# TURNING BACK THE CLOCK

BY THOMAS J. DILORENZO

In a move that could ultimately cost Americans millions of dollars, the U.S. Supreme Court ruled in April that state governments and private parties can challenge mergers that have been approved by the Federal Trade Commission and the Justice Department's Antitrust Division. The decision strengthens the hands of state attorneys general, such as California's John Van de Kamp and New York's Robert Abrams, who aggressively attack corporate mergers.

The Court's ruling came in *California* v. *American Stores*. In 1988, Van de Kamp filed an antitrust suit against American to keep it from merging with Lucky Stores Inc., another large California chain. Since the FTC had approved the merger, American urged the court to dismiss the suit, arguing that Van de Kamp didn't have legal standing to prevent the merger. But Van de Kamp argued that state antitrust laws gave him the authority to challenge the merger, and 32 other state attorneys general filed friend-of-the-court briefs agreeing with him.

Van de Kamp's suit alleged that the merger would give American too large a share of the California grocery market, allowing it to charge monopoly prices for food. Van de Kamp ignored an FTC finding that the California market would remain competitive and that the merger would actually allow the firm to lower food prices.

He based his suit on the "market concentration doctrine"—which holds that a large market share by one or a few firms proves that those firms have monopoly power. For much of this century, this doctrine guided antitrust policy. But in the last 30 years, voluminous research has led antitrust economists to reject the doctrine. Today, an economist who believes that market concentration necessitates monopoly power is like a geographer who believes the earth is flat. Unless new companies can't enter the market because of legal barriers, such as licensing requirements, economists now believe, firms can maintain a large market share only by effectively satisfying their customers. Far from ripping off consumers, these businesses demonstrably serve them well.

**A competitor griped that Red Food's "stiff competition...led to price wars." One result: milk for 19 cents a gallon.**

This implies that antitrust policies that break up firms merely because they are large or "dominant" are grossly misguided. Such policies punish competitive success and stifle productivity.

The Reagan administration's antitrust enforcers took account of these findings. A large market share was usually not a sufficient reason to prosecute a firm. Indeed, unless there was proof that consumers had been harmed, Reagan officials usually assumed that a firm gained a large share of the market by out-hustling its competitors.

Sadly, George Bush's antitrust enforcers seem to see Van de Kamp as a better model than their predecessors in the Reagan administration. Recent FTC actions against the Red Food grocery store chain in Chattanooga, Tennessee, provide an example of the kind of nonsense that passes for antitrust action under the Bush administration.

In early 1989 Kroger decided to shut down its seven unprofitable Chattanooga stores, and Red Food offered to purchase them. The FTC challenged the sale, arguing that because Red Food already had 60 percent of the market, it was a "dominant firm" that monopolized the local market. "Competition and low prices," the FTC charged, "keep new supermarkets out of the city."

The FTC ignored the entry of two large, national grocery chains—Bruno's and Food Max—into the Chattanooga market in the preceding two years. Bruno's and Food Max are, respectively, four and seven times larger than the Red Food chain. The commission also overlooked the fact that such grocery giants as A&P, Winn-Dixie, and Giant Foods, among others, had entered the Chattanooga market during the past 30 years (some have since left). Obviously, there are no significant entry barriers to protect a grocery store monopolist.

In a highly revealing statement, the vice president of a competing grocery chain told a federal district court that he objected to Red Food's "stiff competition and low prices," which have "led to price wars, giving way to such deals as 19-cents-a-gallon milk." Because of Red Food's size (55 stores), he argued, it has "advantages over smaller stores," such as being able to spread the cost of a $5,000 advertisement over a large number of stores. He requested that the government protect him from such competition.

Fierce competition has forced Red Food into a low-margin/high-volume strategy. As Georgia Tech marketing professor David C. Allvine testified, "Red Food's strategy has been one of sacrificing profit to maintain their sales volume and low prices....That makes them vulnerable because they must maintain high volumes."

The facts supported Allvine's interpretation. Red Food's return on equity was one-third less than that of its two top competitors—Bruno's and Food Lion. While Red Food may have held a large share of the market, it was in no position to gouge consumers.

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Indeed, looking at the evidence and not a discredited theory, the Chattanooga grocery market seems quite competitive. In the fourth quarter of 1988—the last before the FTC action—a Chamber of Commerce Researchers Association survey showed that Chattanooga's food prices were 8.8 percent below the U.S. average. Chattanooga had the sixth lowest food prices of the 188 cities surveyed.

U.S. District Judge Orinda Evans saw through the FTC's specious claims and permitted the sale of the Kroger stores in May 1989. "The FTC has not shown a likelihood that Red Food, if it acquires the Kroger stores, will be able to exercise market power," the judge ruled. She also noted that the sale would save 400 jobs. The FTC lost on appeal.

But the FTC wouldn't take no for an answer. In February, Red Food signed a consent agreement with the commission. As the result of what sounds suspiciously like a gun-under-the-table "negotiation," Red Food agreed to sell six of its stores, including four of the ones purchased from Kroger; to sell the stores only to FTC-approved purchasers; to allow the FTC to appoint a trustee to sell the stores if it cannot sell them by December 31; and to get FTC approval before buying any stores in Chattanooga for the next 10 years.

The Chattanooga grocery market will become less competitive because the feds have crippled one of its strongest firms. Red Food's competitors—and other businesses—have learned a lesson that will not serve their customers well: Don't cut prices too much, or the government will drag you into court.

The tough talk by federal antitrust officials and the recent Supreme Court ruling signal a retreat from economic common sense in the antitrust arena. By focusing more on abstract measures of concentration than on competitive realities, the new federal antitrust officials and the newly empowered state attorneys general are about to turn back the antitrust clock, to the detriment of consumers.

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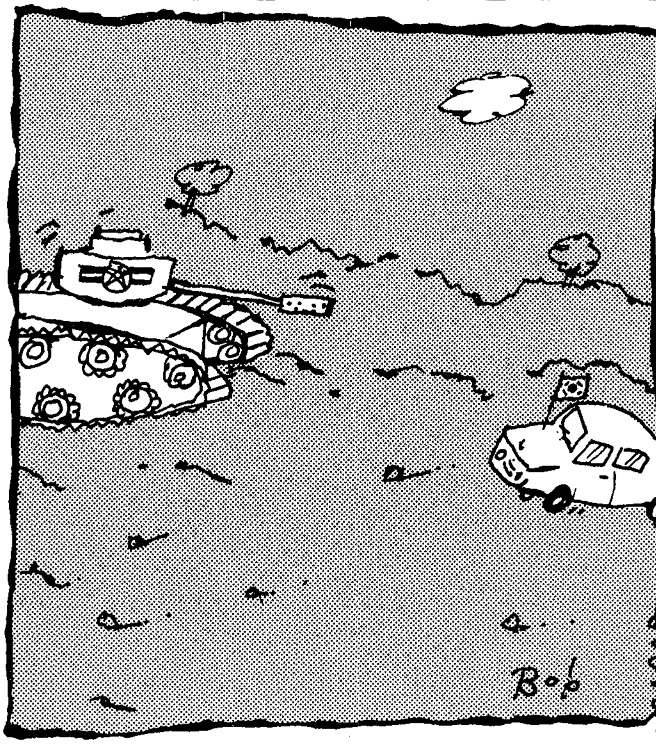
# PROTECTION RACKET

BY MARTIN MORSE WOOSTER



BOB ECKSTEIN

Now that the Berlin Wall has fallen and communism has retreated, there seem to be very few dragons left for the United States to slay. True, Saddam "Beast of Baghdad" Hussein has some potential as a villain. But many commentators have decided that, with the Soviets down for the count, the chief threats to America will be economic, not military.

From Anthony Harrigan on the right to Kevin Phillips and Robert Kuttner on the left come shrill claims that Japan and Europe are about to gang up on us, turning the United States into an economic colony of Tokyo and Bonn. Indeed, some frantic commentators (such as John Judis) have concluded that anyone who is opposed to protectionism must be in the pay of the Japanese government.

It is amusing to see liberals searching for Japanese influence with a fervor equal to that of their counterparts on the right, who once held a contest to find the swarthy paymaster in the ill-fitting Bulgarian suit whom everyone knew was doling out gold rubles to the Institute of Policy Studies from a faded Gladstone bag. Both the left and the right falsely assume that anyone who disagrees with them must have been paid off by malign forces.

To suggest that overseas multinationals are as much of a threat to America as the dictators of the past is to argue that a salesman is the moral equivalent of a tyrant. How many divisions do the Japanese car companies command? Yet a rising number of pundits are rattling their sabers and calling for economic war.

Some commentators observe the rise of "geoeconomics" without endorsing protectionist schemes. "Everyone, it appears, now agrees that the methods of commerce are displacing military methods," contends Edward N. Luttwak of the Center for Strategic and International Studies in the summer issue of *The National Interest.*

Other observers are more bellicose. Perhaps the noisiest is a mandarin named Ronald A. Morse, who told Ian Buruma of *The Spectator* that "Japan, a nation without principles or values, cannot lead the world." Not only is Japan a "predator," Morse said, but "if you defect to the Soviet Union you can get shot, but if you defect to Mitsubishi you can get rich."

But, as Buruma notes, while the chief export of the Soviet Union until recently was the arms race, foreign corporations have made inroads into the American economy not by guile or conquest but by selling well-made goods at reasonable prices. "Is a Japanese company that provides jobs in America and good, cheap products to boot, good or bad for the national interest?" Buruma asks.

In a hard-hitting column in the July 16 *Business Week,* Princeton economist Alan S. Blinder adds that our trade deficit with Japan equals 1 percent of the U.S. gross national product: Even if that deficit were closed through protectionist action, Blinder argues, low American unemployment rates ensure that "there would not be more American jobs if our trade were balanced—there would just be different jobs."

Neither Buruma nor Blinder analyze why so many pundits and terrified CEOs fret so much about foreign competition, but there are several explanations. First, there is the fundamental law of public-choice economics, the rule that advocates of government largess usually fight harder for their subsidies than foes of such spending battle for reductions, because each consumer of government pork stands to gain more from a benefit than a taxpayer or consumer would stand to gain if the entitlement were eliminated. Unionized auto workers who make $40,000 a year from protected jobs are far more effective than the millions of consumers who would save $1,300 on a new Japanese car (according to a 1984 Federal Trade Commission study) if import quotas did not exist and foreign car makers were free to compete.

Second, advocates of government expansion always like to inflate the harm an "enemy" might cause. When Robert Kuttner creates scary myths about foreign capitalists as justification for a Mussoliniesque industrial policy, he is using the same tactics William Bennett uses to defend the war on drugs or the Pentagon employs to justify the defense budget.

As *Newsweek* reporter Bill Powell observes in the August *Business Month,* most commentators simply refer to "the