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Prologue

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A more vivid awareness of the significance of small business to the economic structure of the nation must be cultivated. Those who have examined the role of the small businessman in our economy have emphasized repeatedly that a strong small business sector is essential to the preservation of our free enterprise system, the maintenance of a balance of economic and political power, and the assurance of a constant flow of new ideas and vigor into that system. The Annual Report of the House Committee on Small Business for the Eighty-Eighth Congress (1963-64) pointed out that,

> The role played by small business is vital to the economy in the maintenance of active competition. Small firms perform great services in the area of innovation and stimulation of new ideas, development of hitherto unknown products, and discovering new processes and techniques.
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> A healthy small business community helps to provide stability and moderation in the economy, in politics—in the broadest sense of the term—and in the society in general.
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> Big business needs the special competence and often the genius of small businessmen. A growing number of large business corporations recognize the impact of this dependence on small business.[1]

Statistics alone reveal the importance of small business in our economy. The nation today has approximately 4.7 million small businesses. They comprise 96 per cent of all business, account for 40 per cent of all business activity, provide jobs for 40 per cent of our labor force, and furnish a livelihood for 60 per cent of our population. Further, small businesses account for 73 per cent of retail sales, 70 per cent of wholesale sales, 82 per cent of construction, 80 per cent of service industries, and 33 per cent of manufacturing value added.[2] Even so, the small businessman is confronted with many complex problems that challenge his very existence and demand that he adjust to the changes occurring in our economic structure. Chain stores, joint ventures, exodus to suburbia, urban renewal dislocation, discount houses, big business shopping centers, automation, electronic computers, mergers, and the general trend toward giantism demand that the competitive status of the small business segment of our economy be constantly observed in order to maintain a truly competitive free enterprise system.

Economic concentration is of primary concern to small business. American industry today is experiencing the greatest merger move-

1. Proclamation No. 3586, 88th Cong., 2d Sess. 1238 (1964). See generally Davidson & Doody, *Growing Strength in Small Retailing*, 1964 HARV. BUS. REV. 69 (1964); Uris, *Think Small*, Nation's Business, May 1965, p. 94.
2. Statistics on file with the Office of Economic Adviser, SBA, 1965.

ment in modern industrial history. As evidenced by the number of firms and amount of assets absorbed, this wave of commercial and industrial fusion eclipses even the great merger movement that occurred when the "giant" tobacco, steel, petroleum, and sugar trusts were created. Most of the problems faced by small business stem from this inexorable surge of larger firms to become even larger, absorbing the smaller firms in the process. These changes represent a fundamental restructuring of American industry.[3]

The dairy industry provides an informative case study. Between 1920 and 1950, the eight leading dairy corporations acquired more than 1,700 other dairy companies. This led to the enormous concentration of economic power found today in the dairy products industry. In 1956 pursuant to the 1950 amendment of section 7 of the Clayton Act,[4] the Federal Trade Commission brought suit against the four largest dairy companies for the more than 300 acquisitions made since 1950.[5] These suits culminated in Commission orders requiring divestitures of properties with combined sales of about 200 million dollars and prohibitions against further dairy mergers for a period of ten years.[6] In the recent *Beatrice Foods* decision,[7] the Commission announced that it would view critically any future acquisitions by dairy companies with annual sales of 200 million dollars or more. This should have the effect of deterring any future merger activity by the eight leading dairy firms. The net effect has been to channel mergers away from the larger companies to medium size and smaller businesses.

The wave of conglomerate mergers, however, makes it doubtful that this same industry-wide approach will be effective in other areas. Neither the Federal Trade Commission nor the Department of Justice has had much success in stemming the tide which is trans-

3. In 1962, the manufacturing assets held by the 100 largest corporations were nearly as great as those held by the 200 largest in 1950. A continuation of this trend would mean that by 1975, the 200 largest corporations would hold approximately two-thirds of the assets of all manufacturing companies in the United States. Moreover, by 1962 the financial assets held by the ten largest manufacturing corporations, alone, were almost as large as the combined assets of all 240,000 proprietorships and partnerships engaged in manufacturing plus the smallest 178,000 corporations engaged in manufacturing. In its recent report on mergers, the Federal Trade Commission concluded that business mergers reached an all time high in 1964 with a total of 1,797 mergers recorded. The 991 mergers which occurred during the first six months' of 1965 indicate that this will be another record year in business concentration.

4. Clayton Act § 7, 38 Stat. 730 (1914), as amended, 15 U.S.C. § 18 (1964).

5. *In re* Foremost Dairies, Inc., 60 F.T.C. 944 (1962); National Dairy Products Corp., 1 TRADE REP. ¶ 4365.3691; FTC v. Orton, 1959 Trade Cas. ¶ 69,437 (S.D.N.Y. 1959). Beatrice Foods Co., 3 TRADE REG. REP. ¶ 16,831 (FTC October 16, 1956).

6. The case involving *Beatrice Foods* was not decided until April 26, 1965. See 3 TRADE REG. REP. ¶ 16,831.

7. Beatrice Foods Co., *supra* note 5.

forming the entire structure of American industry.

The overt threat of economic concentration is not the only source of concern. Small business is also confronted by a shortage of capital, management problems, intensive competition with big business for government procurement contracts and subcontracts, and the scourge of poverty that often permits only bare subsistence in urban slums and rural areas.

The Small Business Committees in the House and Senate, and the White House Committee on Small Business are attempting to respond to these problems with the most effective measures available, and many beneficial programs of the Small Business Administration have been initiated. Financial assistance programs have been broadened and strengthened to assist the very small businessman and to meet the problems of poverty-stricken areas.[8] A stronger procurement assistance program has been established, reserving three billion dollars of government purchases for small business bidding.[9] A management assistance program has been established to assist the small businessman in surmounting the obstacles of inexperienced management.[10] The Community Development program (502 Program) has been expanded to aid small businessmen in rural areas.[11] Finally, the Small Business Investment Company program has made equity and long-term capital available to more than 10,000 small businesses.[12]

In addition, the national policy of economic expansion has created a new era of opportunity for small businessmen. The eleven billion dollar tax reduction, the revision of the depreciation schedule on new equipment, the new investment tax credit, the revitalized programs of the SBA, and the recent excise tax reduction are all part of the impetus for business growth.

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8. In 1964 the regular loan program broke all records—10,797 loans were approved totaling almost 426 million dollars.

9. The SBA directs government agencies to small businesses which market a product or provide a service that the agency can utilize. Reciprocally, small business is directed by the SBA to a government agency which uses the company's product or service. In 1964 the procurement assistance program resulted in 2.3 billion dollars in contract awards to small businesses.

10. The Service Corps of Retired Executives (SCORE) employs more than 800 retired business executives to assist in resolving small business problems. Further, the SBA's intra-industry program, involving a management effort that extends to entire industries through the co-operation of trade associations and other groups, is being extended.

11. Under this program, SBA provides loans to local development corporations for specific small business projects and industrial growth. These reached a new high in 1964, totaling 200 loans for 30.7 million dollars. As a result, 7,800 new jobs were created.

12. The program is keyed to investment companies chartered and regulated by SBA for the specific purpose of making investments in small businesses.

Even so, more attention must be given the problems confronting the small businessman, and greater effort expended in strengthening this vital segment of our economy.

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