THE FTC'S MERGER REPORT

The Federal Trade Commission's report on corporate mergers is one of the most astonishing self-indictments I have ever read. Here the FTC tells us that a few big corporations with more than $10 million of assets have merged 643 other corporations since 1943, and that most of these, 522, were corporations merged by huge combines having in excess of $50 million of assets. Yet at the same time the FTC has not stopped a single one of these mergers.

The FTC gives us a 233 page report discussing all the theoretical pros and cons of the anti-merger law, all this advising that some mergers may be desirable and some "socially undesirable", and what aid might not be considered in determining whether or not a merger violates the law. All this double talk fails to provide any hint, however, whether the same mergers listed in the FTC's report are to be considered "socially undesirable". For example, the FTC reports that Foremost Dairies (a $90 million corporation) has acquired and merged 48 other corporations in the milk and food business during the past 6 years; and the Borden Company (a $325 million corporation) has acquired 17 corporations in this field in the same period. The fact that FTC has made no objection to this wholesale combination in the dairy industry speaks louder than all the discussion of vague generalities about "relevant market factors" in its 233 page report. The fact that only 22 big corporations above the $10 million asset size have acquired and merged 244 other corporations right under the FTC's nose, while the FTC has raised a questioning, though hesitating, voice against only 2 of these removes any doubt as to the meaning of the high-sounding language in the FTC report.
Mr. Howrey sabotaged the new anti-merger law with his decision in the Pillsbury case. The effect of the interpretation of the law which was written into this decision has been to make it impossible for the FTC ever to bring a legal case under the anti-merger law to a conclusion, so long as the corporation which has been challenged under this law wishes to pay a lawyer to keep the case going. The Pillsbury mergers took place almost 4 years ago, and the FTC is still taking evidence on "relevant economic factors". From all indications it will still be taking evidence on "relevant economic factors" 10 years from now, while the elimination of competition alleged in this case remains eliminated.

As for the second big merger about which FTC has issued a complaint, in the Crown-Zellerbach matter, progress in enforcing the law has been nil. Although this complaint was issued more than a year ago, the FTC has been too busy writing a report about mergers to make a ruling whether it can proceed with the taking of evidence in a merger suit.

Mr. Howrey has committed the FTC to continue merger suits endlessly, at public expense, while the public interest in maintaining competition is forgotten. His report reinforces my belief that the anti-merger law can be restored to the effectiveness Congress intended for this law only if a new law is passed along the lines I recommended on May 10 in my statement to the House Committee on the Judiciary. In brief, my recommendation would not compel the FTC to enforce the law; it is for a temporary expedient to allow FTC to save face and proceed with some enforcement while Congress is drafting legislation to establish new antimonopoly courts which would absorb FTC's functions.