The original documents are located in Box 58, folder "1976/09/30 HR8532 Hart-Scott-Rodino Antitrust Amendments Act of 1976 (2)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

To: Johnston
9-24-76
8:30 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 23 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8532 - Hart-Scott-Rodino Antitrust Improvements Act of 1976
Sponsors - Rep. Rodino (D) New Jersey and 8 others

Last Day for Action

September 30, 1976 - Thursday

Purpose

Broadens powers of the Department of Justice in conducting antitrust investigations; requires advance notice to Justice and the Federal Trade Commission of certain corporate mergers or acquisitions; and authorizes State attorneys general to file suits to recover damages incurred by the State's residents as a result of certain antitrust violations.

Agency Recommendations

Office of Management and Budget	Approval (Signing statement attached)
Federal Trade Commission	Approval
Department of Commerce	Does not recommend veto
Small Business Administration	Cannot support enactment
Department of the Treasury	Disapproval
Department of Justice	No recommendation received

Discussion

H.R. 8532 is a controversial antitrust bill that has been the subject of extensive negotiations between the Administration and the Congress. The first of the three titles in the bill resulted from an Administration proposal. The second is a congressional initiative which is now acceptable to the Administration since

certain objectionable provisions were deleted by the Congress. The third title (regarding parens patriae) has been strongly opposed by the Administration. While labor and consumer groups have supported H.R. 8532, there has been a great deal of opposition to the entire bill from the American business community, and overwhelming opposition to the parens patriae title.

The enrolled bill passed the Senate by 69-18 and the House by 242-138. In another significant vote, the House rejected a motion to recommit to the Judiciary Committee a bill just containing a parens patriae provision by 223-150.

Major Provisions

Title I - Antitrust Civil Process Act Amendments

Current law (the Civil Process Act) authorizes the Department of Justice to serve a "civil investigative demand" (CID) -- a pre-complaint subpoena -- on suspected violators of the antitrust laws, the so-called "targets." The CID helps the Department determine, in advance of filing a suit, whether in fact a violation has occurred. It may only be used to obtain documents and only from "other than natural" persons (e.g., corporations) that Justice has reason to believe are violating or have violated the law.

The enrolled bill would amend the Civil Process Act to authorize Justice to

-- issue CID's not only to "targets" of the investigation but also to (1) third parties (e.g., customers, suppliers, competitors) who may have information relevant to an antitrust investigation and (2) individuals (e.g., witnesses to a meeting) as well as business firms.

-- obtain answers to oral and written questions, as well as documents, from the CID recipients.

-- issue CID's relating to the investigation of mergers and acquisitions prior to their consummation.

-- authorize access by the Federal Trade Commission (FTC) to materials received by Justice in response to CID's.

H.R. 8532 would also provide certain safeguards to protect persons against governmental overreaching in the use of CID's. Anyone asked to give a deposition could be accompanied and advised by an attorney, who may advise his client, in confidence, to refuse to answer questions on the grounds of self-incrimination or any other lawful grounds. If a disagreement arises about the propriety of any question, a witness could refuse to answer, and the Department would have to obtain a court order to compel a response. A witness could obtain a copy of the transcript of his testimony unless, for good cause, the Assistant Attorney General in charge of the Antitrust Division only permits the witness to inspect the transcript.

This title of the bill is substantially similar to legislation submitted to the Congress by the Department of Justice, and would provide the Department with powers now possessed by the Federal Trade Commission and other Federal agencies. In a March 31, 1976 letter to Rep. Rodino, Chairman of the House Judiciary Committee, you indicated your "... support of amendments to the Antitrust Civil Process Act which would provide important tools to the Justice Department in enforcing our antitrust laws..." and urged "... favorable consideration" of this legislation.

Title II - Premerger Notification

H.R. 8532 would require companies with total assets or net sales of $100 million or more that plan to acquire companies with total assets or net sales of $10 million or more to provide 30 days advance notice to the Department of Justice and the FTC, if the acquisition results in the acquiring company holding either (1) 15 percent of the stock or (2) assets and stock in excess of $15 million in the acquired company.

The companies would have to supply FTC and Justice with documentary material and information relevant to the proposed acquisition. Twelve classes of transactions would be exempt from this requirement, including regulated industry and bank mergers, real estate acquisitions for office space, formation of subsidiary companies, and acquisitions exempted under FTC rules with the concurrence of the Assistant Attorney General in charge of the Antitrust Division.

Other provisions in this title would

-- require a 15 day advance notice period for cash tender offers;

-- authorize FTC or Justice to extend the 30 day notice period for an additional 20 days (10 days for a cash tender offer) and allow Justice and the FTC to terminate the notice period in individual cases; and

-- make anyone who fails to comply with this title liable to a penalty of not more than $10,000 a day.

Title II of H.R. 8532 would be effective 150 days after enactment of the bill, except that a provision authorizing the FTC to prescribe rules relating to this title would be effective immediately upon enactment.

The business community contends that because the values of stock, used for consideration in mergers and acquisitions, would fluctuate during the period of advance notice to Justice and FTC, there is a real danger that this title could disrupt legitimate business combinations. On the other hand, the Justice Department does not believe that existing law gives the Department an adequate opportunity to learn about and take action against mergers or acquisitions that violate the antitrust laws. Due to strong opposition by the Administration and others, a provision in earlier versions of the legislation that would have provided for an automatic injunction against the consummation of mergers and acquisitions by Federal enforcement authorities was deleted. The Administration has not objected to this title of the bill since that provision was dropped.

Title III - Parens Patriae

H.R. 8532 would authorize State attorneys general to bring suits in Federal district court on behalf of State residents for violations of the antitrust provisions of the Sherman Act. Treble damages would be awarded in successful suits and would either be distributed to individuals in a manner approved by the court or be considered a civil penalty and deposited with the State as general revenues. In price-fixing cases, damages could be proved in the aggregate by using statistical sampling or other measures without the necessity of proving the individual claims of, or amount of damage to, each person on whose behalf the suit was brought.

The Attorney General would be required to provide State attorneys general with (a) written notification of instances in which Justice has brought antitrust actions and he believes the States could bring action under this title on the same grounds, and (b) investigative files or other materials, to the extent permitted by law, which may be relevant to a course of action under this title.

While the bill would prohibit State attorneys general from hiring outside lawyers to be paid with a contingency fee based on a percentage of the settlement or recovery, it would allow the court to award "reasonable" fees to such lawyers which could be determined on a non-percentage contingency basis.

The amendments made by this title would not apply to any injury sustained prior to the date of enactment of this bill.

The proponents of this title claim that it is necessary in order to assist large numbers of consumers who may be injured by antitrust violations on a continuing basis although in individually small amounts (e.g., a million consumers might be overcharged an average of a penny a week for a 2 year period on a product like a loaf of bread). In such cases, it is argued, relief is almost impossible to obtain under present law, since individual antitrust law suits are out of the question and class action suits are usually determined to be unmanageable by the courts because of their size and complexity. Hence, the proponents state that "Title III is the legislative response to the present inability of our judicial system to afford equal justice to consumers for violations of the antitrust laws."

In a March 17, 1976 letter to Representative Rhodes, you indicated your "serious reservations concerning the parens patriae concept..." and said:

> "I question whether federal legislation is desirable which authorizes a state attorney general to sue on behalf of the state's citizens to recover treble damages that result from violations of the federal antitrust laws. The states have the ability to amend their own antitrust laws to authorize parens patriae suits in their own courts. If a state legislature, acting for its own citizens, is not convinced the parens patriae concept is sound policy, the Administration questions whether the Congress should bypass the state legislatures and provide state attorneys general with access to the federal courts to enforce it."

You also indicated your concern over specific provisions of the legislation then being considered in the House, as follows:

> -- "The present bill is too broad in its reach and should be narrowed to price fixing violations." (H.R. 8532 is not limited to price-fixing but covers all violations of the Sherman Act.)

-- "... the Administration is opposed to mandatory treble damages awards ..." (H.R. 8532 authorizes treble damages.)

-- "The Administration opposes extension of the statistical aggregation of damages... to private class action suits..." (H.R. 8532 does not extend such techniques to private class action suits.)

The Administration had also opposed a provision in earlier versions of this legislation which would have allowed State attorneys general to hire private lawyers to assist them in parens patriae cases and compensate those attorneys by a contingency fee based on a percentage of the settlement or recovery. As noted above, while contingency fees per se are not permitted under the enrolled bill, courts can award fees to such lawyers on a non-percentage contingency basis.

Congressional and business opponents of this title have asserted that it would (1) overburden the Federal courts with needless litigation, (2) enhance the power of politically ambitious State attorneys general to pillory corporations in highly publicized actions, and (3) impede business growth due to firms' impaired access to financing when exposed to huge contingent liabilities by massive antitrust litigation.

Agency Views

Secretary Simon, in a memorandum to you which is enclosed with the Treasury views letter, strongly recommends that you veto the enrolled bill because of title III. He objects to the provisions which extend its scope beyond price-fixing to the Sherman Act, allow mandatory treble damages, and permit certain contingent fee arrangements for private lawyers. The Secretary argues that:

> "These provisions would give State Attorneys General, nearly all of whom are elected officials (and many of whom are openly competing with other elected State officials), an open invitation to pursue antitrust claims with very little risk to them or the State governments and with a great likelihood of political gain for themselves. State governments would incur little cost in prosecuting antitrust claims against business firms since they would be able to retain private counsel under contingent fee arrangements. Since both elected

> officials and the private antitrust bar would stand to gain from prosecuting parens patriae actions, the potential for abusing this power by promoting unfounded antitrust litigation against business concerns seems manifest.
>
> Business firms [especially small businesses] confronted with such litigation may be forced to settle, irrespective of the merits of the State's case, because they cannot obtain a clean auditor's opinion so long as they are exposed to such a magnified contingent civil liability.
>
> Title III also represents an unwarranted intrusion of the Federal Government upon the States."

The Small Business Administration (SBA) also "cannot now support enactment of H.R. 8532." In its attached views letter, SBA argues that "... smaller firms may become leading victims of parens patriae claims under Title III. A smaller firm ... may be unable to stand the risk of a potentially astronomical exposure. This type of litigation is inherently conducive to 'blackmail settlements,'..." SBA also claims that small business firms, faced with parens patriae actions, may have their ability to obtain financing severely curtailed.

While the Commerce Department does not recommend a veto of H.R. 8532, it has a "deep concern as to the potentially adverse effects that certain provisions of Title III may have upon the business community and consequently upon the economy." The Department notes in its views letter that Titles I and II of the enrolled bill have been passed by the House in essentially identical form as separate bills which are now pending in the Senate and could be passed before the end of the current session.

FTC recommends approval of the enrolled bill and states that it "believes that Title III could provide an effective deterrent to Sherman Act violations in general and price-fixing in particular."

No recommendation has been received from the Justice Department on H.R. 8532 and we have been informally advised by Justice staff that the Attorney General will personally convey his views to you on this matter.

OMB Recommendation

The issue presented by the enrolled bill is whether the parens patriae title, even though somewhat narrowed in scope and effect to meet certain Administration objections, still represents such poor public policy that it justifies disapproving the bill despite the other desirable features of H.R. 8532.

This enrolled bill presents a very close call. On balance, we reluctantly recommend your approval. While it would be preferable if H.R. 8532 did not contain title III, Congress has narrowed the parens patriae provisions in response to Administration objections by (1) confining the statistical aggregation of damages to price-fixing cases, and (2) requiring Federal court approval of arrangements for paying attorneys fees on any contingent fee basis. The more focused and restricted title III, plus the desirable features of title I and the now unobjectionable provisions of title II, outweigh, in our view, the potentially harmful effects of the parens patriae provisions.

Attached for your consideration is a draft signing statement.

Paul H. O'Neill
Acting Director

Enclosures

SIGNING STATEMENT

I have today signed into law H.R. 8532, the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

This bill contain three titles. The first title will significantly expand the civil investigatory powers of the Antitrust Division. These amendments to the Antitrust Civil Process Act originated with the Administration two years ago, and I am pleased to see that the Congress has passed them.

The second title of this bill will require parties to very large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposal. This title was not objected to by the Administration and I intend that it be carefully monitored in operation to assure that it does not hamper legitimate business combinations.

This antitrust bill also includes a third title, about which I have previously expressed serious reservations. It would permit State attorneys general to bring antitrust suits (parens patriae suits) on behalf of the citizens of their States to recover treble damages.

The States have ample authority to amend their own antitrust laws to authorize such suits in State courts. I question whether the Congress should bypass the State legislatures and provide State attorneys general with access to Federal courts to enforce Federal laws.

Congress has, however, narrowed this title so as to reduce the possibility of significant abuses. I had urged that the scope of this legislation be narrowed to price-fixing activities where the impact is most directly felt by consumers. The Congress responded to this suggestion by confining the scope of the most controversial provision, which would authorize the statistical aggregation of damages, to price-fixing violations. Thus, this bill will be confined to hard-core antitrust violations.

I was also concerned about the provision that would allow States to retain attorneys on a contingent fee basis, thereby encouraging suits against business in which the principal motivation would be enrichment for attorneys rather than restitution for the consumer. The present bill, while not prohibiting all contingent fee arrangements, has proscribed those kinds that have been subject to most abuse. I remain concerned about this provision, but I think it has been improved.

With these and other changes that have been made in this title since its introduction, this legislation has been focused and limited. In this form, it may well prove the deterrent to price-fixing that it is supposed to be.

I am signing this major antitrust legislation with the belief that the parens patriae authority will be responsibly enforced and in the knowledge that the Antitrust Civil Process Act amendments and pre-merger notification provisions will strengthen Federal antitrust enforcement.

THE WHITE HOUSE
WASHINGTON

the attached statement is being typed in final now but Paul Leach advises there is still a possibility of changes from Ed Schmults and Bob Hartmann

judy

STATEMENT BY THE PRESIDENT

I am pleased to sign into law today H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. I am confident that this antitrust legislation can contribute to a more competitive and healthy American economy.

COMPETITION AND ANTITRUST POLICIES

I am proud of my Administration's record of commitment to antitrust enforcement. Antitrust laws provide an important means of achieving fair competition. ~~and my Administration has always considered competition to be the driving force of our economy.~~ Our nation has become the economic ideal of the free world because of its dedication to the vigorous competition permitted by the free enterprise system, ~~and to full~~ and vigorous competition. Competition rewards the efficient and innovative business and penalizes the inefficient.

~~Furthermore, promotion of competition is consistent with political and social goals, such as limited and decentralized power, and best serves the interests of individual citizens. Under competitive conditions, economic power is fragmented and no one firm can control prices or supply. Political power is also limited and decentralized by our public policy which stresses reliance on competition because there is then no need for massive governmental bureaucracies to oversee business operations.~~

In a freely competitive market, consumers enjoy the opportunity to choose from a wide range of products, through their decisions in the marketplace, their preferences to businessmen, who translate those preferences into the best products at the lowest prices.

The Federal Government must play two important roles in protecting and advancing the cause of competition.

First, the policy of my Administration has been to vigorously enforce our antitrust laws through the Antitrust Division of the Department of Justice and the Federal Trade Commission. During an inflationary period, this has been particularly important in deterring price-fixing agreements that would result in higher costs to consumers.

Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the environment for business. Not only must the Federal Government seek to restrain private anti-competitive conduct, but our Government must also see to it that its own actions do not impede free and open competition.

All too often in the past, the Government has itself been a major source of unnecessary restraints on competition.

the years been subjected to pervasive regulation. Although regulation has been imposed in the name of the public interest, there is a growing awareness that the consumer is often the real loser. My Administration has taken the lead in sharpening this awareness over the past two years and will continue this effort.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. ~~In many instances, a businessman cannot raise or lower prices, enter or leave markets, or provide or terminate services without the prior approval of a federal regulatory body. As a consequence, the innovative and creative forces of some of our Nation's major industries are suffocated by government regulation.~~

~~This is not the economic system that made this country great.~~ Government regulation is not an effective substitute for vigorous competition in the American marketplace.

~~To be sure,~~ In some instances government regulation may well protect and advance the public interest. But ~~the time has come to recognize that~~ many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

DURING MY

Administration ~~'s competition policy has been a commitment to change, and we have set in motion a far reaching regulatory reform program~~, important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal ~~[illegible]~~ antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has ~~represented~~ BEEN the first real manpower increases since 1950. I am committed to ~~continuing to provide~~ PROVIDING these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time, the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was ~~advanced~~ aided substantially when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation. Contrary to industry predictions, more competition has not led to chaos in the securities industry, and I am confident it will prove to be beneficial in our railroad industry.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A ~~full~~ measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I believe the record of this Administration stands as a measure of its commitment to competition and the action I am taking today should further strengthen competition and antitrust enforcement.

This bill contains three titles. The first title will significantly expand the civil investigatory powers of the Antitrust Division. This will enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it will also better assure that unmeritorious suits will not be filed.

These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago, and I am pleased to see that the Congress has finally passed them.

The second title of this bill will require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This will allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal was supported by my Administration, and I am pleased to see it enacted into law.

I believe these two titles will contribute substantially to the competitive health of our free enterprise system.

This legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their states to recover treble damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the states have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the state, believes that such a concept is sound policy,

it ought to allow it. I questioned whether the Congress should bypass the state legislatures in this instance.

However, Congress has narrowed this title in order to remove the possibility of significant abuses. Earlier, I urged that the scope of this legislation be narrowed to price-fixing violations where the law is clear and where the impact is most directly felt by consumers. Given the broad scope of the bill, I also recommended that damages be limited to those actually resulting from the violations. The Congress addressed these concerns by confining the scope of the controversial provision of measuring damages to price-fixing violations. Thus, as a practical matter, enforcement efforts under this bill will be focused on hard core antitrust violations.

I have also been concerned about the provision that would allow states to retain private attorneys on a contingent fee basis, thereby encouraging suits against businesses in which the motivation would be attorney enrichment. The present bill has been revised to narrow these arrangements and has required Federal court approval of all attorneys fees.

These and other changes that have been made in this title have improved this legislation. In this form, it can contribute to deterring price-fixing violations. Price fixers must be denied the fruits of their acts, and effective remedies must be available to those injured by price fixing. The approach in this title, if responsibly enforced, can

aid in protecting consumers. However, I will carefully review the implementation of these powers to assure that they are not abused.

Individual initiative and market competition must remain the keystones to our American economy. I am today signing this major antitrust legislation with the expectation that it will contribute significantly to our competitive economy.

Schmults & Changes
Leach 2
approved by Huntsman

(2)

STATEMENT BY THE PRESIDENT

AFTER CAREFUL REFLECTION,

I am ~~pleased to sign~~ SIGNING into law today H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. ~~I am confident that this antitrust legislation can contribute to a more competitive and healthy American economy.~~ THIS BILL CONTAINS THREE TITLES, TWO OF WHICH MY ADMINISTRATION HAS SUPPORTED AND ONE -- THE "PARENS PATRIAE" TITLE -- WHICH I BELIEVE IS OF DUBIOUS MERIT,

COMPETITION AND ANTITRUST POLICIES

I am proud of my Administration's record of commitment to antitrust enforcement. Antitrust laws provide an important means of achieving fair competition. Our nation has become the economic ideal of the free world because of the vigorous competition permitted by the free enterprise system. Competition rewards the efficient and innovative business and penalizes the inefficient.

Consumers benefit in a freely competitive market by having the opportunity to choose from a wide range of products. Through their decisions in the marketplace, consumers indicate their preferences to businessmen, who translate those preferences into the best products at the lowest prices.

The Federal Government must play two important roles in protecting and advancing the cause of free competition.

First, the policy of my Administration has been to vigorously enforce our antitrust laws through the Antitrust Division of the Department of Justice and the Federal Trade Commission. During an inflationary period, this has been particularly important in deterring price-fixing agreements that would result in higher costs to consumers.

Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the environment for business competition. Not only must the Federal Government seek to restrain private anti-competitive conduct, but our Government must also see to

it that its own actions do not impede free and open competition. All too often in the past, the Government has itself been a major source of unnecessary restraints on competition.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. Government regulation is not an effective substitute for vigorous competition in the American marketplace.

In some instances government regulation may well protect and advance the public interest. But many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

During my Administration, important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has been the first real manpower increase since 1950. I am committed to providing these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time,

the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was aided substantially when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

WHILE I CONTINUE TO HAVE SERIOUS RESERVATIONS ABOUT THE "PARENS PATRIAE" TITLE OF THIS BILL, ON BALANCE,

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I believe the record of this Administration stands as a measure of its commitment to competition, and the action I am taking today should further strengthen competition and antitrust enforcement.

This bill contains three titles. The first title will significantly expand the civil investigatory powers of the Antitrust Division. This will enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it will also better assure that unmeritorious suits will not be filed. These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago, and I am pleased to see that the Congress has finally passed them.

The second title of this bill will require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This will allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal was supported by my Administration, and I am pleased to see it enacted into law.

I believe these two titles will contribute substantially to the competitive health of our free enterprise system.

This legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their states to recover treble

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In price-fixing cases, this title provides that damages can be proved in the aggregate by using statistical sampling or other measures without the necessity of proving the individual claim of, or the amount of damage to, each person on whose behalf the case was brought. During the hearings on this bill, a variety of questions were raised as to the fairness and constitutionality of this novel and untested concept. Many of the concerns continue to trouble me.

Kind from P. Leahy
Language prepared by
other Sen.
w/ Comments of
Mr. Schmults

INSERT A

it ought to allow it. I questioned whether the Congress should bypass the state legislatures in this instance.

In price-fixing cases, this title provides that damages can be proved in the aggregate by using statistical sampling or other measures without the necessity of proving the individual claim of, or the amount of damage to, each person on whose behalf the case was brought. Serious questions have been raised by [redacted] legal scholars as to the fairness and constitutionality of this novel and untested concept. This concern will add an element of uncertainty to antitrust enforcement under this title.

B

I have also been concerned about the provision that would allow states to retain private attorneys on a contingent-fee basis. While Congress adopted some limitations which restrict the scope of this provision, I continue to be concerned with the potential for abuse and harassment inherent in this provision.

The Congress wisely incorporated a proviso which permits a State to limit or prevent the applicability of this title. I commend this authority to the attention of legislatures of the respective States, and urge them to consider prohibiting the State attorneys general from entering into contingent-fee contracts of any type in "parens patriae" suits.

INSERT A, p 2

In partial response to my concerns, Congress has narrowed this title in order to limit the possibility of significant abuses. In its present form, this title, if responsibly enforced, can contribute to deterring price-fixing violations, thereby protecting consumers. I will carefully review the implementation of the powers provided by this title to assure that they are not abused.

Individual initiative and market competition must remain the keystones to our American economy. I am today signing this antitrust legislation with the expectation that it will contribute to our competitive economy.

damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the states have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the state, believes that such a concept is sound policy, it ought to allow it. I questioned whether the Congress should bypass the state legislatures in this instance.

INSERT A

However, Congress has narrowed this title in order to remove the possibility of significant abuses. Earlier, I urged that the scope of this legislation be narrowed to price-fixing violations where the law is clear and where the impact is most directly felt by consumers. Given the broad scope of the bill, I also recommended that damages be limited to those actually resulting from the violations. The Congress addressed these concerns by confining the scope of the controversial provision of measuring damages to price-fixing violations. Thus, as a practical matter, enforcement efforts under this bill will be focused on hard core antitrust violations.

I have also been concerned about the provision that would allow states to retain private attorneys on a contingent fee basis, thereby encouraging suits against businesses in which the motivation would be attorney enrichment. The present bill has been revised to narrow these arrangements and has required Federal court approval of all attorneys fees.

These and other changes that have been made in this title have improved this legislation. In this form, it can contribute to deterring price-fixing violations. Price fixers must be denied the fruits of their acts, and effective remedies must

be available to those injured by price fixing. The approach in this title, if responsibly enforced, can aid in protecting consumers. However, I will carefully review the implementation of these powers to assure that they are not abused.

Individual initiative and market competition must remain the keystones to our American economy. I am today signing this major antitrust legislation with the expectation that it will contribute significantly to our competitive economy.

WISELY INCORPORATED A PROVISO WHICH PERMITS A STATE TO PREVENT THE APPLICABILITY OF THIS TITLE.

damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

Rec'd from P. Leach Mr. Reuck's Changes 3:00 p.m. 9/30/96

As I have said before, the states have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the state, believes that such a concept is sound policy, it ought to allow it. I questioned whether the Congress should bypass the state legislatures in this instance. TO MEET IN PART MY OBJECTION, Congress

In price-fixing cases, this title provides that damages can be proved in the aggregate by using statistical sampling or other measures without the necessity of proving the individual claim of, or the amount of damage to, each person on whose behalf the case was brought. During the hearings on this bill, a variety of questions were raised as to the ~~fairness and constitutionality~~ SOUNDNESS of this novel and untested concept. Many of the concerns continue to trouble me.

I have also ~~been concerned about~~ QUESTIONED the provision that would allow states to retain private attorneys on a contingent-fee basis. While Congress adopted some limitations which restrict the scope of this provision, ~~I continue to be concerned with~~ the potential for abuse and harassment inherent in this provision STILL EXISTS.

~~The Congress wisely incorporated a proviso which permits~~ a state to limit or prevent the applicability of this title. I commend this authority to the attention of legislatures of the respective states, and urge them to consider prohibiting the state attorneys general from entering into contingent-fee contracts of any type in "parens patriae" suits.

In partial response to my concerns, Congress has narrowed this title in order to limit the possibility of significant abuses. In its present form, this title, if responsibly

enforced, can contribute to deterring price-fixing violations, thereby protecting consumers. I will carefully review the implementation of the powers provided by this title to assure that they are not abused.

Individual initiative and market competition must remain the keystones to our American economy. I am today signing this antitrust legislation with the expectation that it will contribute to our competitive economy.

THE WHITE HOUSE
WASHINGTON

the attached veto message is being typed in final now but Paul Leach advises txxx there is still a possibility of changes from Ed Schmults and Bob Hartmann
judy

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my signature H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. While I had hoped to be able to sign sound antitrust legislation which was consistent with my policies of increased economic competition and strong antitrust enforcement, I cannot accept the "parens patriae" title included in this bill.

I am opposed to the "parens patriae" concept because:

-- The Federal Government would be giving state attorneys general antitrust powers, including novel and untested damage provisions, which their state governments have not authorized.

-- While sponsors have argued that this concept would benefit consumers, I believe just the reverse would be true. Private lawyers would be the major beneficiaries through permitted contingency fee arrangements.

-- Small businesses would be unable to cope with this law. Local manufacturers and service firms could be subjected to large nuisance suits they would not have the resources to defend.

I am proud of my Administration's record of commitment to antitrust enforcement. Antitrust laws provide an important means of achieving fair competition. Our nation has become the economic ideal of the free world because of the vigorous competition permitted by the free enterprise system. Competition rewards the efficient and innovative business and penalizes the inefficient.

Consumers benefit in a freely competitive market by having the opportunity to choose from a wide range of products. Through their decisions in the marketplace consumers indicate their preferences to businessmen, who translate those preferences into the best products at the lowest prices.

The Federal Government must play two important roles in protecting and advancing the cause of free competition.

First, the policy of my Administration has been to vigorously enforce our antitrust laws through the Antitrust Division of the Department of Justice and the Federal Trade Commission. During an inflationary period, this has been particularly important in deterring price-fixing agreements that would result in higher costs to consumers.

Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the environment for business competition. Not only must our Government seek to restrain private anti-competitive conduct, but the Federal Government must also see to it that its own actions do not impede free and open competition. All too often in the past, the Government has itself been a major source of unnecessary restraints on competition.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. Government regulation is not an effective substitute for vigorous competition in the American marketplace.

In some instances government regulation may well protect and advance the public interest. But many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

(MORE)

During MY Administration ~~the competition policy has been a commitment to change, and we have set in motion a far-reaching regulatory reform program.~~ important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal ~~enforcement~~ antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has ~~represented~~ been the first real manpower increases since 1950. I am committed to ~~continuing to provide~~ providing these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time, the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was added substantially when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation. Contrary to industry predictions, more competition has not led to chaos in the securities industry, and I am confident it will prove to be beneficial in our railroad industry.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A full measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I had hoped that the Congress would submit to me additional legislation to further strengthen competition and antitrust enforcement. However, the omnibus antitrust bill which I am returning unsigned contains three titles, two of which my Administration has supported and one which has caused me serious concern.

The first title would significantly expand the civil investigatory powers of the Antitrust Division. It would enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it would also better assure that unmeritorious suits will not be filed. These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago and I support them.

The second title of this bill would require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This would allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal is supported by my Administration.

I believe these two titles would contribute substantially to the competitive health of our free enterprise system.

Unfortunately, this legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their States to recover treble damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the States have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the State, believes that such a concept is sound policy, it ought to allow it. I do not believe that the Congress should bypass the state legislatures in this instance.

While questioning the basic parens patriae concept, I also urged Congress to provide adequate safeguards that would prevent abuses of the parens patriae authority. Although Congress narrowed this title in some respects, important safeguards were ignored.

The present bill requires the award of mandatory treble damages in successful parens patriae suits. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, I believe is no longer valid, given the substantial increase in these penalties which I have previously signed into law. For example, a business can be fined $1 million and its officers imprisoned for three years. While no one condones price-fixing, the present bill would require the courts, without any discretion, to award treble damages which could bankrupt some companies, thereby adversely affecting innocent employees, shareholders and the local economy.

Also, the present bill continues to allow private attorneys to be hired by State attorneys general on a contingency fee basis, although it does eliminate percentage fee arrangements. My Administration has urged a flat ban against any such arrangements. By allowing private attorneys to seek out cases, the bill bypasses a State government's critical role in setting priorities for its citizens and appropriating the funds necessary to protect them.

I believe that the elimination of these safeguards could open the door to multi-million dollar "nuisance" suits by private attorneys who often are the major beneficiaries in such suits. Although proponents of this legislation have alleged that it will benefit consumers, in my view, consumers will

eventually pay the bill in the form of higher prices, while the lawyers instituting such litigation reap large legal fees. Ironically, it is also small businesses which will be hurt since they frequently cannot afford the costly litigation and are forced to settle suits which larger companies could successfully defend.

Congress was aware that I would veto the parens patriae provisions had they reached my desk ~~standing alone~~ in separate legislation. However, I was confronted with the more difficult burden of weighing the benefits provided by the Antitrust Civil Process Act amendments and the pre-merger notice provisions against my strong belief that the parens patriae provisions are not a responsible way to enforce the antitrust laws and my fear that these provisions could be misused. I have decided that I cannot sign any legislation including these parens patriae provisions.

I am returning the Hart-Scott-Rodino Antitrust Improvements Act of 1976 unsigned, with the expectation that Congress will promptly enact the first two desirable titles of this legislation and send them to me for signature. The Senate can do this quickly and simply before adjournment by passing the two bills (H.R. 13489 and H.R. 14580) sent to it by the House earlier this year. This action can assure responsible and effective enforcement of the antitrust laws, without providing for the untested and unwise parens patriae authority. I urge the Congress to reconsider H.R. 8532 and in its place to pass H.R. 13489 and H.R. 14580.

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my signature H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. While I had hoped to be able to sign sound antitrust legislation which was consistent with my policies of increased economic competition and strong antitrust enforcement, I cannot accept the "parens patriae" title included in this bill.

I am opposed to the "parens patriae" concept because:

-- The Federal Government would be giving state attorneys general antitrust powers, including novel and untested damage provisions, which their state governments have not authorized.

-- While sponsors have argued that this concept would benefit consumers, I believe just the reverse would be true. Private lawyers would be the major beneficiaries through permitted contingent fee arrangements.

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COMPETITION AND ANTITRUST POLICIES

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Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the environment for business competition. Not only must our Government seek to restrain private anti-competitive conduct, but the Federal Government must also see to it that its own actions do not impede free and open competition. All too often in the past, the Government has itself been a major source of unnecessary restraints on competition.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. Government regulation is not an effective substitute for vigorous competition in the American marketplace.

In some instances government regulation may well protect and advance the public interest. But many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

During my Administration important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has been the first real manpower increase since 1950. I am committed to providing these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time, the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was aided substantially when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

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The first title would significantly expand the civil investigatory powers of the Antitrust Division. It would enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it would also better assure that unmeritorious suits will not be filed. These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago and I support them.

The second title of this bill would require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This would allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal is supported by my Administration.

I believe these two titles would contribute substantially to the competitive health of our free enterprise system.

Unfortunately, this legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their States to recover treble damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the States have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the State, believes that such a concept is sound policy, it ought to allow it. I do not believe that the Congress should bypass the state legislatures in this instance.

While questioning the basic parens patriae concept, I also urged Congress to provide adequate safeguards that would prevent abuses of the parens patriae authority. Although Congress narrowed this title in some respects, important safeguards were ignored.

B →

The present bill requires the award of mandatory treble damages in successful parens patriae suits. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, I believe is no longer valid, given the substantial increase in these penalties which I have previously signed into law. For example, a business can be fined $1 million and its officers imprisoned for three years. While no one condones price-fixing, the present bill would require the courts, without any discretion, to award treble damages which could bankrupt some companies, thereby adversely affecting innocent employees, shareholders and the local economy.

Also, the present bill continues to allow private attorneys to be hired by State attorneys general on a contingent fee basis, although it does eliminate percentage fee

arrangements. My Administration has urged a flat ban against any such arrangements. By allowing private attorneys to seek out cases, the bill bypasses a state government's critical role in setting priorities for its citizens and appropriating the funds necessary to protect them.

I believe that the elimination of these safeguards could open the door to multi-million dollar "nuisance" suits by private attorneys who often are the major beneficiaries in such suits. Although proponents of this legislation have alleged that it will benefit consumers, in my view, consumers will eventually pay the bill in the form of higher prices, while the lawyers instituting such litigation reap large legal fees. Ironically, it is also small businesses which will be hurt since they frequently cannot afford the costly litigation and are forced to settle suits which larger companies could successfully defend.

Congress was aware that I would veto the parens patriae provisions had they reached my desk in separate legislation. However, I was confronted with the more difficult burden of weighing the benefits provided by the Antitrust Civil Process Act amendments and the pre-merger notice provisions against my strong belief that the parens patriae provisions are not a responsible way to enforce the antitrust laws and my fear that these provisions could be misused. I have decided that I cannot sign any legislation including these parens patriae provisions.

I am returning the Hart-Scott-Rodino Antitrust Improvements Act of 1976 unsigned, with the expectation that Congress will promptly enact the first two desirable titles of this legislation and send them to me for signature. The Senate can do this quickly and simply before adjournment by passing the two bills (H.R. 13489 and H.R. 14580) sent to it by the House earlier

this year. This action can assure responsible and effective enforcement of the antitrust laws, without providing for the untested and unwise parens patriae authority. I urge the Congress to reconsider H.R. 8532 and in its place to pass H.R. 13489 and H.R. 14580.

THE WHITE HOUSE,

B

In price-fixing cases, this title provides that damages can be proved in the aggregate by using statistical sampling or other measures without the necessity of proving the individual claim of, or the amount of damage to, each person on whose behalf the case was brought. During the hearings on this bill, a variety of questions were raised as to the fairness and constitutionality of this novel and untested concept. Many of the concerns continue to trouble me.

Rec'd from P. Leach
Language suggested by atty Gen-
w/ concurrence Mr. Schmitt

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 29 Time: noon

FOR ACTION: Doug Smith
Max Friedersdorf
Bill Seidman

cc (for information): Jack Marsh
Jim Connor
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 29 Time: asap

SUBJECT:

Veto message and signing statement - H.R. 8532-Hart-Scott-Rodino Antitrust Improvements Act of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: September 25 Time: 1020am

FOR ACTION: Paul Leach
Max Friedersdorf veto
Dick Parsons disapprove
Bobbie Kilberg veto
Robert Hartmann

cc (for information): Jack Marsh
Jim Connor
Bill Seidman ~~veto~~ sign
Ed Schmults

FROM THE STAFF SECRETARY

DUE: Date: September 27 Time: 500pm

SUBJECT:

H.R. 8532-Hart-Scott-Rodino Antitrust Improvements Act,1976

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
x For Your Comments
____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE
WASHINGTON

Schmults, Leach version before editorial changes.

jj

STATEMENT BY THE PRESIDENT

I am pleased to sign into law today H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. I am confident that this antitrust legislation can contribute to a more competitive and healthy American economy.

COMPETITION AND ANTITRUST POLICIES

I am proud of my Administration's record of commitment to antitrust enforcement. Antitrust is a major tool in achieving competition and my Administration has always considered competition to be the driving force of our economy. This country has become the economic ideal of the free world because of its dedication to the free enterprise system and to full and vigorous competition. Competition rewards the efficient and innovative business and penalizes the inefficient.

Furthermore, promotion of competition is consistent with political and social goals, such as limited and decentralized power, and best serves the interests of individual citizens. Under competitive conditions, economic power is fragmented and no one firm can control prices or supply. Political power is also limited and decentralized by our public policy which stresses reliance on competition because there is then no need for massive governmental bureaucracies to oversee business operations.

In a freely competitive market, consumers enjoy the opportunity to choose from a wide range of VARIED products. ~~of all sizes, kinds, and varieties.~~ Consumers, through their decisions in the marketplace, show their preferences and desires to businessmen who then translate those preferences into the best products at the lowest prices.

I firmly believe that the Federal Government must play two important roles in protecting and advancing the cause of competition.

First, the policy of my Administration has been to vigorously enforce our antitrust laws, through the Antitrust Division of the Department of Justice and the Federal Trade Commission. During an inflationary period, this has been particularly important in deterring price-fixing agreements that would result in higher costs to consumers.

Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the ~~competitive~~ environment FOR ~~in which~~ business COMPETITION ~~operates~~. Not only must the Federal Government seek to restrain private anti-competitive conduct, but OUR Government must also see to it that its own actions do not impede free and open competition. IT

All too often in the past, the ~~Federal~~ Government has itself been a major source of unnecessary restraints on competition. ~~Many of our most vital industries have over~~

the years been subjected to pervasive regulation. Although regulation has been imposed in the name of the public interest, there is a growing awareness that the consumer is often the real loser. My Administration has taken the lead in sharpening this awareness over the past two years and will continue this effort.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. In many instances a businessman cannot raise or lower prices, enter or leave markets, or provide or terminate services without the prior approval of a federal regulatory body. As a consequence, the innovative and creative forces of some of our Nation's major industries are suffocated by government regulation.

This is not the economic system that made this country great. Government regulation is not an effective substitute for vigorous competition in the American marketplace.

To be sure, in some instances government regulation may well protect and advance the public interest. But the time has come to recognize that many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

DURING MY

Administration ~~'s competition policy has been a commitment to change, and we have set in motion a far reaching regulatory reform program~~, important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal [redacted] antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has ~~represented~~ BEEN the first real manpower increases since 1950. I am committed to ~~continuing to provide~~ PROVIDING these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time, the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was advanced when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation. Contrary to industry predictions, more competition has not led to chaos in the securities industry, and I am confident it will prove to be beneficial in our railroad industry.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A full measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I believe the record of this Administration stands as a measure of its commitment to competition and the action I am taking today should further strengthen competition and antitrust enforcement.

This bill contains three titles. The first title will significantly expand the civil investigatory powers of the Antitrust Division. This will enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it will also better assure that unmeritorious suits will not be filed.

These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago, and I am pleased to see that the Congress has finally passed them.

The second title of this bill will require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This will allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal was supported by my Administration, and I am pleased to see it enacted into law.

I believe these two titles will contribute substantially to the competitive health of our free enterprise system.

This legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their states to recover treble damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the states have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the state believes that such a concept is sound policy,

it ought to allow it. I questioned whether the Congress should bypass the state legislatures in this instance.

However, Congress has narrowed this title in order to remove the possibility of significant abuses. Earlier, I urged that the scope of this legislation be narrowed to price-fixing violations where the law is clear and where the impact is most directly felt by consumers. Given the broad scope of the bill, I also recommended that damages be limited to those actually resulting from the violations. The Congress addressed these concerns by confining the scope of the controversial provision of measuring damages to price-fixing violations. Thus, as a practical matter, enforcement efforts under this bill will be focused on hard core antitrust violations.

I have also been concerned about the provision that would allow states to retain private attorneys on a contingent fee basis, thereby encouraging suits against businesses in which the motivation would be attorney enrichment. The present bill has been revised to narrow these arrangements and has required Federal court approval of all attorneys fees.

These and other changes that have been made in this title have improved this legislation. In this form, it can contribute to deterring price-fixing violations. Price fixers must be denied the fruits of their acts, and effective remedies must be available to those injured by price fixing. The approach in this title, if responsibly enforced, can

aid in protecting consumers. However, I will carefully review the implementation of these powers to assure that they are not abused.

Individual initiative and market competition must remain the keystones to our American economy. I am today signing this major antitrust legislation with the expectation that it will contribute significantly to our competitive economy.

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my signature H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. While I had hoped to be able to sign sound antitrust legislation which was consistent with my policies of increased economic competition and strong antitrust enforcement, I cannot accept the "parens patriae" title which is in this bill.

→ Insert

COMPETITION AND ANTITRUST POLICIES

I am proud of my Administration's record of commitment to antitrust enforcement. Antitrust is a major tool in achieving competition and my Administration has always considered competition to be the driving force of our economy. This country has become the economic ideal of the free world because of its dedication to the free enterprise system and to full and vigorous competition. Competition rewards the efficient and innovative business and penalizes the inefficient.

Furthermore, promotion of competition is consistent with political and social goals, such as limited and decentralized power, and best serves the interests of individual citizens. Under competitive conditions, economic power is fragmented and no one firm can control prices or supply. Political power is also limited and decentralized by our public policy which stresses reliance on competition because there is then no need for massive governmental bureaucracies to oversee business operations.

Insert

I am opposed to the "parens patriae" concept because:

-- The Federal Government would be giving state attorneys general antitrust powers, including novel and untested damage provisions, which their state governments have not authorized.

-- While sponsors have argued that this concept would benefit consumers, I believe just the reverse would be true. Private lawyers would be the major beneficiaries through permitted contingency fee arrangements.

-- Small businesses would be unable to cope with this law. Local manufacturers and service firms would be subjected to large nuisance suits they would not have the resources to defend.

In a freely competitive market, consumers enjoy the opportunity to choose from a wide range of VARIED products, ~~of all sizes, kinds, and varieties.~~ Consumers, through their decisions in the marketplace, show their preferences and desires to businessmen who then translate those preferences into the best products at the lowest prices.

I firmly believe that the Federal Government must play two important roles in protecting and advancing the cause of competition.

First, the policy of my Administration has been to vigorously enforce our antitrust laws, through the Antitrust Division of the Department of Justice and the Federal Trade Commission. During an inflationary period, this has been particularly important in deterring price-fixing agreements that would result in higher costs to consumers.

Second, my Administration has been the first one in forty years to recognize an additional way the Federal Government vitally affects the ~~competitive~~ environment FOR ~~in which~~ business COMPETITION. ~~operate.~~ Not only must OUR Government seek to restrain private anti-competitive conduct, but the Federal Government must also see to it that its own actions do not impede free and open competition.

All too often in the past, the Government has itself been a major source of unnecessary restraints on competition.

the years been subjected to pervasive regulation. Although regulation has been imposed in the name of the public interest, there is a growing awareness that the consumer is often the real loser. My Administration has taken the lead in sharpening this awareness over the past two years and will continue this effort.

I believe that far too many important managerial decisions are made today not by the marketplace responding to the forces of supply and demand but by the bureaucrat. In many instances a businessman cannot raise or lower prices, enter or leave markets, or provide or terminate services without the prior approval of a federal regulatory body. As a consequence, the innovative and creative forces of some of our Nation's major industries are suffocated by government regulation.

This is not the economic system that made this country great. Government regulation is not an effective substitute for vigorous competition in the American marketplace.

To be sure, in some instances government regulation may well protect and advance the public interest. But the time has come to recognize that many existing regulatory controls were imposed during uniquely transitory economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

During MY Administration ~~'s competition policy has been a commitment to change, and we have set in motion a far reaching regulatory reform program~~, important progress has been made both in strengthening antitrust enforcement and in reforming government economic regulation.

In the last two years, we have strengthened the Federal [redacted] antitrust enforcement agencies. The resources for the Antitrust Division and the Federal Trade Commission's Bureau of Competition have been increased by over 50 percent since Fiscal Year 1975. For the Antitrust Division, this has ~~represented~~ been the first real manpower increases since 1950. I am committed to ~~continuing to provide~~ providing these agencies with the necessary resources to do their important job.

This intensified effort is producing results. The Antitrust Division's crackdown on price-fixing resulted in indictment of 183 individuals during this period, a figure equalled only once in the 86 years since enactment of the Sherman Act. The fact that the Division presently has pending more grand jury investigations than at any other time in history shows these efforts are being maintained.

To preserve competition, the Antitrust Division is devoting substantial resources to investigating anti-competitive mergers and acquisitions. At the same time, the Division is litigating large and complex cases in two of our most important industries -- data-processing and telecommunications.

The cause of vigorous antitrust enforcement was advanced when I signed the Antitrust Procedures and Penalties Act of 1974, making violation of the Sherman Act a felony punishable by imprisonment of up to three years for individuals, and by a corporate fine of up to $1 million.

Also, in December 1975, I signed legislation repealing Fair Trade enabling legislation. This action alone, according to various estimates, will save consumers $2 billion annually.

On the second front of reducing regulatory actions that inhibit competition, I have signed the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, which will inject strong doses of competition into industries that long rested comfortably in the shade of federal economic regulation. Contrary to industry predictions, more competition has not led to chaos in the securities industry, and I am confident it will prove to be beneficial in our railroad industry.

My Administration has also sponsored important legislative initiatives to reduce the regulation of other modes of transportation and of financial institutions. An important element of my regulatory reform proposals has been to narrow antitrust immunities which are not truly justified. Although Congress has not yet acted on these proposals, I am hopeful that it will act soon. All industries and groups should be subject to the interplay of competitive forces to the maximum extent feasible.

A full measure of my commitment to competition is the Agenda for Government Reform Act which I proposed in May of this year. This proposal would require a comprehensive, disciplined look at ways of restoring competition in the economy. It would involve in-depth consideration of the full range of federal regulatory activities in a reasonable -- but rapid -- manner that would allow for an orderly transition to a more competitive environment.

This competition policy of regulatory reform and vigorous antitrust enforcement will protect both businessmen and consumers and result in an American economy which is stronger, more efficient and more innovative.

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I had hoped that the Congress would submit to me additional legislation to further strengthen competition and antitrust enforcement. However, the omnibus antitrust bill which I am returning unsigned contains three titles, two of which my Administration has supported and one which has caused me serious concern.

The first title would significantly expand the civil investigatory powers of the Antitrust Division. It would enable the Department of Justice not only to bring additional antitrust cases that would otherwise have escaped prosecution, but it would also better assure that unmeritorious suits will not be filed. These amendments to the Antitrust Civil Process Act were proposed by my Administration two years ago and I support them.

The second title of this bill would require parties to large mergers to give the Antitrust Division and the Federal Trade Commission advance notice of the proposed mergers. This would allow these agencies to conduct careful investigations prior to consummation of mergers and, if necessary, bring suit before often irreversible steps have been taken toward consolidation of operations. Again, this proposal is supported by my Administration.

I believe these two titles would contribute substantially to the competitive health of our free enterprise system.

Unfortunately, this legislation also includes a third title which would permit State attorneys general to bring antitrust suits on behalf of the citizens of their States to recover treble damages. I have previously expressed serious reservations regarding this "parens patriae" approach to antitrust enforcement.

As I have said before, the States have authority to amend their own antitrust laws to authorize such suits in state courts. If a state legislature, representing the citizens of the State believes that such a concept is sound policy, it ought to allow it. I do not believe that the Congress should bypass the state legislatures in this instance.

While questioning the basic parens patriae concept, I also urged Congress to provide adequate safeguards that would prevent abuses of the parens patriae authority. Although Congress narrowed this title in some respects, important safeguards were ignored.

The present bill requires the award of mandatory treble damages in successful parens patriae suits. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, I believe is no longer valid given the substantial increase in these penalties which I have previously signed into law. For example, a business can be fined $1 million and its officers imprisoned for three years. While no one condones price-fixing, the present bill would require the courts, without any discretion, to award treble damages which could bankrupt some companies, thereby adversely affecting innocent employees, shareholders and the local economy.

Also, the present bill continues to allow private attorneys to be hired by State attorneys general on a contingency fee basis, although it does eliminate percentage fee arrangements. My Administration has urged a flat ban against any such arrangements. By allowing private attorneys to seek out cases, the bill bypasses a State government's critical role in setting priorities for its citizens and appropriating the funds necessary to protect them.

I believe that the elimination of these safeguards could open the door to multi-million dollar "nuisance" suits by private attorneys who often are the major beneficiaries in such suits. Although proponents of this legislation have alleged that it will benefit consumers, in my view, consumers will

eventually pay the bill in the form of higher prices, while the lawyers instituting such litigation reap large legal fees. Ironically, it is also small businesses which will be hurt since they frequently cannot afford the costly litigation and are forced to settle suits which larger companies could successfully defend.

Congress was aware that I would veto the parens patriae provisions had they reached my desk standing alone. However, I was confronted with the more difficult burden of weighing the benefits provided by the Antitrust Civil Process Act amendments and the pre-merger notice provisions against my strong belief that the parens patriae provisions are not a responsible way to enforce the antitrust laws and my fear that these provisions could be misused. I have decided that I cannot sign any legislation including these parens patriae provisions.

I am returning the Hart-Scott-Rodino Antitrust Improvements Act of 1976 unsigned with the expectation that Congress will promptly enact the first two desirable titles of this legislation and send them to me for signature. The Senate can do this quickly and simply before adjournment by passing the two bills (H.R. 13489 and H.R. 14580) sent to it by the House earlier this year. This action can assure responsible and effective enforcement of the antitrust laws, without providing for the untested and unwise parens patriae authority. I urge the Congress to reconsider H.R. 8532 and in its place to pass H.R. 13489 and H.R. 14580.

CEA

THe CEA predicts that the effects of this bill will be highly adverse to the operation of the economy in the ne t few years. Pre-merger notification will reduce the number of mergers substantially, praticularly the acquisition of new prodcuts and enterprsies where such acquistion leads to a more efficient use of resources . Parens patriae amenements will give state attorneys general the inititiative on a variety of herman Act casesthat will likely harass the middle size and larger companies. Since the positive effect from Title I of the Act can be achieved by vetoing this bill and proposing Title I next year, the CEA proposes that the President veto this bill.

4 pages retyped by SMITH 9/30

TO THE HOUSE OF REPRESENTATIVES:

I am returning without my signature H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. While I had hoped to be able to sign sound antitrust legislation which was consistent with my policies of increased economic competition and strong antitrust enforcement, I cannot accept the "parens patriae" title ~~which is~~ included in this bill.

→ Insert

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