The original documents are located in Box 2, folder "Antitrust - Hart-Scott-Rodino Bill" of the John Marsh Files at the Gerald R. Ford Presidential Library.

INFORMATION

THE WHITE HOUSE

WASHINGTON

September 1, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: PHILIP BUCHEN

SUBJECT: Senate Consideration of Omnibus Antitrust Legislation

The Senate is continuing to debate a compromise omnibus antitrust bill that essentially adopts the provisions in three separate antitrust bills that recently passed the House. A final vote is expected next Wednesday after the Senate returns from recess. If the sponsors of this compromise amendment are successful, it will be sent to the House for action without a conference. The current prognosis is that the House is likely to pass the compromise amendment.

The following is a brief summary of the key provisions of that amendment and the most important modifications that have been made in response to Administration concerns:

Title I - Antitrust Civil Process Act Amendments - authorizes the Department of Justice to issue civil investigative demands to all persons who may have information relevant to an antitrust investigation. The Justice Department views enactment of these amendments as a vital step designed to close a gap in their enforcement authority. Despite the inclusion of a variety of safeguards to protect against governmental overreaching, however, some business opposition to these amendments continues. All provisions which were objectionable to the Administration were deleted in the Senate amendment under consideration which is the same as the House passed bill.

Title II - Premerger Notification - requires that corporations with assets or sales in excess of $100 million that plan to acquire corporations with assets or sales in excess of $10 million give the federal enforcement authorities 30 days advance notice, subject to a 20 day extension.

In addition to a premerger notification provision, the Senate had earlier provided for an automatic injunction against the consummation of mergers and acquisitions that could be invoked by federal enforcement authorities. Due to strong opposition by the Administration and others, the Senate amendment would drop this provision and adopt the limited House premerger notice provision. There is little controversy surrounding this title.

Title III - Parens Patriae - authorizes state attorneys general to seek damages in federal courts as a result of federal antitrust violations. In a March 17, 1976, letter to Minority Leader Rhodes, you expressed serious reservations regarding the concept of parens patriae, as well as concern regarding specific provisions of the House legislation (see Attachment A). In response to these specific concerns, the House parens patriae provisions were narrowed. The Senate amendment generally adopts the House version by limiting the scope of parens patriae actions, in practical effect, to price fixing violations by allowing the statistical aggregation of damages only in cases of price-fixing agreements. The Senate amendment, however, is broader than the House passed bill in that it would provide for mandatory treble damage awards and some latitude for the courts to permit contingency fees on other than percentage fee bases.

In addition to these major changes in the three major titles, the Senate amendment deleted all other titles in the bill that had earlier passed the Senate (e.g., declaration of antitrust policy, Antitrust Review Commission, and a miscellaneous set of amendments to the antitrust laws).

The Senate has made arrangements to vote on Wednesday, September 8 whether to adopt the proposed compromise amendment or go to Conference on the original Senate bill. The best judgement of your advisers is that the Senate will vote to adopt the proposed compromise amendment and that it is likely also to pass the House. However, the compromise amendment has not been printed and can be submitted to the Senate with such modifications as

Senators Abourezk and Hruska may agree upon. Thus it is possible to work with these two Senators to secure some modifications to the proposed compromise amdnement. The modifications which we would like to seek are:

(a) To make the award of damages up to a maximum of three times actual damages in parens patriae cases discretionary with the court.

(b) To allow no contingency fees in parens patriae cases.

My best judgement is the first such modification is possible if we can indicate that otherwise you will veto the legislation when it comes to you. However, I do not believe that the second modification is favorable under any circumstances, and it is certainly not as important as the first inasmuch as the only contingency fees allowable could not involve a percentage of recovery.

cc: Max Friedersdorf

THE WHITE HOUSE

TEXT OF A LETTER BY THE PRESIDENT
TO REPRESENTATIVE JOHN J. RHODES

March 17, 1976

Dear John:

As I outlined to you on Tuesday, March 16, I support vigorous antitrust enforcement, but I have serious reservations concerning the parens patriae concept set forth in the present version of H.R. 8532.

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.

In addition to my reservations about the principle of parens patriae, I am concerned about some specific provisions of the legislation developed by the House Judiciary Committee.

The present bill is too broad in its reach and should be narrowed to price fixing violations. This would concentrate the enforcement on the most important anti-trust violations.

In addition, the Administration is opposed to mandatory treble damage awards in parens patriae suits, preferring instead a provision which would limit awards only to the damages that actually result from the violation. The view that federal penalties were inadequate, which has been used to justify mandatory treble damages in the past, is no longer justifiable given the substantial increases in these penalties in recent years.

The Administration opposes extension of the statistical aggregation of damages, beyond parens patriae legislation, to private class action suits because this is outside of the appropriate reach of this legislation.

Finally, the Administration prefers discretionary rather than mandatory award of attorney's fees, leaving such awards to the discretion of the courts.

During the last two years, the Administration has sought to improve federal enforcement efforts in the antitrust area and the resources devoted to antitrust enforcement have increased substantially. In December 1974, I signed the Antitrust Penalties and Procedures Act which increased maximum penalties from $50,000 to $1 million for corporations and $100,000 for individuals. As I indicated above, I support vigorous antitrust enforcement, but I do not believe H.R. 8532 is a responsible way to enforce federal antitrust laws.

Sincerely,

/s/ Gerald R. Ford

The Honorable John J. Rhodes
Minority Leader
House of Representatives
Washington, D.C. 20515

ROBERT McCLORY
13TH DISTRICT, ILLINOIS

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September 17, 1976

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

Dear Mr. President:

In the passage of the so-called Antitrust Improvement Act of 1976, the Congress, upon the initiative of the Senate, has combined three antitrust measures into a single bill, H.R. 8532.

Title I, relating to civil investigative demands, and Title II, relating to pre-merger notification, are relatively noncontroversial measures which are consistent with your recommendations to strengthen the Federal antitrust laws.

Title III vests broad authority in the attorneys general of the 50 States to bring parens patriae actions in behalf of the citizens of the State for Sherman Act violations with the power to aggregate damages -- treble damages -- in price-fixing cases.

I recall in your letter of March 17, 1976, to the distinguished Minority Leader, Congressman John Rhodes, you expressed five reservations to parens patriae legislation. I believe that by way of amendments in the House and in the Senate which are contained in the bill that has been forwarded to you for your signature, those reservations have been substantially met.

First, you indicated that it was questionable policy for the Federal Government to by-pass the State legislatures by providing that State attorneys general may sue in federal court to enforce federal antitrust law. I believe that this reservation has been substantially met by the inclusion of a provision which permits any State that believes that the parens patriae concept is not sound policy to withdraw itself from the application of this title.

Second, you indicated that the provision concerning the aggregation of damages should not be extended beyond parens patriae suits to private class actions. Not only does the bill on your desk meet this objection by striking the authority for private class actions but it goes further than your suggestion by limiting the provisi

concerning aggregation of damages to parens patriae cases where there has been unlawful price fixing.

Your third objection was that the bill should be narrowed to price fixing violations. Although technically a State might bring an action for any violation of the Sherman Act, it should be noted that aggregation of damages is permitted only with regard to price fixing. In reality, if a plaintiff cannot aggregate damages in large class actions, the courts, in all probability, will dismiss the actions as "unmanageable." Some courts have indicated that it might take one hundred years to put each member of a class of millions of people on the stand to indicate what injury they individually suffered. In short, although technically the State may bring an action for any violation of the Sherman Act, I believe that the State will generally be successful only in price fixing situations. Therefore, by narrowing the aggregation provision to price fixing, I believe that we have substantially met your reservation.

Your fourth reservation was that the bill provides for mandatory treble damages rather than actual damages. You are definitely on target in suggesting that damages beyond single damages are punitive in several aspects. It should be pointed out, however, that the bill as mentioned above will be of limited utility. It will focus upon the most objectionable of antitrust violations: price fixing. It is clear from the legislative history in both the House and the Senate that Congress intended to limit "price fixing" to a "conscious, willful, overt, deliberate, intentional, actual agreement to fix prices." In view of this limitation, the Senate and the House believed it was "superfluous" to accept an amendment which I offered to the effect that a defendant acting in good faith need only pay actual damages. The legislative history now appears to be clear that the definition of "price fixing" is intended to be so narrow that it is not generally possible to fix prices while acting in good faith. There are occasions, however, where a businessman will rely on prior judicial or administrative precedent which clearly indicates that his actions are legal, only later to find himself in a situation where the precedent on which he relied has been overruled. In those very limited situations, the courts have indicated that it might be unjust to impose any damages at all upon the defendant. Therefore, it is my belief that this reservation has been substantially met.

Your last reservation was that you would prefer that attorneys' fees that are awarded to a prevailing plaintiff be done so at the court's discretion rather than by statutory mandate. It is the purpose of the parens patriae title to create a vehicle for the enforcement of the Clayton Act, which has been law since 1914. Since 1914, it has been true that a prevailing plaintiff is entitled, by statute, to a reasonable attorney's fee. In enacting the legislation, the Congress did not intend to change that well-established principle. But it did provide the safeguard that the fee must be "determined" by the court and not merely approved by it. Thus, there is some discretion in the awarding of attorneys' fees.

I realize that the question of attorneys' fees is a matter of considerable controversy. In view of the complex nature of this question, it was thought more appropriate to reserve any further changes for separate legislation where the question of statutory attorneys' fees could be addressed in principle rather than in piecemeal fashion. In this solution, I hope you will concur.

Therefore, in general, it is my opinion that the measure passed by the House is consistent with your recommendations for strengthening the Federal antitrust laws. It will enable the Department of Justice to take more effective steps toward eliminating anti-competitive and monopolistic practices -- and promoting competition in our private enterprise system.

This bill is not perfect in every respect. But it is vastly improved over those versions that were originally referred to the Judiciary Committees of both Houses. If this bill is signed into law, in my opinion it will be perceived as the fourth milestone in the history of antitrust, standing as tall as the Sherman Act, the Clayton Act and the Celler-Kefauver Act.

In your consideration of giving approval to this measure, I would be pleased -- at your convenience -- to confer with you further.

Sincerely yours,

Bob McClory

Robert McClory
Member of Congress

RMcC:mh

cc: Philip Buchen
Counsel to the President

Edward H. Levi
Attorney General

Harold R. Tyler, Jr.
Deputy Attorney General

September 21, 1976

MEMORANDUM FOR: ED SCHMULTS

FROM: JACK MARSH

Very shortly the President will have to address anti-trust legislation.

As you are aware, there has been considerable industry interest in this measure. I think it would be helpful if you could prepare a summary of industry expressions to indicate (1) the concerns, (2) what the industry spectrum is meaning type of manufacturer, and (3) the attitude of trade and business groups and what their spectrum is.

If there are industry and trade groups who favor the legislation, that should also be presented.

I believe this will be helpful because the last time this subject came up, the President asked for industry's views.

Many thanks.

JOM/dl

E. S.
P. W. B.

September 21, 1976

Dear Bob:

On behalf of the President, I wish to thank you for your September 17 letter presenting an analysis of the provisions of H.R. 8532, the so-called Antitrust Improvements Act of 1976.

He appreciates having this careful presentation, and has directed the appropriate advisers to study it thoroughly.

With kindest regards,

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable Robert McClory
House of Representatives
Washington, D.C. 20515

cc: w/inc to Philip Buchen for further handling
bcc: w/inc to Bill Nicholson - FYI (Note final Para of inc.)

MLF:JEB:VO:jem

,14 Re HR 8532 Interview regarding unfavorable

9-20

ROBERT McCLORY
13TH DISTRICT, ILLINOIS

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September 17, 1976

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

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MF

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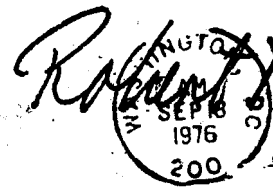

The Honorable Gerald R. Ford
The White House
Washington, D. C. 20500

HUGH SCOTT
PENNSYLVANIA

United States Senate

OFFICE OF THE MINORITY LEADER
WASHINGTON, D.C. 20510

September 21, 1976

The President
The White House
Washington, D. C.

Dear Mr. President:

Early in the first session, Senator Hart and I introduced an ambitious omnibus antitrust reform bill--the Antitrust Improvements Act of 1975. As you know, the House passed the measure last Thursday by a wide margin.

The bill we send to you bears only the slightest resemblance to the original Hart-Scott bill. It has suffered through a year and a half of intense debate. Students of history will ponder its tortured career for generations to gain insight into the mysteries of the legislative process.

At every stage in its history we have whittled away at its provisions. For example, of the original seven titles, only three survive. Wholly eliminated were the provisions dealing with the automatic TRO in certain merger cases, the provisions relating to the use of pleas of nolo contendere in civil actions, the provision authorizing the Department of Justice to issue C.I.D.'s to parties before the administrative agencies, and the provision allowing access to grand jury documents in certain civil cases. In fact, in the C.I.D. portion of the bill we made every change requested by the Administration.

The most far-reaching change occurred in the parens patriae title. While the innovative heart of the measure is intact, its scope has been severely curtailed. We have made its provision prospective only. We have eliminated the right of consumers suing under the federal rules to aggregate damages statistically. We have eliminated the right of the state Attorneys General to sue for damage to the state's general economy. We have prohibited the award of percentage contingency fees. And we have effectively limited the scope of the remedy to that most notorious of antitrust offenses--price fixing.

I must state candidly that I had privately urged many of these changes in an attempt to accommodate what I preceived to be your views, and not merely to enhance the bill's chances of passage in either house of Congress. In the spirit of compromise, Senator Hart accepted the limiting amendments, even though he knew we had the votes.

With this history in mind, I stated last week on the Senate floor that "It is a bill that I believe President Ford can sign". I am enclosing a copy of Bob McClory's letter to me in which he expresses his pleasure with final passage of the bill. In it he also observes that we can see how responsibly the state attorneys general exercise their new authority in the course of the next year or two. If the feared abuses materialize, then Congress will trim back the law. Similarly, under the bill's provisions, the various state legislatures can themselves remove their states from the ambit of parens patriae at any time if experience shows the measure to have been ill-advised. On the other hand, if the bill has a salutary effect on antitrust enforcement and competition, as I believe, that's all to the good.

I am, of course, convinced that the entire bill has merit. By enhancing the likelihood of detection of antitrust violations, and by increasing the potential liability therefor, we will discourage future illegal anticompetitive activity. In that way we can eliminate stultifying and unnecessary governmental regulation and unleash the creative forces of our free market economy.

In my view, the measure is a necessary element of your own regulatory reform program.

I stand at the ready to answer any questions you may have as to the bill's provisions.

With warmest personal regard,

Sincerely,

Hugh Scott

Hugh Scott
Republican Leader

ROBERT McCLORY
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September 17, 1976

The Honorable Hugh Scott
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Hugh:

I am pleased to report that the House concurred in the Senate amendments to the antitrust bill in which you were particularly interested.

It seems unfortunate that the two parts of the bill in which I took a particular interest prior to House passage should have been retained in a watered-down and confused form -- leaving doubt as to the interpretation on the subjects of contingent fees and treble damages.

I am aware of the complete good faith which you demonstrated and your apprehension that any further House amendments might have jeopardized final passage.

I am reconciled to what has occurred notwithstanding my efforts to restore the House language on these two parts.

I am sure your position and mine are virtually identical. If the measure is interpreted later in a way which neither you nor I intended, I will then undertake to introduce corrective legislation at the next Congress.

I want to reiterate my assurances that I do indeed prize your friendship and respect your judgment in all things. In obtaining assurances from Senators Allen, Hruska and Thurmond that they would not stage another filibuster, I was convinced that if the House had acted on the amendments which I favored, there would have been ample opportunity for final passage of the antitrust bill.

Sincerely yours,

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Sincerely yours,

Robert McClory
Member of Congress

RMcC:mm

United States Senate

COMMITTEE ON ARMED SERVICES
WASHINGTON, D.C. 20510
OFFICIAL BUSINESS

Strom Thurmond
U. S. S.

hand- delivered

September 22, 1976

Dear Senator Allen:

This will acknowledge receipt and thank you for the September 17 letter to the President in which you joined with 11 of your colleagues to urge a veto of H.R. 8532, the so-called Antitrust Improvements Act of 1976, and to offer to help expedite passage of H.R. 13489 and H.R. 14580, in lieu of the former bill.

Please be assured I shall call your letter promptly to the attention of the President and the appropriate Presidential advisers. You may be assured that your recommendations will be fully studied.

With kindest regards,

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable James B. Allen
United States Senate
Washington, D.C. 20510

bcc: w/inc to Philip Buchen for further handling

MLF:JEB:VO:kir

Identical letters to all signees.

9-20

United States Senate
COMMITTEE ON ARMED SERVICES
WASHINGTON, D.C. 20510

SE 16

September 17, 1976

The President
The White House
Washington, D. C.

SEP 17 1976

Dear Mr. President:

Yesterday, H. R. 8532, the Hart, Scott, Rodino Antitrust Improvements Act of 1976, passed in the House of Representatives by a vote of 242 to 138.

The parens patriae concept embraced by Title III of this legislation is most dangerous. It will encourage private attorneys to become innovative in their quest for more antitrust cases. It will pose a temptation for the State Attorney General to use his office as a political platform to move up. As we all know, a great majority of the antitrust cases are settled. Other than based on a percentage of recovery, contingency fee arrangements are still possible. Historically, the class actions under Rule 23 of the Federal Rules of Civil Procedure give us a valuable lesson on the subject of astronomical attorneys fees. Since such a large number of the cases are settled in favor of the plaintiff, the plaintiff's attorney runs little or no risk of losing his fee. Even a minor risk of loss of a case is not a risk business, particularly small businesses, can take. In the end, business will raise prices to pay for more settlements. The already hard pressed consumer will pay the price increases.

Your letter of March 1976 to the Minority Leader of the House of Representatives offered a solution which should have been adopted. The States, through their legislatures, should decide whether State Attorneys General should hire private attorneys to bring antitrust suits in the Federal courts. There are other solutions as well.

We urge you to veto H. R. 8532, because of the inclusion in the bill of parens patriae, Title III. Knowing that you favor strongly well founded antitrust legislation, as do we, an offer to sign a Civil Investigative Demands Bill and a Premerger Notification Bill would put you on record as favoring strong antitrust legislation.

Now before the Senate Judiciary Committee are two separate bills. Both bills have been passed by the House of Representatives. Should this solution find favor with you, we pledge our support to work to insure that H. R. 13489, a bill which closely resembles Title I, the Antitrust Civil Process Act Amendments of 1976, H. R. 8532, and H. R. 14580, a bill which closely resembles Title II, the Antitrust Premerger Notification Act, of H. R. 8532, are quickly reported and brought to a vote in the Senate.

With kindest personal regards and best wishes,

Respectfully,

Strom Thurmond

Strom Thurmond

ST/yaa

Roman L. Hruska

Henry Bellmon

James A. McClure

James B. Allen

Jesse Helms

Paul Laxalt

Henry F. Bartlett

Gaylord Nelson

Carl T. Curtis

William L. Scott

John Tower

THE WHITE HOUSE
WASHINGTON

[redacted]

Strom Thurmond
Roman L. Hruska
Henry Bellmon
James A. McClure
James B. Allen
Jesse A. Helms
Paul Laxalt
Dewey F. Bartlett
Paul J. Fannin
Carl T. Curtis
William Lloyd Scott
John Tower

September 22, 1976

Dear Hugh:

The President has asked me to thank you for providing him, under date of September 21, your analysis of the provisions of the Antitrust Improvements Act of 1975.

He appreciates having your views on this bill and wishes me to assure you that these will be most helpful to him in reviewing the legislation.

With kindest regards,

Sincerely,

Max L. Friedersdorf
Assistant to the President

The Honorable Hugh Scott
Minority Leader
United States Senate
Washington, D.C. 20510

[redacted] w-incoming to Philip Buchen for further handling.

Note: John Marsh rec'd the letter from Sent. Scott and provided copies to the President, Phil Buchen and Ed Schmults.

MLF:JEB:VO:vo

9-22

HUGH SCOTT
PENNSYLVANIA

United States Senate

OFFICE OF THE MINORITY LEADER
WASHINGTON, D.C. 20510

September 21, 1976

The President
The White House
Washington, D. C.

Dear Mr. President:

Early in the first session, Senator Hart and I introduced an ambitious omnibus antitrust reform bill--the Antitrust Improvements Act of 1975. As you know, the House passed the measure last Thursday by a wide margin.

The bill we send to you bears only the slightest resemblance to the original Hart-Scott bill. It has suffered through a year and a half of intense debate. Students of history will ponder its tortured career for generations to gain insight into the mysteries of the legislative process.

At every stage in its history we have whittled away at its provisions. For example, of the original seven titles, only three survive. Wholly eliminated were the provisions dealing with the automatic TRO in certain merger cases, the provisions relating to the use of pleas of nolo contendere in civil actions, the provision authorizing the Department of Justice to issue C.I.D.'s to parties before the administrative agencies, and the provision allowing access to grand jury documents in certain civil cases. In fact, in the C.I.D. portion of the bill we made every change requested by the Administration.

The most far-reaching change occurred in the parens patriae title. While the innovative heart of the measure is intact, its scope has been severely curtailed. We have made its provision prospective only. We have eliminated the right of consumers suing under the federal rules to aggregate damages statistically. We have eliminated the right of the state Attorneys General to sue for damage to the state's general economy. We have prohibited the award of percentage contingency fees. And we have effectively limited the scope of the remedy to that most notorious of antitrust offenses--pricefixing.

I must state candidly that I had privately urged many of these changes in an attempt to accommodate what I preceived to be your views, and not merely to enhance the bill's chances of passage in either house of Congress. In the spirit of compromise, Senator Hart accepted the limiting amendments, even though he knew we had the votes.

With this history in mind, I stated last week on the Senate floor that "It is a bill that I believe President Ford can sign". I am enclosing a copy of Bob McClory's letter to me in which he expresses his pleasure with final passage of the bill. In it he also observes that we can see how responsibly the state attorneys general exercise their new authority in the course of the next year or two. If the feared abuses materialize, then Congress will trim back the law. Similarly, under the bill's provisions, the various state legislatures can themselves remove their states from the ambit of parens patriae at any time if experience shows the measure to have been ill-advised. On the other hand, if the bill has a salutary effect on antitrust enforcement and competition, as I believe, that's all to the good.

I am, of course, convinced that the entire bill has merit. By enhancing the likelihood of detection of antitrust violations, and by increasing the potential liability therefor, we will discourage future illegal anticompetitive activity. In that way we can eliminate stultifying and unnecessary governmental regulation and unleash the creative forces of our free market economy.

In my view, the measure is a necessary element of your own regulatory reform program.

I stand at the ready to answer any questions you may have as to the bill's provisions.

With warmest personal regard,

Sincerely,

Hugh Scott

Hugh Scott
Republican Leader

ROBERT McCLORY
13TH DISTRICT, ILLINOIS

ROOM 2452
RAYBURN HOUSE OFFICE BUILDING
(202) 225-5221

JUDICIARY COMMITTEE

SELECT COMMITTEE ON INTELLIGENCE

U.S. INTERPARLIAMENTARY UNION DELEGATION

Congress of the United States

House of Representatives

Washington, D.C. 20515

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WAUKEGAN, ILLINOIS 60085
(312) 336-4554

McHENRY COUNTY
McHENRY COUNTY COURTHOUSE
2200 SEMINARY ROAD
WOODSTOCK, ILLINOIS 60098
(815) 338-2040

September 17, 1976

The Honorable Hugh Scott
Minority Leader
United States Senate
Washington, D.C. 20510

Dear Hugh:

I am pleased to report that the House concurred in the Senate amendments to the antitrust bill in which you were particularly interested.

It seems unfortunate that the two parts of the bill in which I took a particular interest prior to House passage should have been retained in a watered-down and confused form -- leaving doubt as to the interpretation on the subjects of contingent fees and treble damages.

I am aware of the complete good faith which you demonstrated and your apprehension that any further House amendments might have jeopardized final passage.

I am reconciled to what has occurred notwithstanding my efforts to restore the House language on these two parts.

I am sure your position and mine are virtually identical. If the measure is interpreted later in a way which neither you nor I intended, I will then undertake to introduce corrective legislation at the next Congress.

I want to reiterate my assurances that I do indeed prize your friendship and respect your judgment in all things. In obtaining assurances from Senators Allen, Hruska and Thurmond that they would not stage another filibuster, I was convinced that if the House had acted on the amendments which I favored, there would have been ample opportunity for final passage of the antitrust bill.

Sincerely yours,

Robert McClory
Member of Congress

RMcC:mm

THE WHITE HOUSE

WASHINGTON

September 23, 1976

MEMORANDUM FOR: JACK MARSH

FROM: ED SCHMULTS

SUBJECT: Reaction by the Business Community to Antitrust Legislation

This is in response to your request for a summary of the mail which has been received at the White House from industry leaders relative to enrolled bill H.R. 8532, the "Hart-Scott-Rodino Antitrust Improvements Act of 1976." Set forth below is a highly distilled analysis of the attached file.

A. Total number of letters. The attached file contains more than 75 letters received from businessmen across the country. All oppose the legislation.

B. Range of interests represented. The businessmen whose views are reflected in this file represent the broad spectrum of American business, from Fortune's 500 to small, privately held corporations. Moreover, the concerns expressed reflect the views of industry in general and are not confined to any specific product lines.

The NAM, the Chamber of Commerce, and the Business Roundtable oppose the legislation. The Roundtable has not expressed its opposition publicly.

C. Nature of Objections.

(i) Several writers object to the bill in general.

(ii) No more than a handful object to the CID or pre-merger notification provisions.

(iii) All object to the parens patriae provisions for a variety of reasons:

- Many claim that it will compel companies to enter into "black-mail" settlements.

- Many contend that it will only benefit lawyers.

- A large number believe that it will clog our courts with frivolous suits and increase the prices of commodities.

D. General. The opposition of the business community is widespread and deep and should not be underestimated. Several persons who were representing a large number of companies told me that of all bills the President was considering that were viewed adversely by the business community, the antitrust bill would rank number one to be vetoed.

THE WHITE HOUSE

WASHINGTON

Date: September 24, 1976

MEMORANDUM FOR: PHIL BUCHEN

FROM: WILLIAM W. NICHOLSON

SUBJECT: National Association of Attorneys General re: HR8532

The attached is for your appropriate handling.

Thank you.

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ACTION
T/D
SCHEDULE DD.
DATE RECEIVED
SEP 24 1976
MESSAGE
SPEAKERS BUREAU
OTHER Mrs Bucher
APPOINTMENT OFFICE

PRESIDENT GERALD FORD
WHITE HOUSE
WASHINGTON DC 20500

THIS ASSOCIATION URGES YOU TO SHOW YOUR COMMITMENT TO FOSTER COMPETITION AND BRING PRICES DOWN FOR THE CONSUMER BY SIGNING INTO LAW HR8532. YOUR OBJECTIONS, AS STATED IN YOUR MARCH 17, 1976 LETTER TO REPRESENTATIVE JOHN J RHODES, HAVE BEEN LARGELY RESOLVED BY THE COMPROMISE VERSION. WE REQUEST A PERSONAL MEETING WITH YOU IF YOU HAVE RESERVATIONS ABOUT SIGNING THIS ANTI-TRUST BILL INTO LAW.

NATIONAL ASSN OF ATTORNEYS GENERAL

18:07 EST

MGMCOMP MGM

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THE WHITE HOUSE
WASHINGTON

9/24

To: JACK MARSH

~~TO:~~ ED SCHMULTS

FROM: ~~STEVE McCONAHEY~~

For your information_____

Comments: FYI

Jack - Here is the letter we discussed.

September 21, 1976

President Gerald R. Ford
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D. C. 20500

Dear President Ford:

We, the undersigned, are a coalition of consumer, business, and labor groups that urge you to sign into law H.R. 8532, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which would strengthen antitrust enforcement on both state and federal levels.

We strongly favor Title III which authorizes states to sue price fixers to recover damages for consumers. Consumers now lose billions of dollars yearly from price fixing and other anti-trust violations,according to federal authorities. Public confidence in government's ability to protect both consumers and businesses from antitrust violators, who seek to enrich themselves at the great expense of others, has been shaken. This legislation which would serve as an effective deterrent to those who choose to indulge in anticompetitive practices represents a step in the right direction to restore public confidence.

In your State of the Union address last year, you promised "to foster competition and to bring prices down for the consumer." H.R. 8532 is legislation that would help you fulfill your promise by assuring consumers benefits the American system was designed to achieve. This legislation is entirely consistent with your commitment to the American people that under your Administration, antitrust enforcement would be a major remedy to the economic problems facing the country.

We urge you to provide strengthened antitrust enforcement for both consumers and businesses by signing this vital legislation.

Respectfully submitted,

National Retired Teachers Association
American Association of Retired Persons
Consumer Federation of America
Computer and Communications Industry Assn.
United Mine Workers of America
National Farmers Union
Congress Watch
Citizens For Class Action Lawsuits
National Council of Senior Citizens
United Steelworkers of America
National Consumer Congress
International Union of Electric, Radio and Machine Workers
Amalgamated Clothing and Textile Workers Union
United Auto Workers
National Rural Electric Cooperative Assn.
Oil, Chemical and Atomic Workers Intntl. Union
MCI Communications Corp.
International Ladies Garment Workers Union
American Federation of St County and Municipal Employees
Congress of Hispanic American Citizens
National Congress of Petroleum Retailers

SEP 25 1976

THE WHITE HOUSE

WASHINGTON

September 25, 1976

MEMORANDUM FOR: PHILIP BUCHEN
JIM LYNN
JACK MARSH
BILL SEIDMAN

FROM: ED SCHMULTS

SUBJECT: Consideration of the Hart/Scott/ Rodino Antitrust Improvements Act of 1976

In connection with consideration of the antitrust legislation, attached for your review is a proposed statement for use by the President in acting on the legislation.

Attachment A is a suggested outline of the antitrust and competition policy of the Ford Administration.

Attachment B would be the last part of the statement if the President decides to sign the antitrust bill.

Attachment C would be used if the President decides to veto the bill.

While I can't find any precedent for a statement in the form I am suggesting, I think there is real benefit, from the President's standpoint, in putting whatever action he takes on the bill in the context of the Administration's overall antitrust policy. The President's antitrust record is a good one and action on the antitrust bill is an event which we can use to call attention to his record. Hopefully, it will be a useful political document in rebutting the attacks Carter and Mondale have made on "weak" Republican antitrust efforts. If the President decides to veto the bill, we could mitigate the down side risk by "forcing" a review of his overall record.

A

ATTACHMENT A

STATEMENT OF THE PRESIDENT

THE ANTITRUST AND COMPETITION
POLICY OF THE FORD ADMINISTRATION

This country has become the economic ideal of the free world because of its dedication to the free enterprise system. Full and vigorous competition has been the watchword of America's economic progress.

My Administration has always considered competition to be the driving force of our economy. Our competitive markets promote efficiency and innovation by rewarding businesses that produce desirable products at low cost. In a competitive industry, inefficient companies are forced to become efficient or be driven out of business. Competition is also a powerful stimulus to the development of new products and manufacturing processes. The free market system rewards the successful innovator.

In the United States, promotion of competition is consistent with our political and social goals. Any excessive concentration of either economic or political power has traditionally been seen as a threat to individual freedom. Under competitive conditions, economic power is fragmented; no one firm can control prices or supply. Political power is also 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 today's international economy, members of a vigorously competitive economic system enjoy unlimited worldwide opportunities and contribute significantly to the stability of their domestic economies.

But perhaps the most compelling justification for a free market economy is that it best serves the interests of our citizens. In a freely competitive market, consumers enjoy the freedom to choose from a wide range of 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 an important role in protecting and advancing the cause of competition.

Through enforcement of our antitrust laws, the Antitrust Division of the Department of Justice and the Federal Trade Commission must assure that competitors do not engage in anticompetitive practices.

A vigorous antitrust enforcement policy is most important in deterring price-fixing agreements between competitors that result in higher costs to consumers -- and less production. As we come out of an inflationary period and into a period of economic growth and expansion,

my Administration will work to assure that the price mechanism is not artificially manipulated for private gain.

It is important to realize that this Administration has been the first one in forty years to recognize a second way the Federal Government vitally affects the competitive environment in which businesses operate. Not only must the Federal Government seek to restrain private anticompetitive conduct, but the Federal Government must also see to it that the governmental process does not impede free and open competition.

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 vigorously continue this most worthwhile 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, provide or terminate services without the prior approval of a Federal regulatory body. As a consequence, the innovative and creative forces of major industries are suffocated by governmental 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 governmental 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 periods which differed greatly from today's economic conditions. We must repeal or modify those controls that suppress rather than support fair and healthy competition.

My Administration's pro-competitive policy has attempted to make those necessary modifications. We have set in motion a far-reaching regulatory reform program. And this program has been accompanied by a policy of vigorous antitrust enforcement to reinforce our commitment to competition.

In the last two years, the antitrust laws have been vigorously enforced by strengthened 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 represented the first real manpower increases since 1950. I am committed to continuing to provide 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 a competitive market structure by preventing anti-competitive mergers and acquisitions, the Antitrust Division is devoting substantial resources to merger investigations. At the same time, the Division is litigating large and complex anti-monopoly cases in two of our most important industries -- computers and telecommunications. Cases have also been filed involving such anticompetitive business actions as restrictive allocation of customers and markets.

I advanced the cause of vigorous antitrust enforcement with the signing of the Antitrust Procedures and Penalties Act of 1974, which made 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.

Two regulatory reform proposals I have signed -- the Securities Act Amendments of 1975 and the Railroad Revitalization and Regulatory Reform Act, inject strong dosages 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 and elsewhere.

My Administration has also sponsored important legislative initiatives to reduce regulation of other modes of transportation and the regulation of financial institutions. An important element of my regulatory reform proposals has been the narrowing antitrust immunities which Federal legislation currently grants to industry rate bureaus thereby permitting these groups to restrain competition under official government sanction. Although Congress has not yet acted on these proposals, I am hopeful that the elected representatives of our people will take action on these proposals soon, since every day which passes

means millions of dollars of excessive costs and inefficiencies in our economic system.

The Administration also has underway a comprehensive review of many other legislative immunities to the antitrust laws and I intend to eliminate those immunities that are not truly justified -- if the Congress will concur. All industries and groups, however regulated and by whom, should be subject to the interplay of competitive forces to the maximum extent feasible.

A full measure of my commitment to competition is the proposed Agenda for Government Reform Act. This would require a comprehensive, disciplined look at ways of restoring competition in the economy. This 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, which includes regulatory reform and invigorated antitrust enforcement, will protect those businessmen who desire to be competitive from anti-competitive actions both by government regulators and by other business competitors. In turn, the American consumers will enjoy the substantial benefits provided by full and open competition within the business community.

B

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 the 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 proposal. 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 the 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.

However, 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.

However, Congress has narrowed this title in order to remove the possibility of significant abuses. Earlier, I had urged that the scope of this legislation be narrowed to price-fixing activities 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 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 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.

ATTACHMENT C

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 I had hoped that the Congress would submit to me additional legislation to further strengthen competition and antitrust enforcement. However, Congress passed an omnibus antitrust bill containing 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 the Administration two years ago.

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 proposal. 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 was supported by the Administration.

I believe these two titles would 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.

I also urged Congress to provide adequate safeguards that would prevent abuses of parens patriae. 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 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 and 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. The Administration has urged a flat ban against any such arrangements. By allowing private attorneys to seek out cases, the bill avoids the state government's 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 can successfully defend.

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

I am vetoing the Hart/Scott/Rodino Antitrust Improvements Act of 1976 with the expectation that Congress will promptly enact the first two 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 titles sent to it by the House earlier this year. This action will better assure the American people of responsible and effective enforcement of the antitrust laws.

EVELLE J. YOUNGER
ATTORNEY GENERAL

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL
Department of Justice
110 WEST A STREET, SUITE 600
SAN DIEGO, CALIFORNIA 92101
(714) 236-7770

September 27, 1976

Philip W. Buchen
Counsel to President Ford
The White House
Washington, D. C. 20500

Re: H.R. 8532 - Parens Patriae Legislation

Dear Mr. Buchen:

Attached is copy of letter dated September 17, 1976 sent to President Ford by Attorney General Younger pertaining to H.R. 8532.

Very truly yours,

ANTHONY C. JOSEPH
Deputy Attorney General

ACJ:md
Enclosure

AIR MAIL SPECIAL DELIVERY

EVELLE J. YOUNGER
ATTORNEY GENERAL

(213) 736-2304

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

3580 WILSHIRE BLVD.
LOS ANGELES, CALIFORNIA 90010

September 17, 1976

President Gerald R. Ford
The White House
Washington, D.C.

Dear Mr. President:

This letter is to urge you to sign H.R. 8532 which includes important amendments to the antitrust laws. California is particularly interested in the new parens patriae provisions.

Support of parens patriae representation in the antitrust field has a long history within the California Attorney General's Office. It was this office that brought the initial case in which the Court of Appeals indicated that while parens patriae was a valuable concept, approval would be needed from Congress. Thereafter, this office assisted in the drafting and development of the bill. We have continued to follow and support the bill.

It is our firm belief that parens patriae representation can provide a strong deterrent to antitrust violations. The representation of natural persons by state attorneys general in cases involving price fixing of consumer commodities is clearly necessary to discourage this most basic antitrust violation.

Your past reservations regarding antitrust parens patriae representation have led to amendments of the bill. The bill as passed by the Congress is a workable and valuable tool which will be well used in California, and other states, to protect consumers and to provide effective antitrust enforcement. I strongly recommend that you sign this most important bill.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

ca

Antitrust

September 27, 1976

MEMORANDUM FOR: DICK CHENEY

FROM: JACK MARSH

John Rhodes and Roman Hruska have filed a request to meet with the President for 10 minutes to discuss the antitrust bill, particularly the parens patriae section. They want the President, before he acts, to be aware of their concerns about this legislation and why it should not be signed.

JOM/dl

September 28, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: JACK MARSH

SUBJECT: Antitrust Legislation

The last day for action on the Antitrust Bill is Thursday, September 30th.

Because of the importance of the bill and the difficulty of addressing it, it was felt you may wish to meet for 15 minutes with some of your advisers in the building, namely Phil Buchen, Ed Schmults, Jim Lynn, Dick Cheney, Max Friedersdorf and Jack Marsh to review where we stadd.

In lieu of that, we have tried to put this on paper.

Finally, John Rhodes has called and specifically requested a meeting with you before you act on this bill for himself and Senator Hruska.

JOM/dl

SEP 29 1976

THE WHITE HOUSE

WASHINGTON

September 29, 1976

MEMORANDUM FOR: JACK MARSH

FROM: ED SCHMULTS

SUBJECT: The Antitrust Legislation

I think the President should be made aware of the action of House and Senate Conferees yesterday to authorize $10 million of LEAA funds to increase state antitrust enforcement programs. We now have the prospect of the antitrust bill giving new powers to state attorneys general and the federal government funding the enforcement efforts. See the attached article from today's Washington Post.

If the President decides to sign the antitrust legislation, I trust we are at least considering a signing ceremony. We could decide to run with the ball and take some credit for the new bill. Additionally, as you know, Senator Hart is quite ill and a ceremony at which he and Senator Scott would attend would be well received.

Attachment

THE WASHINGTON POST - September 29, 1976

WASH POST 9/29/76

Antitrust Fund Gains Support

House and Senate conferees yesterday agreed to authorize $10 million a year for three years in seed money to increase state antitrust enforcement programs.

The authorization was part of the Senate-passed Law Enforcement Assistance Administration authorization bill and was insisted upon by Sen. Edward M. Kennedy (D-Mass.) in conference although there was no comparable House provision.

House conferees polled and voted 7-2 to okay it after Judiciary Chairman Peter W. Rodino Jr. and Rep. William J. Hughes (both D-N.J.) supported the provision. They said it was a good way to give the states money to bring antitrust suits —without hiring outside lawyers — should President Ford sign the antitrust bill giving states the power to bring antitrust damage suits on behalf of their citizens. The measure is now on his desk.

September 29, 1986

Dear Senator:

Thank you for your September 29 letter to the President outlining for him your objections to the Antitrust Improvements Act of 1976 as it passed the Congress.

I know the President will appreciate having your comments on this legislation, and I shall call your letter promptly to his attention.

With kindest regards,

Sincerely,

Joseph S. Jenckes V
Special Assistant for
Legislative Affairs

The Honorable E.J. (Jake) Garn
United States Senate
Washington, D.C. 20510

bc: w/incoming to Philip Buchen for your information
bcc: w/incoming to James Cannon - for your information

JSJ:JEB:VO:vo

E. J. (JAKE) GARN
UTAH

4203 DIRKSEN SENATE OFFICE BUILDING
TELEPHONE: 202-224-5444

JEFF M. BINGHAM
ADMINISTRATIVE ASSISTANT

9-29

COMMITTEES:
BANKING, HOUSING AND URBAN AFFAIRS
AERONAUTICAL AND SPACE SCIENCES
DISTRICT OF COLUMBIA

United States Senate

WASHINGTON, D.C. 20510

September 29, 1976

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HAND DELIVERED
RECEP. AND SECURITY UNIT
THE WHITE HOUSE
WASHINGTON

President Gerald R. Ford
The White House
Washington, D.C. 20500

Dear Mr. President:

H.R. 8532, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, is now on your desk and must be acted on by midnight Thursday, September 30. I urge your veto because the bill is defective, particularly Title III--Parens Patriae.

Title III is defective because of changes in the provisions relating to contingency fees and expansion of the parens patriae concept. The version of the bill that passed the Senate in June, 1976, prohibited the use of "any person employed or retained on a contingency fee based on a percentage" of the award and restricted parens actions to "per se offense[s], or [actions] arising out of the fraudulent procurement or enforcement of a patent, in violation of the Sherman Act. . . . " Those provisions were drafted after a compromise agreement and I fear that the expansion of these concepts in the present bill will encourage numerous politically-motivated and frivolous suits. If this fear is realized, Title III will prove to serve the interests of lawyers and politicians rather than the general public.

My objection to H.R. 8532 is not based on a total rejection of its provisions. I supported the bill as it originally passed the Senate because I believed that bill provided a reasonable approach to antitrust enforcement. The present bill, however, expands the original concept to include parens actions for "any violation of the Sherman Act" and permits treble damages in any such action. The present bill also modifies the contingency fees concept of the earlier bill and this change may prove critical. These changes and others have expanded the bill beyond the bounds of required reform and it is therefore critically flawed. It should be vetoed.

Your support for effective antitrust legislation has been demonstrated, and I trust the American people will understand the wisdom of a veto of H.R. 8532. The interests of consumer and business alike can best

be served by passage of bills incorporating the general provisions of Titles I and II of this bill and I hope that your veto message will indicate your support--and willingness to sign--such measures.

With kind personal regards.

Sincerely,

Jake Garn

JG/lom

United States Senate

WASHINGTON, D.C. 20510

OFFICIAL BUSINESS

Jake Garn

U.S.S.

President Gerald R. Ford
THE WHITE HOUSE
Washington, D.C. 20500

September 30, 1976

Dear Senator:

In your letter of September 29 you have provided the President with a careful commentary on the provisions of H.R. 8532, the Antitrust Parens Patriae Act.

I know the President will find your views most helpful to him, and I shall call your letter to his attention at the earliest opportunity.

With kind regards,

Sincerely,

Joseph S. Jenckes V
Special Assistant for
Legislative Affairs

The Honorable Robert Morgan
United States Senate
Washington, D.C. 20510

bcc: w/incoming to Philip Buchen for appropriate handling
bcc: w/incoming to James Cannon - FYI

JSJ:JEB:VO:vo

ROBERT MORGAN
NORTH CAROLINA

9-30

United States Senate

WASHINGTON, D.C. 20510

September 29, 1976

The President
The White House
Washington, D.C.

Dear Mr. President:

I must respectfully urge you not to veto the Hart-Scott-Rodino antitrust bill. As you know, I acted as floor manager of the bill for Senator Hart, even though I was not a member of the Judiciary Committee, because of my experiences as a state attorney general trying to enforce antitrust law. This ended up being a very moderate bill, but still one which would have been of great benefit to me as a state official attempting to uphold the law.

I know the bill has been the object of a mail campaign, the results of which you are no doubt seeing. The quality of this campaign is shocking to me, for the deliberate distortions which have been circulated are simply wild. In general, the bill is represented as a burden to small businessmen unable to defend against parens patriae suits. This can be nothing more than a ploy to get as many people as possible to write Washington. Of course, the small businessman is not going to be the object of such suits; the people who would put him out of business are the more likely candidates. This approach is like objecting to bigamy laws on the grounds that celibate priests will bear the burden of them.

It has also been charged groundlessly that private attorneys or politically-motivated attorneys general will be the ones tormenting small businessmen. Only attorneys general may file parens patriae suits, and there is a provision in the bill which holds an attorney general personally liable, should he file a groundless suit.

What the parens patriae provision really does is provide for responsible state officials -- not the federal government -- to sue to recover damages from thousands of sales of small items on which the price has been fixed. For years, it has been possible for those who deliberately violate the law to plead nolo contendere, take a fine relatively small in relation to the take, and keep the proceeds of their illegality.

Mr. President, this is not hastily-drawn legislation designed to torment small businessmen. It is the result of years of experience with predatory anti-business law violation antithetical to the spirit of free enterprise. I urge you to sign the bill.

Respectfully,

Robert Morgan

Robert Morgan

RM/rjj

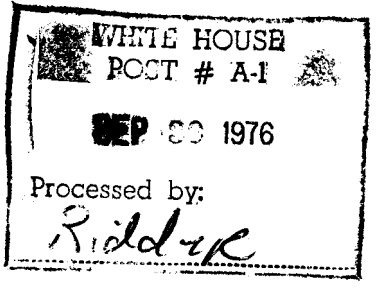
United States Senate

WASHINGTON, D.C. 20510

OFFICIAL BUSINESS

Robert Morgan
U.S.S.

The President
The White House
Washington, D.C.


WHITE HOUSE
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SEP 30 1976
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FOR IMMEDIATE RELEASE September 30, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

After careful reflection, I am signing into law today H.R. 8532 -- the Hart-Scott-Rodino Antitrust Improvements Act of 1976. 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.

more (OVER)

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.

more

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

I believe the record of this Administration stands as a measure of its commitment to competition. While I continue to have serious reservations about the "parens patriae" title of this bill, on balance, 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. To meet in part my objection, Congress wisely incorporated a proviso which permits a state to prevent the applicability of this title.

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 soundness of this novel and untested concept. Many of the concerns continue to trouble me.

I have also 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, the potential for abuse and harassment inherent in this provision still exists.

more

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.

# # #

FOR IMMEDIATE RELEASE September 30, 1976

Office of the White House Press Secretary

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FOR IMMEDIATE RELEASE September 30, 1976

Office of the White House Press Secretary

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THE WHITE HOUSE

FACT SHEET

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976 (H.R. 8532)

President Ford signed the Hart-Scott-Rodino Antitrust Improvements Act of 1976 today. He noted that this legislation will contribute to the Administration's overall competition policy of vigorous antitrust enforcement and regulatory reform.

This Act:

-- Broadens powers of the Department of Justice in conducting antitrust investigations.

-- Requires advance notice to the Justice Department and the Federal Trade Commission of major corporate mergers and acquisitions.

-- Authorizes state attorneys general to file suits to recover damages to citizens of the states resulting from certain antitrust violations.

MAJOR PROVISIONS

Title I. Antitrust Civil Process Act Amendments

This title adopts Administration-sponsored legislation to amend the Antitrust Civil Process Act of 1962. It authorizes the Department of Justice to issue a pre-complaint subpoena--called a Civil Investigative Demand ("CID") -- not only on targets of the investigation, as permitted under current law, but also to third parties (e.g., suppliers and customers) who have information relevant to an investigation. The bill would also allow the Department to obtain, not only documentary evidence as under current law, but also answers to oral and written questions from recipients of such a CID. These amendments also provide safeguards, including right to counsel by the recipient of the CID, to assure that these powers are not abused.

Title II. Premerger Notification

H.R. 8532 requires companies with assets or sales in excess of $100 million to notify the Department of Justice and the Federal Trade Commission in advance of the acquisition of, or merger with, any company with assets or sales in excess of $10 million. This will allow the antitrust enforcement agencies sufficient time to investigate the competitive consequences of major mergers and acquisitions and, if necessary, to obtain injunctive relief before steps have been taken toward consolidation of the operations.

(more)

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.

Mandatory treble damages would be awarded in successful suits and would either be distributed to individuals in a manner approved by the court or 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 damages to each individual on whose behalf the suit was brought.

The bill prohibits state attorneys general from hiring outside lawyers on a contingency fee based on a percentage of the award. However, it would allow private attorneys to bring suit on behalf of the state and their fees would be determined by the court.

SUMMARY

In his signing statement, the President noted that the first two titles of the bill--the Antitrust Civil Process Act amendments and premerger notification--were desirable. In addition, the President reiterated his concerns with the potential for abuse of the parens patriae title and said that its implementation would be carefully reviewed to assure that it was responsibly enforced.

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