In 1950 President Harry S Truman signed the Celler-Kefauver Act into law. This statute did much more than eliminate a loophole based on a legal technicality; it symbolized renewed congressional concern and vigorous commitment to the preservation of competitive markets and the prevention of monopoly power. As a result of the 1950 amendment one commentator was moved to write, “Thus, over 40 years after the enactment of the Clayton Act, it now becomes apparent for the first time that Section 7 has been a sleeping giant all along.”

Yet satisfaction with the antimerger law has been far from universal among economists. John Kenneth Galbraith argues that because the Act “exempts those who possess the market power and concentrates on those who would try to possess it,” its enforcement “defends and gives legitimacy to a charade.”

Is enforcement of the Celler-Kefauver Act, along with the broader purposes of antitrust policy, a charade, an anachronism in a complex industrial society? This chapter investigates one aspect of the antitrust laws — horizontal-merger enforcement of the Clayton Act — and attempts to answer that question. By comparing the benefits with the costs
of undertaking horizontal-merger cases, an evaluation of Celler-Kefauver enforcement is possible.

The Goals of Antitrust

What are the basic goals underlying antitrust policy? What did Congress have in mind when enacting the various antitrust statutes? These questions are as important as they are difficult to answer; without a clear conception of the purpose of the antitrust laws it is impossible to identify the social benefits from their enforcement. Despite this importance, the goals of antitrust remain elusive. F. M. Scherer, who was Director of the Bureau of Economics at the Federal Trade Commission from 1974 to 1976, found congressional intent "muddled and often contradictory." He observed, "I frequently felt that if we only knew precisely where we're to go, we could proceed there in a more orderly fashion. But clear objectives were a luxury we seldom enjoyed, ambiguity was our guiding star." 3

Despite, or because of this confusion, considerable attention has been devoted to identifying the congressional intent behind the antitrust laws. Robert H. Bork 4 and Richard A. Posner, 5 for example, are convinced that allocative efficiency was not only the dominant, but the sole consideration of Congress in enacting the antitrust statutes. According to Bork, "Though an economist of our day would describe the problem of concern to [Senator] Sherman differently, as a misallocation of resources brought about by a restriction of output rather than one of high price, there is no doubt that Sherman and he would be thinking the same thing." 6

Not all economists agree about the single-mindedness of Congress in passing the antitrust laws. Leonard W. Weiss 7 interprets the primary intent of Congress as concern over the redistribution of wealth resulting from monopoly power. According to Weiss, Congress was more interested in preventing large capital gains to the organizers of monopolistic cartels and mergers than avoiding losses in allocative efficiency.

Willard F. Mueller attributes broader, noneconomic as well as economic goals to congressional motivation underlying the Celler-Kefauver Act: "while Congress spoke much about broad economic, social and political consequences of economic power, when it wrote a statute to cope with these problems it applied an economic concept, the probable lessening of competition within particular geographic and product markets. It is important to keep in mind this distinction between the objective of the act and the statutory language." 8