The original documents are located in Box 11, folder "Economic Policy Board (1)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

FOR IMMEDIATE RELEASE JUNE 10, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

The White House today announced the designation of William F. Gorog as Deputy Director for Domestic Economic Policy, Economic Policy Board. Mr. Gorog, formerly chairman and chief executive officer of Mead Technology Laboratories, Dayton, Ohio, a subsidiary of the Mead Corporation, will serve as a deputy to L. William Seidman, Assistant to the President for Economic Affairs.

Mr. Gorog was one of the founders of Mead Technology Laboratories in 1956. The company, originally known as Data Corporation, merged with Mead Corporation in 1968. He contributed to the development and introduction of the computerized legal research system known as LEXIS, which is now in use by law firms and courts throughout the country.

A 1949 graduate of the United States Military Academy at West Point, New York, Mr. Gorog holds an M.S. degree in Industrial Engineering from Ohio State University. After a five-year tour of duty in the Air Force during which he served at Wright Air Development Center in Dayton, Ohio, in Korea, and with Allied Air Forces Central Europe in France, he began his business career as assistant director of the camera division of the Bulova Watch Company in New York, New York.

Mr. Gorog was born on September 2, 1925, in Warren, Ohio, and is married to the former Gretchen Elizabeth Meister. The couple, who currently reside in Dayton, has six children.

# # #

THE WHITE HOUSE

WASHINGTON

August 1, 1975

MEMORANDUM FOR JAMES M. CANNON

FROM: L. WILLIAM SEIDMAN

SUBJECT: DOMESTIC COUNCIL/EPB OVERLAP

We have compared your list of Domestic Council activities with our list of Economic Policy Board activities and find that we are jointly considering some aspects of the following issues:

1. Aviation legislation
2. No-Fault Auto insurance
3. Regulatory Reform
4. Housing Act of 1975
5. Auto Emissions
6. New York City financial problems (not on your list)
7. Inflation Impact Statements (not on your list)

Let's discuss.

THE WHITE HOUSE

WASHINGTON

July 25, 1975

MEMORANDUM FOR JAMES M. CANNON

FROM: L. WILLIAM SEIDMAN

Pursuant to our earlier conversation, I am attaching a list of subjects which have been considered by the Economic Policy Board since March 1975.

Attachment

July 1975

SUBJECTS CONSIDERED BY THE ECONOMIC POLICY BOARD

Eurodollars

Federal Insurance for Municipal Bonds

Northeast Rail Restructuring

Pan Am

Tax Reform

Capital Formation

New York City Financial Situation

Countercyclical Assistance Act of 1975

US/USSR Maritime Agreement

MVS 121

Reform of Robinson-Patman Act

Food Deputies

Commodity Agreements

Benefit Adequacy Requirements

Activities of Council on Wage and Price Stability

National Commission on Unemployment Insurance

Permanent Unemployment Insurance Changes

Taxation of International Investment

Administration Position on Utility Rate Increases

National Economic Planning

Economic Effects of Potential OPEC Oil Price Increase

Foreign Bank Act of 1975

Regulatory Reform

National Commission on Productivity

Interagency Fertilizer Task Force

Labor Management Advisory Committee

National Commission on Supplies and Shortages

Task Force on Antitrust Immunities

Sunshine Law

SEC and Bank Disclosures

Grain Reserves

Economic Aspects of Energy Policy

Capital Market Working Group

Gold

Minimum Protected Price Mechanism

Law of the Sea

Export Promotion

Rail Legislation Initiative

MTN

Financial Support Fund

MAJOR ISSUES/ECONOMIC-ENERGY

1. Cut government regulation of economic sector.
2. The economy--no new spending programs, balanced recovery to improve unemployment and cap inflation.
3. Unemployment--economic recovery is solution.
4. Energy--conservation and exploration for new supplies.
5. Housing.
6. Farm policy--encourage market system.
7. Balance environmental and economic needs.
8. International economics--monetary reform; foreign investment; continue raw materials; supplies; food.
9. Deficit (size).
10. Tax reform.
11. Capital formation.

THE WHITE HOUSE

WASHINGTON

Ed - There is a section in the SOTU about Antitrust Policy. Would you tell me exactly what it means. Thanks

January 27, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: ED SCHMULTS

SUBJECT: Antitrust Policy

You will recall in his Democratic "State of the Union" reply message, Senator Muskie said that government should curb the "abuse of power by corporations that dominate the market place, charging what they want . . . corporations, in other words, that each year grow more wealthy and more powerful." Later in the message Muskie said that we need an antitrust policy that will move immediately to prevent powerful firms from gaining too much control over both markets and capital. At the Tenth Annual Consumer Assembly, sponsored by the largest consumer organization last week, five contenders for the Democratic Presidential nomination promised that they would take vigorous antitrust enforcement actions.

It seems to me that the President and his Administration should not be placed in the position of merely reacting to old, stale, antitrust ideas coming from the Congress. We should consider the preparation of a clearly articulated antitrust policy and program within the Executive branch which would emphasize the real strengths in the Administration's economic program (e.g., freer trade and anti-protectionism, in both the domestic and international arenas, as ways of getting more competition into our economy rather than breaking up oil and auto companies in ways that may significantly impair economic efficiency).

Ed Good

If you agree that something should be done in this area, perhaps we should schedule a meeting with the Attorney General and Tom Kauper to discuss the matter. I doubt that this job should be left solely to the Antitrust Division because its relationship with

congressional oversight committees makes it difficult for the Division to change the status quo.

Attached are some newspaper articles concerning some very questionable antitrust legislative proposals (Tab A), materials prepared last Spring to begin to shape a distinct Ford Administration antitrust philosophy (Tab B), a speech proposal which grew out of the Spring effort (Tab C), and a background statement prepared for the press office to answer questions regarding the President's Hardware Speech last August (Tab D).

cc: Jim Cannon

N.Y. Times
1/23/76

CONSUMERS HEAR ANTITRUST PLEDGE

Business Reform Stressed At Parley in Washington

By FRANCES CERRA
Special to The New York Times

WASHINGTON, Jan. 22 —

No Longer Being Buddy Buddied

By Roberta Hornig
Washington Star Staff Writer

When Sen. James Abourezk rose on
Standard of California are engaged in all four basic phases of the petroleum business. They produce, refine,
But Senate staffers say this proposition, backed by Bayh, could emerge slightly different. The key, they say,

B

FROM:

SUBJECT: Antitrust Policy and Program

Issue

During recent months, there has been a revival of interest in antitrust legislation, especially in the Congress. The days of "antitrust on ice" are over; it is becoming a "motherhood issue. Much legislation is in the works on which the Administration will need to take a position. In addition, we will want to push for enactment of our own antitrust program (e.g., harmonizing the antitrust laws and the statutes of the regulatory agencies in cases where deregulation is not appropriate or feasible; repeal of fair trade laws and Robinson-Patman reform; modification or repeal of certain antitrust immunities; and patent law reform.

OMB could play an extremely important balancing role over the next several months to assure both that the President has a range of views and that the Administration is acting creatively, not defensively and reactively, to antitrust legislation. In part, this requires that the Administration develop its own antitrust philosophy, at least for internal

consumption and for purposes of general direction; and possibly for public consumption during 1976. There is much we need, or might want, to do.

Background

Since the President's October 8 message in which he stated, "I am determined to return to the vigorous enforcement of the antitrust laws", the Administration has also pushed for a modest overhaul of antitrust laws. Our proposed legislation to increase antitrust penalties was enacted last session. Amendments to the Antitrust Civil Process Act, which failed last session, have been reintroduced. Finally, we have introduced legislation to repeal Federal enabling legislation for State fair trade laws and are also supporting similar legislation introduced by Brooke in the Senate.

We also anticipate submitting legislation to reform the Robinson-Patman Act and may also wish to propose legislation applicable to certain antitrust exemptions, in addition to those on which the Congress will likely take action in the near future (e.g., energy and defense). See issues at Attachment A.

Senate action is also expected early this summer on the Administration's patent law reform bill, S. 1308, sponsored by Senator Hugh Scott, which attempts to harmonize the patent and antitrust laws.

Congressional Developments. The efforts on the Hill are led by Senator Hart and Judiciary Committee liberal Democrats (Kennedy, Bayh, etc.) with the participation of Hugh Scott. Two major pieces of legislation, already introduced, are:

--S. 1136 - Antitrust Enforcement Act of 1975, sponsored by Hart and 42 bipartisan co-sponsors. The bill would authorize sharply increased, separate and equal, appropriations for FY 76-78 for both the Antitrust Division and FTC's Bureau of Competition. Both antitrust bureaus would each receive $25 million in FY 76, $35 million for FY 77, and $45 million for FY 78. Currently, the appropriation for our Antitrust Division is $17 million and the Bureau of Competition gets $12.5 million. Our FY 76 budget would increase this to $18.8 million and $15.5 million, respectively. (See discussion of issue #1 at Attachment A.)

--S.1284 - Antitrust Improvements Act of 1975, cosponsored by Hart and Scott. This bill consolidates a number of previous piecemeal efforts to facilitate effective antitrust enforcement. The major provisions would amend the Antitrust Civil Process Act (as proposed by the Administration last session); provide increased penalities for not obeying FTC special orders or subppenas; permit State attorneys general to file antitrust suits and to collect treble damages on behalf of their citizens; require the FTC to broaden and keep in force its premerger notification requirements (a similar provision would also permit Justice to obtain advance merger information); and repeal the escape clause that now prevents use of nolo contendere pleas as evidence in private antitrust suits. See discussion of issue #2 at Attachment A.

OMB staff also reports that other major legislation will be proposed over the next two or three weeks:

--A Hart, Kennedy bill admonishing all independent regulatory agencies to consider the anti-competitive effects of their actions. "A regulatory agency shall not sanction any practice that may lessen competition

substantially unless the anti-competitive effects of such a practice are clearly outweighed in the public interest by the need to further other objectives of the regulatory statute." (See issue #3 at Attachment A.)

--A bill to modify antitrust immunities in the energy and defense areas (é.g., the Emergency Petroleum Allocation Act of 1973 and the Defense Production Act of 1950)--action on this bill is expected to be rapid, prior to the expiration of the Energy Act in August of this year.

Each of these bills relate closely to the objectives of the Administration's program--both our attempt to (1) harmonize the antitrust laws and the statutes of the independent regulatory agencies and (2) the narrowing of certain antitrust immunities.

The Congress will also be pushing legislation that has been traditionally opposed by the Administration. Two priority items, the first of which will likely be enacted, include:

--Vertical divestiture of oil pipelines and refineries.

A similar bill was introduced by Hart as a floor amendment on natural gas deregulation legislation last session.

--Hart's concentration legislation will be reintroduced that would require divestiture of monopoly power if a corporation has greater than a 15% rate of return or more than 50% of the market in any line of commerce in any area of the country for a given period of time.

Direction of Future Administration Antitrust Efforts

A good case can be made, in view of this overall legislative agenda, for giving antitrust law revision a high Presidential and Administration priority during the current session and into the 1976 election year. Antitrust is also a good Republican issue, as instanced by the interest that current antitrust and related legislation is receiving from those in the Senate, many up for reelection, such as Hugh Scott, Ed Brooke, Bill Brock, etc. But to date, the overall initiative is increasingly likely to be preempted by the Democrats (Hart, Kennedy, and the other 30 or so cosponsors of the antitrust budget increase bill.

The antitrust issue, moreover, is one in which the Ford Administration could give its own distinct imprimatur, consistent with a philosophy about the dangers of big

government as opposed to big business. There is a new antitrust philosophy that is gaining ground, much of it related to the regulatory reform debate, that departs in significant ways from the old "trust-busting" philosophy of the recent past. This philosophy is reflected in the legislative program that we are developing or have already sent to the Hill. Finally, this philosophy need not be inconsistent with many of the legislative proposals (e.g., increase in antitrust authorizations, the Antitrust Improvements Act) which will likely receive early action in the Congress--although the philosophy would result in a different emphasis in terms of how additional resources and improved machinery might be used.

At Attachment A, we have attempted to summarize these divergent antitrust philosophies and how they bear on policy and program in the present legislative setting. The discussion of policy issues set forth there assumes that the Administration is committed to the "new view" and that it would also like to push aggressively for improvements in antitrust consistent with this view. The issues are:

--If budget resources for the Antitrust Division and the FTC are to be increased, how should such resources be utilized?

--How can improved legal machinery, including increased penalties and State, as well as private, antitrust suits, best complement enhanced enforcement efforts in a manner consistent with desirable antitrust objectives?

--How can the Administration build on the "competition test" notion, embodied in the forthcoming Hart/Kennedy legislation, to move toward redefined regulatory agency mandates (both the independent agencies and certain activities of the Executive Branch) and improved procedures that will assure continued economic regulation that is in the public interest? Note, in this regard, that this thrust has been the major policy planning priority of the Antitrust Division since the President's October 8 speech. Any debate over utilization of increased antitrust resources and improved legal machinery should focus on this priority area.

--How can we sell to the Congress and the public-at-large the notion that certain antitrust powers are excessive (e.g., the Robinson-Patman Act), and that some enforcement efforts may be possibly misdirected? The issues

here relate closely to why we are not against "bigness" per se and do not wish to use the antitrust laws to penalize economic efficiency in order to pursue largely psychological objectives related to "smallness and decentralization". Any enhancement of antitrust enforcement and legal machinery should assure that economic efficiency is served, not vague objectives relating to notions about anti-competitive concentrations of economic power embodied in attempts at divestiture, prevention of certain types of mergers as a class, etc.

Finally, how can we push the notion that antitrust powers have been unduly restricted in ways that do not serve the purposes of economic efficiency? This applies to the carving out of special exemptions from antitrust prohibitions for particular industries or activities, including regulated ones; industries where the dispensations of government are provided in other ways (e.g., oil, agriculture) which no business could win by itself in the marketplace. They range from traditional dispensations (e.g., patent grants), though subsidies and tax preferences, to all manner of laws and rules that often favor special interests in lieu of the public interest.

The Appropriate OMB Role

In addition to our traditional concern that budget resources for, and to some extent organization and procedure in, the Antitrust Division is consistent with the Administration's general policies, OMB might play an extremely important balancing and catalytic role over the next several months in shaping a more clearly articulated antitrust policy and program.

The Justice Department, particularly under Attorney General Levi, clearly will have a viewpoint on the issues set forth above. On the other hand, the President should have a range of views from others in the Administration and including his personal advisers, especially during a time when antitrust is likely to be very much a politically charged issue. During these months, we should seek to avoid reacting defensively and negatively to Congressional developments, and attempt to get the Administration to shape a policy and program that is clearly its own.

Recommendation

That we discuss these issues internally in the near future. I would suggest that we include Carl Collier, who is familiar both with the recent Congressional developments and the general issues, in any such discussion.

Further, the issues set forth above and at Attachment A, might be taken up as an agenda item for Executive Committee review at a future EPB meeting.

Finally, an Administration spokesman may be invited to testify at forthcoming hearings on the various Congressional proposals. Hart's staff have already inquired informally as to who in addition to Tom Kauper, could be invited to the hearings on S. 1284 (Antitrust Improvements Act) on May 7-9. This is among the first of a number of action-forcing events.

If you approve, I will arrange a meeting with appropriate OMB staff at your convenience.

Antitrust Policy In The President Legislative Setting

During the past several years, two fundamentally divergent antitrust philosophies have been emerging. These philosophies, and their relation to policy and program, might be summarized as follows:

--The "new view" of antitrust, which goes back to its original purpose--keeping the economy open and free. But the major threat to a competitive free enterprise system is not, in this view, "big business" or concentrations of social and economic power in the private sector. Rather, it is big government and industries conspiring together in the creation and perpetuation of shared monopoly. An April Fortune article summarizes this view rather vividly: If an industry tries to conspire to raise prices, it violates antitrust. But if an industry goes to Washington, it is not violating any laws. It can get the government to police the industry. The government becomes part of the collusive agreement. That's the high road to monopoly."

Examples abound in the regulated industries (e.g., trucks, railroads, airlines) as well as industries where the dispensations of government are provided in other ways (e.g., oil, agriculture) which no business could win by itself in the marketplace. The dispositions range from patent grants, through subsidies and tax preferences, to laws and rules that favor special interests in lieu of the public interest.

--The "old view" of antitrust, while not necessarily disagreeing with the new view, assigns a greater priority to the problem of industrial concentration and concentrations of social and economic power. There should be, in this view, a commitment to "smallness and decentralization," if largely for psychological reasons. Competition, in this view, means preventing and eliminating monopoly and oligopoly power in the private market sphere through divestiture

and reorganization of industry, prevention of vertical (as opposed to horizontal) mergers as a class, maintaining laws that give small business more power relative to large businesses, etc.

Under this view, legislation is needed to give the antitrust agencies (Justice and the FTC) more power and more resources, as well as more specific legislative guidance, to pursue this set of antitrust objectives.

Those who hold the more fundamental view clash with this more recent view in a number of ways. For example, they do not believe that a flat condemnation of concentration and oligopoly based on current economic knowledge, is wise. The rationale behind proposals (such as Senator Hart's) to deconcentrate highly oligopolistic industries, based on observed correlations between measured concentration and profitability is weak; and many factors besides the number of firms in a market appear to be relevant to the competitiveness of their behavior. Big companies, for example, grow up in industries where large scale economies can be effected. But so long as there are "competitive rivilry" and no barriers to entry, the net result is beneficial to the consumer. The presumed link between concentration and profitability is lacking unless one can also find significant entry barriers. "Over the last 50 years", it was recently observed, "the only firms that have averaged a rate of return on capital of more than 15% for long periods are those that the government protects against the entry of competition. The rate of return on capital invested in New York City taxi cabs is now well over 100% a year; the number of permits to operate cabs has not been increased in over 35 years."

Those holding the more fundamental view believe that antitrust action should not be taken to create smaller firms, or in anticipation of future concentrations that the market might (or might not) produce. "Instead, it should concentrate on detecting and penalizing collusion". When the government sues and wins for the wrong reasons, the consumer isn't helped. The only result is another increment of government power.

Further, they are concerned about the advisability of certain antitrust legislation, most of it adopted during the 1930's or shortly thereafter, which would seem to make little sense in the current economic setting. Much of that legislation (e.g., the Robinson-Patman Act, "fair trade laws" was adopted in a time when we gave undue emphasis to perceived concentrations of economic and social power and attempted to penalize larger businesses (and the consumer) in favor of smaller businesses. The goal of legitimate price competition was thus sacrificed.

Much of this "new view" of antitrust, and the way in contrasts with the "old view" is reflected in the 1969 report of the Task Force on Competition and Productivity. In particular, the recommended policy on competition in the regulated industries, the development of criteria for classes of cases (including mergers); the role of the FTC and recommendations for charges in the Robinson-Patman Act and a deemphasis on deconcentration and attacks on vertical mergers--all this reflects the general thrust of the "new view", which also reflects the original purpose of antitrust.

Issues of Legislative Strategy

Our fundamental philosophy, and antitrust policy, bears heavily on both what we should attempt to achieve and fend off in the current legislative setting. The issues set forth below assume that the Administration is committed to the "new view" and that it would also like to push aggressively for improvements in antitrust consistent with this view. The issues are:

1. Should budget resources for the Antitrust Division and the FTC be further increased and, if so, how should they be utilized?

2. How can improved legal machinery, including increased antitrust penalties and State/private antitrust suits, best complement Federal enforcement efforts?

3. How can we build on the "competition test" notion, embodied in forthcoming legislation sponsored by Hart and Kennedy, to better harmonize the antitrust laws and the regulatory statutes?

4. How can we best advance the notion that certain antitrust powers are excessive and that some enforcement efforts may be possibly misdirected?

5. On the other hand, how do we advance the notion that some antitrust powers have been unduly restricted in ways that do not serve the purposes of economic efficiency?

A discussion of issues is set forth in the attached issue papers.

C

PROPOSAL FOR PRESIDENTIAL SPEECH ON COMPETITION AND REGULATORY REFORM

Although the engulfing theme of his entire regulatory reform effort is the revitalization of the free market and the promotion of increased competition, the President has not made a major address on competition and antitrust policy. Concern that the regulatory effort is pro-business and anticonsumer has been expressed both by Congressional staff and by Members of Congress.

Therefore, it might be useful to have the President speak out on his views that effective competition is the key ingredient of a strong and viable free market system. Such a message should include a statement in support of rational and effective antitrust enforcement as an essential companion to the fundamental reform of economic regulation being sought by the Administration. For example, most of the emphasis in the press on the Rail Revitalization Act recently sent to Congress, was devoted to the "pro-industry" measures such as pricing flexibility, financial assistance, etc. The antitrust immunities which is opposed by industry is just as important to competition as the pricing provisions, but this has not been emphasized in the press. In addition, other parts of the Administration's program such as removal of the paperwork burden and opposition to a consumer protection agency are being viewed as a partisan effort to aid the business community.

We need to balance this view with the other side of the story which is that the regulatory reform effort will divest business of the government protections they have enjoyed in the past, to exempt activities such as cartel ratemaking and market sharing agreements from antitrust prosecution. These restraints cannot be ignored in any program seeking to encourage and expand market competition.

It is essential that this view be broadly expressed and understood in order to build the bipartisan, consumer/business constituency needed to obtain enactment of reforms. Such an address could also be used to respond to the many Congressional initiatives now being formed in the antitrust area such as the bill to increase budgeted resources of antitrust agencies, the Hart-Kennedy bill to strengthen current antitrust law and enhance competition, etc.

Draft Presidential Speech on
Competition and Regulatory Reform

August 25, 1975

Introduction

Today, I would like to focus on one of the programs of my Administration which is of vital interest to you as businessmen and citizens. Although I have spoken often to groups such as yours to enlist your support for elements of this program, there are some less visible dimensions which have caused concern within the business community, and elsewhere. I would like to address these issues frankly and candidly.

The basic issue my program addresses is the problem of monopoly in American life. The program is a test of the true commitment of this society, and its business and governing institutions, to the principle of economic freedom and its restoration as the bedrock of our economic system.

The evils of monopoly are well known: higher prices, slower innovation, less responsive services, and discriminatory practices. But there is a folklore about monopoly that conjures up giant predators lumbering through the economic jungle devouring everything in sight.

Unfortunately, the folklore of giant predators and robber barons has caused us, as a society, to often lose sight of the plain reality that monopolies come in all sizes and shapes--and that they often exist with the blessing and the active participation of government. A giant manufacturer may be a monopolist if there is no choice for his as opposed to another manufacturer's product in the market. A small bank in a remote community may be "the only game in town"--a very real monopolist in relation to customers, and one that is probably strengthened by government entry regulation for banks. A group of firms, whether large or small, is a very real monopoly if it can set the price at which its members sell to the public and dominate the field. Again, this occurs frequently with an "industry rate bureau" or "self-regulatory" organization which has or purports to exercise governmental powers.

To an increasing extent, the problem of monopoly is a result of government intervention to create and perpetuate shared monopoly. Examples abound in the regulated industries--trucking, railroads, and the airlines--as well as industries where the dispensations of government are provided in other ways which no industry could win for itself in the market-

place. The imposition of tariffs, [the various agricultural programs] , the enforcement of licensure, the control of prices, and the legal restrictions on entry and on the legitimate use of competitive tactics are the origins of serious monopoly problems created by government dispensations.

The dispensations, of course, are not all bad. For example, patents are created by law for a limited duration as a subsidy to encourage technological innovation. And government controls these limited monopoly grants to assure they are not handed out except for novel and useful inventions and are not exploited in an anti-competitive manner.

Of course, patents are not the only monopolies created by law and handed out by government. Broadcast licenses, trucking certificates, and bank charters are familiar examples. Here government takes various steps, often with limited success, to assure that the holders of these grants serve the public as well as themselves. Unlike patents, these grants do not tend always to be of brief duration, nor are they clearly related to innovative skill and effort.

More often than not, however, the dispensations represent a "special benefit program" created to serve some small but powerful group in the economy at the expense of the general taxpayer or the consumer. [And these programs tend to persist by inertia long after they have outlived their usefulness.] In addition to a wide body of economic regulation, the programs include numerous subsidies and tax preferences, and all manner of laws and rules that serve special interests and not the public interest.

Our Nation appears to have become gradually accustomed to this way of life, as well as the process that leads to the creation and perpetuation of monopoly privileges. In turn, we have developed ambivalent attitudes toward monopoly. If an industry tries to conspire to raise prices, it violates our antitrust laws. But if an industry goes to Washington or a state capital, it is not violating any laws. It can get the Government to build higher tariff barriers, increase agricultural support prices, or police the industry against the intrusion of potential competitors or the misbehavior of one of its own members who desires to reduce prices. The Government becomes part of the collusive arrangement and walks with them along the ~~high~~ road to monopoly.

[In our laws, the basic conflict between the right of collective petition and the illegality of attempting to collude has been decided in favor of the right to petition. The antitrust laws are not violated by agreements to petition the government to restrict competition--but are violated when such agreements do not involve government.]

Make no mistake, with a government organized, as it is, along "advocacy" principles, the collective right to petition is an integral part of our system of democracy. Yet, at the same time, this system permits many interest groups to use government for their own ends, and the decisions made often bear little relationship to social benefits and costs. The problems have been exacerbated by an increasing tendency, over the last several decades, to politicize economic decisions [and by the fact that true costs can more easily be hidden through the government].

I do not intend to celebrate our Bicentennial by permitting this process to go unchecked. The year of our founding was also the year that Adam Smith's Wealth of Nations swept across the European Continent and began to profoundly shape

our own economic and social system. Smith attacked the very foundations of the mercantilist system, that pervasive system of governmental monopoly and protectionism in England and on the Continent. In several chapers of the Wealth of Nations, Smith described inefficiencies caused by government measures to protect and subsidize industries. His thought profoundly influenced the American Way, which traditionally to rely on competitive markets to do most of the work of allocating resources, organizing production, and providing economic progress. In this way, we have obtained a greater degree of efficiency than in other economies as well as a "higher standard of living" with relatively higher payments to American workers, and lower costs of goods and services to the American consumer.

This phenomenal progress was made possible, in large part, by economic thinking and social policy which abhorred government intervention in the creation and perpetuation of monopoly. Over the last several decades, however, our thinking has changed. For good reasons and bad, we have continously expanded governmental power, and the scope and detail of governmental controls over economic life. Under the "Blue Eagle" of the NRA, we also began to accelerate the creation of "government

sanctioned cartels" which, in spite of the quick demise of the NRA, have become one of the more enduring types of monopoly because it generally enlists government to help enforce the scheme in the name of some worthy cause. Today, transportation and insurance rate bureaus, shipping conferences, stock exchanges, and professional associations continue to operate in a congenial "cost-plus" environment because government has decided that the groups or firms they represent need not or cannot compete.

* * *

My message today is quite simply that we cannot confine consideration of "the monopoly problem" to a few predatory giants of the Age of the Robber Barons, or a few contemporary giants whom some suspect of doing evil at public expense. Rather, we must look at the whole range of reality - from the small firm with a monopoly franchise, to the government-sanctioned cartel, to those that are systematically using government to serve their own ends to the detriment of the public interest. We must recognize that government does as much to create monopoly as to control it. Our ultimate concern must be with the cost of monopoly, however imposed.

I repeat, as I have said before, some estimates that I have seen place the combined cost of government regulation and restrictive practices in the private sector at more than the Federal Government actually collects in income taxes--or something on the order of $2,000 per family each year. And these costs take no account of the cost of subsidies and tax preferences and other "special benefit programs" which are a by-product of, and closely related to the problem I have described.

We must be concerned with reducing these costs, wherever possible. In a word, we must be concerned with long-run efficiency --with the ability of the system to deliver what we want at the lowest cost.

Antitrust has an important role to play here. It enforces our commitment to a competitive market that will achieve efficiency--driving down costs to their minimum and assuring prices based on these costs. Competitive markets provide rewards for successful risk-taking and innovation; and they respond rapidly to changing conditions. Antitrust law and enforcement seeks to assure and promote these values.

My Administration is committed to vigorous enforcement of these laws. To achieve this, we are moving to expand enforcement resources in the Justice Department and the Federal Trade Commission, over and above the substantial increases in recent years.

Congress is strongly behind this effort. New legislation, providing more and sharper tools to the enforcement agencies, is well along in Congress. This legislation, with bipartisan co-sponsorship by Senators Hart and Scott, is known as the Antitrust Improvements Act of 1975. It is truly an omnibus bill, with 7 titles covering an array of subjects. These range from changes in the jurisdictional reach of the antitrust laws to provisions allowing for increased representation of a State's citizens by State attorneys general. In most respects, this legislation has my strong support.

Antitrust is in great favor these days: expanding enforcement budgets and some strengthening of legal sanctions and enforcement tools are desirable and widely popular ways of beginning to build a vigorous, affirmative competition policy.

Yet, such steps can confront only part of the "monopoly" problem, and the steps now being taken are really the easy ones. Much more difficult will be dealing with the areas which antitrust does not or cannot reach: the regulated and legal monopolies, and the government-sanctioned cartels.

I am confident and encouraged that Congress will soon strike down the so-called "fair trade" laws, which sanction price-fixing which would otherwise be illegal under the antitrust laws. [After many years, Congress is moving toward a desirable and comprehensive reform of our patent laws, based on Administration proposals to strengthen public and judicial confidence in, and proper governmental control over, these limited monopoly grants.]

The Administration has also submitted legislation to reform the regulation of railroads and trucking. In addition to constraining the activities of the ICC in ratemaking and restrictions on entry, the legislation would remove the antitrust immunity of industry rate bureaus to fix prices. Similar legislation on reform of airline regulation, including the antitrust immunity of industry bureaus, will be submitted shortly. But enactment of such legislation will not be easy in the face of powerful opposition.

I also have underway a broad, in-depth Administration review of many other legislative immunities to the antitrust laws--insurance and ocean shipping, for example. I see no reason, in principle, why one industry--such as insurance--should be exempt from these laws, while others--such as banking--are not. All industries, however regulated and by whom, should be subject to the interplay of competitive forces, to the maximum degree that government can make that possible.

In some cases where, by Congressional mandate or judicial interpretation of that mandate, activities which may create advantages to special interest groups lie out of the reach of the antitrust laws, we must take special steps to promote a vigorous competition policy. A special White House group is working with the Congress, the Executive Branch agencies, and the independent regulatory agencies to accomplish some of the necessary first steps. In particular, we are attempting to assure that government is aware of the costs, as well as the benefits, of its actions, and that there is a better representation of consumer interests when government proposes new rules and regulations. We are making special efforts to assure that the effects on competition and economic efficiency, which translates into lower prices for the consumer, are taken fully into account.

I will be taking further steps to institutionalize a vigorous competition policy within the very heart of government, of which these represent but first steps. I am also sympathetic to Congressional desires to push further in this direction through legislation. Senators Hart and Kennedy have sponsored such legislation, which my Administration now has under careful review, as well as other proposals which move in a similar direction.

Such legislation could be a desirable complement to that designed by the Administration to effect the reform of regulation in specific industries such as transportation or financial institutions. Perhaps we have reached the stage where we should also consider broad, affirmative legislation that could help us come to grips with the more pervasive monopoly problems--created by government--with which the antitrust laws cannot adequately deal. But such fundamental changes in the basic law must, I think grow out of a public demand for action similar in intensity to that anti-monopoly coalition of farmers and small businessmen which brought about the first of our antitrust laws--the Sherman Act--which is now widely regarded, in its generality, flexibility, and principled nature, as our Economic Constitution.

Whatever the means to the desired end, we now need new principles, embodied both in law and in the institutions of government, that will permit our Nation to regain our economic freedoms and which will provide new safeguards against those seeking special anti-competitive and monopolistic advantages from the government. The present antitrust laws, created in other times and to guard against other kinds of monopoly--"the big trusts"--are not by themselves sufficient to do the job.

At times, the law has dealt with "monopoly"--actual or imagined--by protecting competitors, rather than insuring competition. Whether by enacting government-supported entry barriers or by minimum price regulation or by other ways of cutting back on the flexibility of the competitive process, government has adopted laws which draw the warm political support of protected competitors, but retard economic efficiency in ways that raise costs to the consumer. Thus, for example, the antitrust laws were amended in 1936 by the Robinson-Patman Act to protect small grocery stores against a threatened monopoly. The monopoly did not materialize--but the efficiencies and convenience of chain-store supermarkets did. Nevertheless, the

statute lives on--making pricing of many products less flexible--making it harder for tough buyers to break oligopoly pricing patterns by large sellers.

[When Congress returns in September, I will submit legislation calling for the repeal of the Robinson-Patman Act.] I do so knowing that the proposal for repeal will be strongly, and sometimes bitterly opposed, by many of you. Yet, I ask you to recognize that, in reality, the law has done much harm, and little affirmative good, to both you and the economy.

We face a critical choice in the months ahead. Shall business and government work together in a free economy for the betterment of all? I do not believe that we can affirmatively do so if each of the choices on our economic freedoms is to be determined solely on the basis of how it affects particular segments of the community.

Rather, we all must be willing to make small sacrifices for change which will benefit us all. Your true commitment to both the principle of economic freedom and its restoration in a free enterprise system is at stake. The overall program can

succeed with your active support and belief in its underlying principles, even if you, as individuals, do not actively support all elements of the program. But, overall, your support is the key to preserving the American Way. For America's sake, and yours, I ask your help.

D

Background on Antitrust and Regulation

The President has spoken before on the need for a fundamental reform of economic regulation. He has also spoken of the importance of strong antitrust enforcement activities. (See Attachment.)

One of the less well understood aspects of regulatory reform is the importance of assuring that is accompanied by a policy of vigorous antitrust to enforce our commitment to competition. Regulatory reform and vigorous antitrust enforcement must go hand in hand. A less regulated economy requires strong antitrust enforcement to assure that competition will drive costs down to their minimum and also assure that prices are based on these costs.

In addition to traditional Justice and FTC antitrust enforcement against private sector price fixing and other anti-competitive activities, the Administration is concerned with areas that antitrust does not now reach because government has written laws that exempt many activities from antitrust prosecution. These are the regulated and legal monopolies and the government sanctioned cartels--various industry rate bureaus and self regulatory organizations which are allowed to fix prices, restrict entry and divide and share markets--free from legal prosecution. These include transportation rate bureaus, ocean shipping conferences, stock exchanges and professional associations (such as lawyers' minimum fee schedules and State occupational licensing boards which restrict entry into many occupations.

The Administration is concerned that Government has done as much to create monopoly as to control it. We need to look at the whole range of monopoly--which comes in all sizes and shapes. There is not only the traditional kind of monopoly. But there is also government monopoly ranging from the small franchise (say, a small bank in a remote community protected by government entry barriers) to government sanctioned cartels controlling entire industries (rail, truck, and airline rate bureaus).

This Administration is concerned that the public better understand the need for a real commitment to a vigorous pro-competition policy that looks across-the-board at the "monopoly problem." This is a time when anti-business feelings run high. A recent poll by Peter Hart shows that 61 percent of Americans believe there's a big business conspiracy to keep prices high. Only 17 percent favor the present economic system; 41 percent want major changes, including scrapping the free enterprise system.

In many ways, we have reached the stage where such a large number of people no longer believe in the system because Government has permitted the political process to replace the market in regulating the economy. Government, in fact, has been the major culprit--government intervention to create and perpetuate practices that are antithetical to competition. The Administration's regulatory reform program actively seeks to end this government "protectionism".

During a time of high prices and unemployment--and when the economic pie has been getting smaller--the Nation can no longer afford a system that permits special interests groups to use Government for their own ends. Government must be used to encourage and protect competition, rather than to protect competitors against one another. Competition, enforced by the antitrust laws, can do more of the work of allocating resources, organizing production, and providing for economic progress. It can "police" the market much better than regulation has done in the past.

Up until 40 years ago, our Nation had a commitment to competitive values. We abhorred government intervention in the marketplace--we let the market make most decisions in terms of economic efficiency, rather than letting the political system make them. In this way, the country was able to obtain a much greater degree of efficiency than in other economic systems, as well as a much "higher standard of living" and higher payments to American workers with lower costs of goods and services to the American consumer. This was the direct result of <u>real</u> competition bringing about maximum economic efficiency.

The reforms the Administration is proposing must be viewed as "pocketbook" issues. The Administration is telling the 61 percent of the people who believe that there is a big business conspiracy to keep prices high to look more carefully at what Government has been doing. The antitrust laws can protect us against those who collude to fix prices in the private sector. But when Government joins the conspiracy by giving legal sanction to these practices--who is left to protect the consumer? In fact, the law is used to impose untold billions of added costs on the consumer.

The President's program of regulatory reform and antitrust is an ambitious attempt to reverse the trends of the last 40 years and calls for a real commitment to competitive values. Here are its elements:

A. Improving Traditional Antitrust Enforcement

--The Administration has been moving to expand resources in the Justice Department and the FTC. Increased resources and personnel have been devoted not only to traditional antitrust activities, but also to regulatory reform efforts. Congress is also strongly behind an effort to increase resources (as indicated by the Congressional Democratic Policy Statement at the regulatory summit and authorizing legislation (S.1136) supported by 43 Senators that would triple the budgets of the antitrust agencies over the next three years). Although the Administration has opposed this specific legislation as being too much of an increase too quickly, we are committed to the general objectives underlying the effort.

--Last October, the President urged that Congress enact legislation to both (1) increase criminal and civil antitrust penalties and (2) expanded the investigatory powers of the enforcement agencies by amending the Civil Process Act. Congress enacted the legislation to increase antitrust penalties.

--Congress, however, failed to enact the Administration's Civil Process Act amendments which has been reintroduced as H.R. 39. The Administration is also supporting most of the provisions of omnibus antitrust legislation (The Hart-Scott Antitrust Improvement Act of 1975 - S. 1284) which covers an array of subjects. It incorporates the Administration's Civil Process Act provisions, allows for increased representation of a State's citizens by State attorneys general, requires proper notification of mergers before they are consummated, and provides for certain changes in the jurisdictional reach of the Sherman and Clayton Acts.

B. Problem Areas Where Antitrust Does Not Reach: The Need for Action

Antitrust has become a "motherhood" issue these days: expanding enforcement budgets and enforcement tools are widely popular ways of building a vigorous, affirmative competition policy. But as the Administration emphasizes, such action addresses only part of the problem, and the steps now being taken to improve traditional antitrust enforcement are the really easy ones. Much more difficult will be dealing with areas which antitrust does not reach--the regulated and legal monopolies and the government sanctioned cartels.

1. Fair Trade

The President has strongly endorsed legislation to repeal Federal fair trade enabling legislation--(Miller-Tydings Act, and McGuire Act). These laws enable States to sanction price-fixing activities of manufacturers. In effect, a manufacturer is allowed to dictate the retail price for his product, thus prohibiting outlets such as discount stores from selling his product at a lower price. It has been estimated these laws cost consumers $2 billion annually in higher prices.

2. The Robinson-Patman Act

The Administration is also concerned with other laws which draw the support of protected competitors but which work to retard competition and raise consumer prices. In his April 23 speech to the Chamber of Commerce, the President identified the Robinson-Patman Act as a "leading example" of such laws. This law was passed in the 1930's to protect small businessmen--particularly "mom and pop" grocery stores--from the competitive advantage of larger firms (e.g., chain stores such as A&P) who might use their greater bargaining power to obtain discounts from their suppliers that can't be justified on the basis of costs. In reality, however, the law has often worked to hurt those it was intended to protect--the small businessman--as well as the consumer. The Act has worked in perverse ways. For example,

--Justice Department criminal price-fixing cases have demonstrated that manufacturers use the cloak of Robinson-Patman to swap pricing information. As one critic put it, "businessmen who swap price-fixing information can be put in jail, but if they do it in the FTC chambers, they are regarded as industrial statesmen."

--Economists agree that the Act has led to uniform, inflexible pricing, especially in large industries with a few sellers.

--The Act prevents businesses from expanding into new markets because they can't tailor prices to meet market demands--in different sections of the

country or to "promote" a new product, for example. Under the RP-A, this would be price discrimination. Paradoxically, most RP-A cases are brought, and FTC orders are entered, against small firms. And they are the businesses that can least afford expensive legal counsel to justify their pricing practices in view of an incredibly, complex law.

The Administration is considering legislation to modify or repeal this Act.

3. Patent Reform

Patents are an example of a legal monopoly which is supposed to encourage innovation. After many years, Congress is moving toward a desirable and comprehensive reform of our patent laws, based on Administration proposals to strengthen procedures in the Patent Office. There has been much public and judicial criticism of the present system--too many patents, for example, are handed out that are later found invalid in the courts. The Administration's legislation (S. 1308), sponsored by Senator Hugh Scott is a comprehensive reform program that will increase public and judicial confidence, and proper governmental control over these limited monopoly grants and assure that they are handed out only for useful and novel inventions.

4. Financial Institutions

Over the years, financial institions regulation has been used to protect one type of savings institution from the competition of another. We have prevented these institutions from providing competitive returns on savings accounts for small savers and more diversified services to all customers. The Administration's Financial Institution's Act would breathe a new competitive vigor into this industry and begin to put an end to government intervention to protect competitors against one another.

5. Transportation Regulation

In 1948, Congress passed the Reed-Bulwinkle Act which exempted trucks and railroads from antitrust prosecution, thus adding to their protection against

competition. In vetoing that legislation, President Truman issued a clear warning to Congress and the American people:

> "Regulation cannot be an effective substitute for the affirmative stimulus toward improved service and lower rates which competition provides."

Unfortunately, Congress overrode his veto and Reed-Bulwinkle became law.

The Ford Administration has underway a comprehensive program to reform transportation regulation. In May, we submitted the Railroad Revitalization Act--soon we will submit legislation dealing with truck regulation. In addition to constraining ICC activities which constrain competiton by setting and holding prices too high and prohibiting entry, the legislation would remove antitrust immunity now granted to industry rate bureaus. Such immunity permits these carrier associations to engage in price fixing activities under official government sanction granted by Reed-Bulwinkle. In addition, the Administration will soon submit legislation to reform airline regulation and will eliminate antitrust immunity for the collusive pricing and capacity-sharing activities currently practiced by the airlines.

6. Review of Antitrust Immunities

The Administration also has underway a broad in-depth review of many other legislative immunities to the antitrust laws granted to industries such as insurance and international transportation (air and ocean shipping), for example. The Administration sees no reason, in principle, why one industry--such as insurance--should be exempt from these laws, while others--such as banking--are not. All industries, however regulated and by whom, should be subject to the interplay of competitive forces, to the maximum degree that government can make that possible.

C. Other Necessary Steps to Assure a Vigorous Competition Policy

In cases where, by Congressional mandate or judicial interpretation of that mandate (e.g., recent Supreme Court decisions in the securities cases), activities which may create advantages to special interest groups lie out of the reach of the antitrust laws, we must take special stpes to promote a vigorous competition policy. The President has set in motion efforts to assure that government is aware of the costs, as well as the benefits, of its actions, and that there is a better representation of consumer interests when government proposes new rules and regulations. In this effort, we are making special efforts to assure that the effects on competition and economic efficiency, which translate into lower prices for the consumer, are taken fully into account.

Conclusion

President Ford has called for a revitalization of our free-enterprise system. This means eliminating "monopoly" wherever and in whatever form it exists.

This is going to require some tough choices in the months ahead. It will require that business, the consumer, and the government work together toward a freer economy and for the betterment of all.

It also means that we cannot make these basic choices on our economic freedoms, as we have often done in the past, solely on the basis of how it affects a particular constituency.

SUBJECT: Presidential Statements on Antitrust

Listed below are the President's remarks on the importance of antitrust enforcement activities from his earlier speeches.

> To increase productivity and contain prices, we must end restrictive and costly practices whether instituted by Government, industry, labor, or others. And I am determined to return to the vigorous enforcement of antitrust laws.
>
> The President's Address delivered before a joint session of the Congress. October 8, 1974.

> All of the initiatives toward regulation should be accompanied by vigorous enforcements of antitrust laws. Vigorous antitrust action must be part of the effort to promote competition.
>
> Remarks of the President at the White House Conference on Domestic and Economic Affairs. Highway Hotel. April 18, 1975.

> Agencies engaged in regulatory activities can expect that the Antitrust Division of the Department of Justice will continue to argue for competition and lower consumer prices as a participant in your agency's proceedings. Furthermore, the Attorney General will continue to insure vigorous antitrust prosecution to remove private sector barriers to competition.
>
> President Ford, Vice-President Rockefeller, with Members of the Cabinet, and Independent Regulatory Commissioners. July 10, 1975.