

Michigan Journal of International Law

Volume 2 | Issue 1

1981

Front Matter

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Recommended Citation

Front Matter, 2 MICH. J. INT'L L. (1981).

Available at: <https://repository.law.umich.edu/mjil/vol2/iss1/17>

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**Michigan Yearbook of
International Legal Studies**

Volume 2

1981

Corporate Concentration

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**Michigan Yearbook of
International Legal Studies**

VOLUME II

CORPORATE CONCENTRATION

**National and International
Regulation**

Ann Arbor The University of Michigan Press

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Published in the United States of America by
The University of Michigan Press and simultaneously
in Rexdale, Canada, by John Wiley & Sons Canada, Limited
Manufactured in the United States of America

Library of Congress Cataloging in Publication Data
Main entry under title:

Corporate concentration.

(Michigan yearbook of international legal studies; v. 2)

Bibliography: p.

Includes index.

1. Antitrust law—Addresses, essays, lectures.
2. Corporation law—Addresses, essays, lectures.
3. Antitrust law—United States—Addresses, essays, lectures. 4. Corporation law—United States—Addresses, essays, lectures. 5. Industrial concentration—Addresses, essays, lectures.
- I. Krauland, Edward J. II. Smith, Stephanie M. III. Green, Joseph T. IV. Series.

K3856.Z9C67 343'.072 80-25646

ISBN 0-472-09250-2

To John H. Jackson,

Professor, University of Michigan Law School

Preface

This is the second volume of a new international and comparative law periodical of the University of Michigan Law School—the *Michigan Yearbook of International Legal Studies*. The *Yearbook* is an annual student publication intended each year as a comprehensive sourcebook on an international and comparative law topic of particular current interest. Volume II contains the written contributions of foreign and American scholars who gathered at the law school in the autumn of 1979 to discuss the issues associated with the existence and regulation of corporate concentration.

Volume I of the *Yearbook* examined "Antidumping Law"—an extensive body of law regulating a particular and concrete aspect of international trade and commerce. With volume II, the *Yearbook* accepted a new and different challenge, for the antitrust problems of corporate concentration, particularly in the transnational context, are of relatively recent vintage and are hence less well formulated.

The term *concentration* describes various forms of industrial structure and organization: *horizontal* concentration refers to the control of a given industry or market by a small number of producers, *vertical* concentration refers to the results of mergers between companies that operate in different phases or stages of the production and distribution process, *aggregate* concentration refers to the overall aggregation of national economic power or assets in the hands of major producers. As large multinational business enterprises expand through takeovers and mergers, national and international attention has begun to focus on corporate concentration in national and transnational markets.

Those advocating strict regulation of corporate concentration are concerned that concentration of productive capacity reduces competition, blocks the entry of new companies into the market, hinders innovation, and insulates corporate decision making and conduct from governmental and public scrutiny. Politically there is a fear that large corporations exert quasi-governmental authority in making decisions that affect social welfare and the process of economic development. The issue of corporate concentration becomes more attenuated in the transnational business environment due to the incorporeal character of multinational corporations and the disparate economic and political values of foreign governments.

Although the topic of corporate concentration plunges us into the established and well-documented field of antitrust law, there is a noticeable dearth of law and legal writing addressed to the specific social, political, and economic considerations of industrial structure and organization. In the United

States (where free enterprise is so much a part of the social fabric), as well as in other industrialized countries, concentration of economic assets, market shares, and managerial power has not attracted the type and breadth of scrutiny that corporate behavior in the marketplace has garnered.

Upon perusing the collected articles and notes, the reader may gather that the topic is one of indefinite proportions and contours, contains troublesome and unresolved issues of social and economic policy, and evinces a distressing absence of political consensus regarding the "concentration problem." Accordingly, volume II seeks to serve the traditional purposes of legal scholarship: to state the issues, identify particular problems, discuss these issues and problems, and posit possible solutions. However, since the *Yearbook* concerns itself with a nascent and developing area of law and social policy, its flavor is descriptive and provocative, with a view to stimulating additional discussion and analysis.

To this end, volume II begins with a discussion of current U.S. antitrust enforcement policy in the area of national and transnational corporate concentration. A recent legislative proposal that offers an innovative structural approach to aggregate concentration is followed by a brief but engaging economic essay. The first section closes with an examination of the regulation of controlled-economy enterprises operating in the United States's free market economy. The second section contains a series of articles dealing with selected foreign efforts to regulate corporate concentration in the domestic and transnational settings. These articles demonstrate the wide variety of regulatory perspectives toward concentration that exist at the national level. The European Economic Community (EEC) article also illustrates the difficulty of applying a supranational regulatory framework to national economic systems that ascribe to different economic and competitive policies. The ensuing corporate perspective expands upon the foreign analysis by highlighting some of the peculiarities of doing business in nonmarket economies, and asks whether the concern over corporate concentration is nothing but a chimera in the context of East-West trade and investment. The scholarly discourse ends with a description and assessment of current international efforts to regulate multinational corporate behavior and structure; in particular the activities of the Organisation for Economic Cooperation and Development (OECD) and the United Nations, and the difficulties in obtaining multilateral consensus on antitrust policy are cogently examined. The final feature of the *Yearbook* is a collection of appendixes that summarize selected foreign antitrust laws, outline recent U.S. legislative proposals relevant to corporate concentration, and list a selected annotated bibliography.

Volume II, like its predecessor, is the progeny of a symposium held at the University of Michigan Law School under the joint auspices of the International Law Society and the *Yearbook* organization. The faculty committee and editorial board of the *Yearbook* would again like to express their gratitude to those who participated at the symposium and made such extremely interesting and valuable contributions.

The symposium itself was an endeavor of tremendous proportions. Many students, faculty, and law school administrators made the symposium possible through their labor, advice, moral support, and financial assistance. We appreciate the kind help given us throughout the year by Helen Betts, Ann LaVacque, and Henrietta Slote.

We would like to thank the following people for their assistance in preparing the manuscript: Michelle Johnson, Vicki Scoggins, Edith Horvath, Pat Root, and Mary Gladstone.

Special thanks are in order for University of Michigan President Allan Smith and Law School Dean Terrance Sandalow; the members of our faculty advisory committee—Professor Emeritus William W. Bishop, Jr., and professors Alfred F. Conard, Eric Stein, Whitmore Gray, John H. Jackson, and Gerald M. Rosberg; and special advisors professors Thomas E. Kauper and William James Adams. The editorial board of volume II would like to express its deepest appreciation to Professor Kauper for his help in organizing the symposium and his advice on the articles and notes. It was our pleasure to be able to work with Professor Kauper, as well as all the other faculty members who shared their time and thoughts with us. We believe the collective effort has resulted in a valuable contribution to the legal literature.

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Abbreviations

ARC	Act Against Restraints of Competition (Federal Republic of Germany)
CEE	Controlled Economy Enterprise
CMEA	Council for Mutual Economic Assistance
CTC	United Nations Commission on Transnational Corporations
ECSC	European Coal and Steel Community
EEC	European Economic Community
FCO	Federal Cartel Office (Federal Republic of Germany)
FIRA	Foreign Investment Review Act (Canada)
FTO	Foreign Trade Organization (Soviet Union)
GATT	General Agreement on Tariffs and Trade
IME	International Investment and Multinational Enterprise
MNC	Multinational Corporation
OECD	Organisation for Economic Cooperation and Development
OFT	Office of Fair Trading
RBP	Restrictive Business Practice
RTPC	Restrictive Trade Practices Commission
TNC	Transnational Corporation
UNCTAD	United Nations Conference on Trade and Development

This volume should be cited as:

2 MICH. Y.B. INT'L LEGAL STUD._____(1981)

