monopoly Power and for a time were restrained from making mergers afterward. This, plus the elimination of controls over production, facilitated the entry of new firms, which have prospered in Japan's rapid economic growth since 1955." *Id.* at 3544. See also Hosomi & Okumura, *Japanese Industrial Policy*, in NATIONAL INDUSTRIAL STRATEGIES AND THE WORLD ECONOMY 123, 149 (J. Pinder ed. 1982). (table 5.9).

<sup>181</sup> *Id.*

<sup>182</sup> R. CAVES & M. UEKUSA, INDUSTRIAL ORGANIZATION IN JAPAN 19 (1976). More generally, aggregate concentration in the Japanese economy (measured by the share of all manufacturing collectively accounted for by the 100 largest producers) dramatically *fell* over the post-World War II era; by the early-1970s, aggregate concentration in Japanese manufacturing was substantially *below* that in the United States. See Iguchi, *Aggregate Concentration, Turnover, and Mobility Among the Largest Manufacturing Firms in Japan*, 32 ANTITRUST BULL. 939, 944-49 (1987).

<sup>183</sup> D. FRIEDMAN, THE MISUNDERSTOOD MIRACLE 9-10 (1988).



tric models; Takeuchi led the world in the production of mini-backhoe construction equipment; and Soar, a maker of portable, sophisticated electrical testers, in ten years grew from a family operation to an enterprise operating throughout the world.”<sup>184</sup> Nor are these isolated developments. Throughout Japan, Friedman concludes,

the dramatic trends toward independence, increased technical skill, and specialized small and medium-sized enterprise support indicate the same kind of industrial outcome in even the largest metropolitan areas. Collectively, urban and rural industrial hamlets have changed the shape of Japanese manufacturing, leading toward a decentralized economy of great flexibility.<sup>185</sup>

Japan has not been immune from mergers and acquisition, either during the 1960s or, more recently, in the 1980s. Nonetheless, the mergers that do occur primarily involve small firms. Between 1960 and 1970, for example, more than 9,000 mergers were recorded. Of these, however, only fifty-seven were capitalized at a value exceeding \$3 million, and the bulk of them were in the distribution sector.<sup>186</sup> Likewise, approximately 2,000 Japanese mergers and acquisitions in 1986 were valued at \$3 billion. In the same year, by contrast, the roughly 3,000 mergers and acquisitions in the United States were valued at \$180 billion—or, sixty times the Japanese total.<sup>187</sup>

Moreover, the mergers and acquisitions that do occur in Japan appear to be no more successful than elsewhere. For example, one recent study finds “little evidence to suggest that increased concentration among the largest few firms has significant favorable effects on market performance, and much evidence of unfavorable effects.”<sup>188</sup> Other studies report either no discernible effect of mergers, or degradations in some measures of performance following merger.<sup>189</sup>

### C. Industry Resistance to Government Consolidation Efforts

Given the allegations of government-industry collaboration in “Japan Inc.,” it is noteworthy that a number of Japanese industries have

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<sup>184</sup> *Id.* at 182.

<sup>185</sup> *Id.* at 200.

<sup>186</sup> Trezise & Suzuki, *Politics, Government, and Economic Growth in Japan*, in *ASIA'S NEW GIANT* 804 (H. Patrick & H. Rosovsky eds. 1976).

<sup>187</sup> *THE ECONOMIST*, Mar. 21, 1987, at 94. Although the largest pre-war *zaibatsus* took some steps to partially reconstitute themselves later, informed opinion concludes that they have not significantly diminished competitiveness in the Japanese economy. E. HADLEY, *supra* note 170, at 253-56; R. CAVES & M. UEKUSA, *supra* note 182, at 63-67.

<sup>188</sup> R. CAVES & M. UEKUSA, *supra* note 182, at 158.

<sup>189</sup> See Hoshino, *General Comparison of Financial Characteristics Between Merging and Nonmerging Firms in Japan*, in *THE ANATOMY OF JAPANESE BUSINESS* 352, 353 (K. Sato & Y. Hoshino eds. 1984).

*resisted* government efforts to create “national champions” via consolidation. Prominent among these are automobiles, steel, computer/electronics, and machine tools—in other words, some of the most successful Japanese competitors in global markets.

In motor vehicles, for example, the Ministry of International Trade and Industry (“MITI”) sought as early as 1953 to concentrate production of automobiles in one or at most two established firms (Nissan, Toyota), and to preclude new entry. When three new firms (Mitsubishi, Fuji, Mazda) commenced automobile production, cutting the combined Toyota-Nissan market share from three-quarters to less than one-half, MITI was alarmed. Government authorities worried “that a large number of competing auto firms could only result in disaster. The Ministry also reasoned that excessive competition among the manufacturers would be detrimental to bringing the Japanese auto industry into a competitive position with the American ‘Big Three’.”<sup>190</sup> Prime Minister Ikeda voiced his concern that “the Japanese automobile manufacturers will not become competitive with General Motors and Ford under the current [competitive, unregulated entry] situation.”<sup>191</sup> Yet another government official warned that “in the light of the general trends in the world among industries, and in the light of the present situation in our country too, six [automobile] companies are too many . . . [and] five or six companies will not be possible.”<sup>192</sup>

In 1961 MITI announced plans to consolidate Japanese automakers into just three large concerns, to limit each of these firms to a single segment of the market, and to bar newcomers (including Honda) from the field.<sup>193</sup> But in the face of intense industry opposition, MITI abandoned its consolidation plan. By 1965, Japan had eight highly competitive car companies, and by 1984, the number had grown to nine. Japanese automakers had prevailed against the world—and against their own government’s faith in bigness-by-consolidation.

As with the automobile industry, MITI attempted to consolidate steel production in the hands of a few giant firms. Nevertheless, it was again thwarted by the industry. In 1949, Kawasaki constructed Japan’s first modern post-war integrated steel plant against the wishes of MITI and the Bank of Japan. Similarly, in 1965, Sumitomo continued to expand its capacity despite opposition and even sanctions by MITI.<sup>194</sup> The

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<sup>190</sup> SAKIYA, HONDA MOTOR: THE MEN, THE MANAGEMENT, THE MACHINES 136-37 (1982).

<sup>191</sup> E. KAPLAN, JAPAN: THE GOVERNMENT-BUSINESS RELATIONSHIP 123 (1972).

<sup>192</sup> W. DUNCAN, U.S.-JAPAN AUTOMOBILE DIPLOMACY 90-91 (1973).

<sup>193</sup> Magaziner, *Japanese Industrial Policy*, in THE JAPANESE AUTOMOTIVE INDUSTRY: MODEL AND CHALLENGE FOR THE FUTURE? 82 (R. Cole ed. 1981).

<sup>194</sup> FEDERAL TRADE COMM’N, *supra* note 126, at 327; Ohmae, *Japan vs. Japan: Only the Strong*

industry also rejected a committee report issued in 1966 by MITI's Industrial Structure Council, which proposed concentrating the industry into three or four giant groups.<sup>195</sup> A 1965 MITI report calling for consolidation of the specialty steel sector also went unheeded.<sup>196</sup> Finally, although the two largest steel firms were permitted to merge in 1969 to create Nippon Steel, the result was not exceptionally constructive, and produced few ascertainable economies of scale.<sup>197</sup>

The computer and electronics industries have also persistently shunned government consolidation efforts. Although observers report that MITI has long been interested in consolidating computers, the traditional independence, competitiveness, and pride of computer manufacturers seem to have rendered corporate amalgamation infeasible.<sup>198</sup> Over the years 1957-1961, seven firms undertook computer production in Japan. By the early 1970s, the country had six computer manufacturers (in contrast with one "national champion" in the United Kingdom, and one in France).<sup>199</sup>

In machine tools, too, the Japanese government tried—and failed—to promote mergers and concentrated corporate giantism:

from the 1930s onward the bureaucracy attempted to implement policies that would have reversed almost all of the activities associated with the rapid growth of the machine tool industry. In the prewar period the Machine Tool Industry Law and the *toseikai* scheme attempted to limit the number of firms that could build machinery, generating economies of scale. These policies were failures. After the war MITI tried to promote consolidation, cartels, scale economies, and stable markets with various Special Measure laws. Its efforts did not transform the industry. Nor was private coordination successful; *gyokai* production restraint programs failed to reduce firm entry or limit product development. . . . Instead, Japanese machinery makers fragmented the market: new entrants flooded high-tech equipment sectors, existing firms flatly refused to coordinate or consolidate production.<sup>200</sup>

As the president of one machine tool manufacturer put it, MITI "told us to form into larger companies. We told them 'the hell with that' and

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*Survive*, Wall St. J., Jan. 26, 1981, at 20, col. 3. Japan Steel, created when the Japanese government merged together the nation's seven largest steel producers in 1934, had been dissolved by the Allies during the post-war occupation.

<sup>195</sup> E. KAPLAN, *supra* note 191, at 177.

<sup>196</sup> *Id.* at 155-56.

<sup>197</sup> *Id.* at 151.

<sup>198</sup> *Id.* at 98-99; Kikkawa, *Shipbuilding, Motor Cars and Semiconductors: The Diminishing Role of Industrial Policy in Japan*, in *EUROPE'S INDUSTRIES*, *supra* note 48, 236, 260.

<sup>199</sup> E. KAPLAN, *supra* note 191, at 82; Jequier, *Computers*, in *BIG BUSINESS*, *supra* note 71, at 195, 214-16.

<sup>200</sup> D. FRIEDMAN, *supra* note 183, at 33, 202.

refused.”<sup>201</sup> As a result, the number of competitors in the field escalated over the postwar years, and concentration in the industry declined.<sup>202</sup>

Thus, the Japanese experience suggests that the country’s remarkable post-war performance may be attributed more to competitive domestic market structures—put into place by the Allies, and largely maintained despite government efforts to erode them—than to any alleged government-industry collaborationism, the country’s unique cultural ethic and social homogeneity, or a manipulation of the yen. To “understand why Japanese companies do so well on world markets,” Ken Ohmae points out, “it’s important to recognize that they have built up their competitive strengths in perhaps the world’s most competitive domestic industry.”<sup>203</sup>

## VII. THE EUROPEAN COMMUNITY

Community-wide analyses and statistical investigations of mergers, corporate bigness and industrial concentration corroborate the foregoing findings. A 1973 study of corporate size and economic performance in Great Britain and the European Community, for example, found that, “for the largest European firms, the net effect indicates that size must mainly increase average costs, because of control loss or some other form of ‘X-inefficiency,’” and that “the actual increase in economic concentration does not bring superior results in terms of profit or growth rates along with it.”<sup>204</sup>

A 1977 survey of empirical evidence reported that “as far as the effects of large firm size in Europe is concerned, no evidence of increasing profit, faster growth or more intensive research activities can be found to support the ‘size mystique’ that has prevailed in Europe.” The survey concluded that “the benefits of regrouping and mergers are exaggerated and . . . performance does not improve with size.”<sup>205</sup>

In 1980, a comparative statistical analysis of mergers in seven countries found: “No consistent pattern of either improved or deteriorated profitability can therefore be claimed across the seven countries. Mergers would appear to result in a slight improvement here, a slight worsening of performance there. . . . Any economic efficiency gains from the

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<sup>201</sup> *Id* at 100.

<sup>202</sup> *Id.* at 108-13.

<sup>203</sup> Ohmae, *supra* note 194.

<sup>204</sup> Jacquemin & de Lichtbuer, *Size, Structure, Stability and Performance of the Largest British and EEC Firms*, 4 EUR. ECON. REV. 393, 405, 407 (1973).

<sup>205</sup> A. JACQUEMIN & H. DE JONG, EUROPEAN INDUSTRIAL ORGANISATION 156, 252 (1977).

mergers would appear to be small. . .”<sup>206</sup>

In 1984, another cross-country comparative study summarized the evidence in the following terms:

Numerous econometric studies put into question the view that higher profitability, faster growth, and more intensive research activity could be expected from larger European firms. Most authors find no (or a negative) relationship between firm size and profitability. Very similar results have been obtained by looking at the consequence of mergers, which usually appear to result in lower profits and sometimes even in lower growth for the acquiring firm. Since these effects have been observed for as long as seven years after a merger, it is hard to argue that they reflect transitional costs. Certainly more direct studies of the productivity effects of mergers confirm that the efficiency claims in favor of most mergers are either imaginary or else vastly inflated. Direct estimation and measurement of single and multi-product scale economies similarly confirms that few of the larger plants of more heavily concentrated industries can be justified by scale economies. The growth rate of sales seems to be more or less independent of firm size, which suggests that no comparative dynamic efficiencies exist.<sup>207</sup>

Economic performance, de Jong found, would *not* be improved by encouraging corporate bigness. To the contrary, he argued that “concentration and stagnation mutually reinforce each other, not only because fewer decision centres come forward with fewer initiatives, but also because these centres have an interest in preserving the status quo.”<sup>208</sup> With respect to antitrust policies, Geroski and Jacquemin found that “a relaxation of the European competition policy would not strengthen the Community’s industrial policy. . . . Any change aimed at organizing more cartels or favouring more mergers will not help provide domestic restructuring, nor will it improve European competitiveness in exports or imports.”<sup>209</sup>

These results have not gone unnoticed by the European business press, or by progressive European business leaders. For example, in a recent special insert entitled “The New Entrepreneurs,” the conservative *Economist* pointed out that “conglomerate companies, built by people who believed that being big and diversified was safe, found instead that large, lumbering organizations were often the last to hear about innovations.”<sup>210</sup> After reviewing the evidence, the magazine editorialized that mergers are “as likely to strangle their perpetrators as their competi-

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<sup>206</sup> Mueller, *A Cross-National Comparison of the Results*, in *THE DETERMINANTS AND EFFECTS OF MERGERS*, *supra* note 70, at 299, 306.

<sup>207</sup> Geroski & Jacquemin, *supra* note 18, at 347 (citations omitted).

<sup>208</sup> de Jong, *Sectoral Development and Sectoral Policies in the EC*, in *EUROPEAN INDUSTRY: PUBLIC POLICY AND CORPORATE STRATEGY*, *supra* note 18, at 147, 167.

<sup>209</sup> Geroski & Jacquemin, *supra* note 18, at 357.

<sup>210</sup> *THE ECONOMIST*, Dec. 24, 1983, at 61.

tors.”<sup>211</sup> With respect to the European automobile industry, in particular, it said: “The worst mistakes were made by believers in industrial strategies who thought that bigger meant better: ‘economies of scale’ are often better translated as ‘if you will join with me, we may both be able to stay inefficient longer.’”<sup>212</sup>

Among some pragmatic businesspeople, too, the love affair with bigness appears to be coming to an end. “Giant conglomerates in European industry are scaling down into leaner and more specialized companies,”<sup>213</sup> the *Wall Street Journal* reported recently. Divesting, streamlining, and specializing are now beginning to be viewed as the best means for European industry to meet the competitive challenge of the global marketplace.<sup>214</sup> Worried about falling further behind in the technology race, European behemoths are increasingly turning to small, entrepreneurial “start-up” companies for help.<sup>215</sup>

European governments, too, seem ready to reject the bigness myth. In an apparent reorientation away from decades of conventional wisdom, “nearly every country in Western Europe has implemented a program to stimulate small business. Prime Minister Margaret Thatcher in England and President Francois Mitterrand in France, in particular, have staked great political capital on their small business initiatives. Indeed European leaders highlighted attention to small business by designating 1983 as the ‘European Year of Small and Medium Enterprises.’”<sup>216</sup>

### VIII. CONCLUSION

Two summary observations are in order. First, as we have seen, there is a growing awareness on both sides of the Atlantic that merger-induced corporate giantism is *not* the key to promoting operating efficiency, technological innovation, and international competitiveness. In the United States, both academic and business literature is replete with empirical evidence on that score.<sup>217</sup> In Europe, too, there is a growing

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<sup>211</sup> THE ECONOMIST, July 13, 1985, at 20.

<sup>212</sup> THE ECONOMIST, Aug. 30, 1986, at 9. “The group therapy that some claimed would come from bundling together British Leyland produced instead a demoralised, bureaucratised nightmare. Fiat got nowhere with Citroen, and Renault went backwards with American Motors. Peugeot nearly crippled itself by buying Chrysler’s European interests, just as Chrysler did by buying them in the first place.” *Id.*

<sup>213</sup> Nelson & Moore, *Europe’s Industries Take on Leaner Look*, Wall St. J., Mar. 9, 1987, at 24, col. 1.

<sup>214</sup> *Id.*

<sup>215</sup> Kirkland, *Europe’s New Entrepreneurs*, FORTUNE, Apr. 27, 1987, at 260.

<sup>216</sup> S. SOLOMON, SMALL BUSINESS USA 273 (1986).

<sup>217</sup> The prominent business analyst, Tom Peters, puts it most emphatically: “What has been the most venerated tradition in American economics, or, indeed, the American psyche—that big is good;

recognition that small and medium-sized enterprise are prime engines of economic growth and job creation.<sup>218</sup>

Second, in spite of the foregoing awareness, merger policy in both the United States and the European Economic Community ("EEC") is bedeviled by contradictions. In the United States, at least since 1950, the government has been armed with strong legislative authority to combat not only horizontal, but also vertical and conglomerate mergers.<sup>219</sup> Yet,

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bigger is better; biggest is best—isn't so. It wasn't so. And it surely won't be so in the future." T. PETERS, *THRIVING ON CHAOS* 20 (1987). See also *Structuring American Industry for Global Competition, 1986: Hearing Before the Subcomm. on Economic Stabilization of the House Comm. on Banking, Finance, and Urban Affairs*, 99th Cong., 2d Sess. 42 (1986) (testimony of F.M. Scherer, Professor of Economics, Swarthmore College); J. BLAIR, *ECONOMIC CONCENTRATION: STRUCTURE, BEHAVIOR AND PUBLIC POLICY* 185-95 (1972); *THE DETERMINANTS AND EFFECTS OF MERGERS*, *supra* note 70; M. FRANKENA & P. PAUTLER, *ANTITRUST POLICY FOR DECLINING INDUSTRIES* (Bureau of Economics, Federal Trade Comm'n Oct. 1985); E. HERMAN & L. LOWENSTEIN, *THE EFFICIENCY EFFECTS OF HOSTILE TAKEOVERS: AN EMPIRICAL STUDY* (Center for L. & Econ. Stud., Colum. Univ. Sch. of L. Working Paper No. 20, Jan. 1986); G. MEEKS, *supra* note 64; D. RAVENS-CRAFT & F. SCHERER, *MERGERS AND MANAGERIAL PERFORMANCE* (Federal Trade Comm'n Working Paper No. 137, Jan. 1986); D. RAVENS-CRAFT & F. SCHERER, *THE PROFITABILITY OF MERGERS* (FEDERAL TRADE COMM'N WORKING PAPER NO. 136, JAN. 1986); S. REID, *THE NEW INDUSTRIAL ORDER* 101-19 (1976); S. RHOADES, *POWER, EMPIRE BUILDING, AND MERGERS* 89-118 (1983); F. SCHERER, *INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE* 459-74 (1980); Laiken, *Financial Performance of Merging Firms in a Virtually Unconstrained Legal Environment*, 18 *ANTITRUST BULL.* 827 (1973); Langetieg, Haugen & Wichern, *Merger and Stockholder Risk*, 15 *J. FIN. & QUANTITATIVE ANALYSIS* 689 (1980); Mason & Goudzwaard, *Performance of Conglomerate Firms: A Portfolio Approach*, 31 *J. FIN.* 39 (1976); Mueller, *The Effects of Conglomerate Mergers: A Survey of the Empirical Evidence*, 1 *J. BANKING & FIN.* 315, 344 (1977); Mueller, *Mergers and Market Share*, 67 *REV. OF ECON. & STATISTICS* 259 (1985); Scherer, *Takeovers: Present and Future Dangers*, *BROOKINGS REV.*, Winter-Spring 1986, 15; *Diversification Blues*, *MERGERS & ACQUISITIONS*, May-June 1987, 13-14.

For accounts in the "popular" press which cast doubt on the efficiency-enhancing impact of mergers, see Weidenbaum & Vogt, *The Pot Versus the Kettle*, *CHALLENGE*, Sept.-Oct. 1987, 56-60; Beman, *Exxon's \$600-Million Mistake*, *FORTUNE*, Oct. 19, 1981, at 68; Fisher, *The Decade's Worst Mergers*, *FORTUNE*, Apr. 30, 1984, at 262; Louis, *The Bottom Line on Ten Big Mergers*, *FORTUNE*, May 3, 1982, at 84; Pittel, *Smaller Can Be Prettier*, *FORBES*, June 17, 1985, at 206; Nordhaus, *The Vanity of the Takeover Game*, *N.Y. Times*, Oct. 3, 1982, 3, at 3, col. 1; Chavez, *The Acquisitions That Haven't Paid Off*, *N.Y. Times*, Mar. 28, 1982, 3, at 1, col. 2; Schmitt, *A Drooping Burpee Rebuilds*, *N.Y. Times*, Sept. 19, 1987, § 1, at 39, col. 3; Schmitt, *Schlumberger Reaches Accord to Sell Fairchild*, *Wall St. J.*, Sept. 1, 1987, at 2, col. 2; Ingrassia & Hertzberg, *How Baldwin-United Expanded From Pianos to Finance to Trouble*, *Wall. St. J.*, Mar. 28, 1983, at 1, col. 6; Williams, *Sears Roebuck's Struggling Financial Empire*, *FORTUNE*, Oct. 14, 1985, at 40; Charlier, *Occidental's Plan to Spin Off Up to 49% of IBP May Strengthen Meat Subsidiary*, *Wall. St. J.*, July 21, 1987, at 34, col. 1; *For Better or For Worse?* *Bus. Wk.*, Jan. 12, 1987, at 38; Charlier, *Wilson Stages an Unlikely Turnaround*, *Wall. St. J.*, Apr. 29, 1987, at 6, col. 1; Mason & Wallace, *Downfall of a CEO*, *BUS. WK.*, Feb. 16, 1987, at 76; *Confused Conglomerates*, *THE ECONOMIST*, Jan. 10, 1987, at 68; Prokesch, *New General Mills Is "Lean and Mean"*, *N.Y. Times*, Jan. 5, 1987, at D1, col. 3; Phillips, *Chuckles: From Red to Black*, *N.Y. Times*, Nov. 10, 1986, at D1, col. 3.

<sup>218</sup> See *supra* notes 204-216 and accompanying text.

<sup>219</sup> Clayton Act, ch. 323, § 7, 38 Stat. 730, 731-32 (1914), (codified as amended at 15 U.S.C. § 18 (1982)).

currently, there is no disposition in Washington to use that authority to stem the spectacular mega-merger movement of the 1980s.<sup>220</sup> Indeed, the current Administration has advocated outright repeal of the anti-merger law on the grounds that it is an obstacle to U.S. competitiveness in world markets.<sup>221</sup>

In Europe, by contrast, whatever the disposition may be to control mergers, the Treaty of Rome provides no explicit mechanism for doing so.<sup>222</sup> For some thirty years now, like Pirandello's Play *Six Characters in Search of an Author*, the EEC has unsuccessfully struggled for a way to plug this loophole in the Treaty.

The situation is not without its irony. As James Rahl reminds us, "America's perplexing problems of concentration and oligopoly exist largely because of a lack of a strict anti-merger policy [before 1950]."<sup>223</sup> Europe later repeated the mistakes of this chapter in United States anti-trust history—citing the brooding omnipresence of the United States corporate giants as justification for its pro-merger, pro-concentration policy. And today, U.S. policy makers seem intent on making the same mis-

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<sup>220</sup> See, Adams & Brock, *The "New Learning" and the Euthanasia of Antitrust*, 74 CAL. L. REV. 1515, at 1540-46 (1986).

<sup>221</sup> See Riggs & Dorminey, *The Case For Revision of Section 7 of the Clayton Act*, 65 NEB. L. REV. 808 (1986); Adams & Brock, *The Proposed Emasculation of Section 7 of the Clayton Act*, 65 NEB. L. REV. 813 (1986).

<sup>222</sup> Article 85 prohibits "any agreement between undertakings . . . which have as their object or effect the prevention, restriction or distortion of competition within the common market." Treaty Establishing the EEC, Mar. 25, 1957, art. 85, 298 U.N.T.S. 11 (*entered into force* Jan. 1, 1958).

Article 86 provides "any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States." *Id.* art. 86.

The Treaty contains no explicit provision barring anticompetitive mergers and acquisitions. Recently, however, the Commission of the European Communities has circulated a proposed Community-wide statute specifically addressing anti-competitive mergers, acquisitions and takeovers. Council of the European Communities, AMENDED PROPOSAL FOR A REGULATION (EEC) OF THE COUNCIL ON THE CONTROL OF CONCENTRATIONS BETWEEN UNDERTAKINGS, Mar. 3, 1988. As articulated in the proposed statute, "Mergers which give rise to or strengthen a dominant position in the common market or in a substantial part of it are not compatible with the common market (Article 2(2))." *Id.*, "Explanatory Memorandum," at 2. The statute, as currently worded, specifies that anticompetitiveness is to be "appraised by reference in particular to the possibilities of choice of suppliers and consumers, to the market position and the economic and financial power of the undertakings concerned, to their access to supplies or markets, to the structure of the markets affected, to international competition, to legal and factual barriers to entry, and to supply and demand trends for the relevant goods or services." *Id.*, Art.2, par. 2.

For a penetrating comparative analysis, see Fox, *Monopolization and Dominance in the United States and the European Community: Efficiency, Opportunity, and Fairness*, 61 NOTRE DAME L. REV. 981 (1986).

<sup>223</sup> Rahl, *Competition and Antitrust in American Economic Policy: Are There Useful Lessons For Europe?*, 8 COMMON MKT L. REV. 284, at 291 (1971).



take—calling for an abandonment of structural antitrust because of the alleged domination of world markets by European and Japanese giants.

It would be sad indeed if, in the future, by a process of reciprocal emulation, the major trading nations were to embrace industrial policies animated by the allure of a sterile bigness mystique.