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Perspectives on the General Motors-Toyota Joint Venture

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SYMPOSIUM: PERSPECTIVES ON THE GENERAL MOTORS-TOYOTA JOINT VENTURE

FOREWORD

The joint venture between Toyota and General Motors (GM) for the production of a small car at the idle GM plant in Fremont, California presents a fascinating and factually rich event for antitrust analysis. Approval of the joint venture by the Federal Trade Commission reflects dramatic changes in the outlook of antitrust enforcement agencies. In response, Chrysler initiated and later abandoned an attempt to have the Commission's decision overturned.

Given the importance of the legal issues raised by the joint venture and the auto industry's impact on the national economy, the antitrust issues raised by the joint venture are an appropriate subject for a symposium issue. The legal departments of both GM and Chrysler were asked to prepare an article detailing their respective positions in Chrysler's court challenge to the joint venture. Although Chrysler declined, GM responded by submitting the Weinbaum article.

Mr. Weinbaum delineates numerous procompetitive benefits of the joint venture. After an extensive factual analysis of the purported anticompetitive effects of the joint venture, he concludes that the joint venture is not anticompetitive, but is actually procompetitive. Thus, in his opinion there is no basis whatsoever for asserting that the joint venture should have been prohibited.

Professors Ordover and Shapiro have analyzed the joint venture from an economic perspective. While no two economists can speak for the entire profession, their article presents one economic approach to the antitrust issues presented by the joint venture. In essence, they assert that the procompetitive effects of the joint venture include the likely increase of the number of subcompact cars manufactured in the U.S., as well as the transfer of Japanese technology to GM. However, they also perceive two basic anticompetitive risks. The first anticompetitive risk is the increased danger of collusion. The second risk is the likely loss of GM and Toyota as separate potential

entrants into the U.S. manufacturing market of joint venture type vehicles. Although their conclusion that the joint venture will likely be procompetitive may be challenged by other economists, their article makes a significant contribution by thoroughly analyzing the competitive issues raised by the joint venture from the viewpoint of the economics profession.

In addition to the Weinbaum and the Ordover and Shapiro articles, three student notes also cover legal issues raised by the joint venture. One note discusses the important procedural question of whether a firm (Chrysler), which would probably benefit from the joint venture if some of its claims of illegality were true, should be able to assert in court that the joint venture violates the antitrust laws. This issue is of considerable practical importance today in the context of corporate takeovers when the target company seeks to prevent a beneficial takeover by raising antitrust issues.

A second note discusses the appropriate definition of a joint venture under the assumption that a joint venture will be treated more leniently than a merger under the antitrust laws. Accordingly, the note then carefully analyzes what types of cooperative behavior between competitors should be given the label "joint venture." The note assumes that if a venture is not found to be a "joint venture," it will be scrutinized as a merger.

Finally, a third student note deals with the role of "efficiencies" in antitrust law. An efficiencies defense was one of the two main issues in the Commission's antitrust analysis of the joint venture. The Commission balanced the efficiencies to be gained by the joint venture against its anticompetitive risks and found that the efficiencies outweighed the risks. In contrast, traditional merger antitrust law has generally been understood to give little weight to efficiency claims. Instead, it has attempted to develop standards to judge whether the merger under examination will generate significant anticompetitive risks. If such risks are found, the merger is prohibited. Traditional merger law assumes that mergers often lead to substantial efficiencies, and consequently requires that a merger create substantial anticompetitive risks before banning it. Thus, the Commission's analysis of the joint venture raises the important question of whether it was appropriate for it to depart from accepted merger doctrine.

The Commission's approach also raises the question of whether the antitrust authorities can effectively judge the efficiency gains that would flow from a particular joint venture, as well as the quantity of anticompetitive risk, and then properly balance or weigh the two. For example, although Toyota and GM claimed efficiencies of the joint venture, they could have found alternative ways to make small cars in the U.S.; Toyota could have followed the lead of Honda and Nissan, while GM could have bought or developed in-house

Japanese type manufacturing technology and know-how. Nevertheless, both managements believed that it would be more cost efficient for them to engage in the joint venture. There is simply no reason to believe that any government official could make the decision as to the most efficient way to proceed more accurately than the respective managements of GM and Toyota. The Commission here agreed with the managements, but it clearly reserved the right to reach the opposite conclusion.

In any event, a strong argument can be made that an application of the antitrust laws to a joint venture should assume efficiencies and develop appropriate tests for deciding whether a particular venture creates substantial anticompetitive risks. The conclusion that the joint venture creates no substantial anticompetitive risks is compelling, especially in light of the world-wide glut of small cars. In fact, even if GM and Toyota merged their entire small car operations, it would not substantially affect their ability to price small cars. Moreover, the situation is likely to worsen from the point of view of the car makers since Korean companies are potential future entrants into the U.S. small car market. In contrast, the large and luxury car market is somewhat less competitive. Therefore, a close analysis would be required of a joint venture between, for example, GM and Daimler-Benz, in view of the prominence of both companies in the luxury car field.

However, it seems that the antitrust authorities and scholars should attempt to develop rules for determining whether substantial anticompetitive risks are created by joint ventures similar to those established to regulate horizontal mergers. This is necessary regardless of how the law ultimately decides to treat efficiencies. This Symposium issue represents a significant contribution to this effort.

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