The original documents are located in Box C49, folder "Presidential Handwriting, 9/29/1976 (2)" of the Presidential Handwriting File at the Gerald R. Ford Presidential Library.

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

September 29, 1976 5:30 PM

Mildred--
Phone call from Robert List, Attorney General of Nevada, who was told by the President to give messages to you whenever he wanted to be certain the message would get to the President. Did this in phone conversation one week ago last Saturday and on previous occasions.

Message is:

"On his desk is the Anti Trust Bill. I want to strongly encourage him to sign this measure into law. This has been the primary legislative objective of the States Attorneys General for the past several years. It contains a good many compromises entered into with the understanding that these changes would make it more palatable to the Administration. There is unanimous bi-partisan support in our association for this bill.

"I am informed that the Carter people are anticipating a possible veto and that Senator Phil Hart's staff are preparing a major address on the subject of the veto for Carter to deliver. In my judgement, we have a great deal to lose politically by a veto and very little, if anything, to gain by one."

dkc

THE PRESIDENT HAS SEEN . . .

THE WHITE HOUSE

WASHINGTON

September 29, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: ED SCHMULTS

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

From a political standpoint, I wanted to call your attention to the fact that recent events have, in my view, given the Democrats a way to attack you personally if you veto the antitrust bill. In my earlier memorandum I argued that a veto would not substantially buttress the Democrats assertion that Republicans don't care about consumers, small taxpayers, and the poor. I still think this is true. But, the recent stories about your golf games as a guest of major corporations will give the Democrats a chance to say that a veto is for the benefit of these same large corporations whose lobbyists are your friends. I think the fact that these stories and your decision on the antitrust bill will occur in the same week is extremely unfortunate. Indeed, this coincidence may well tip the political scales toward signing the bill.

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

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 stand.

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.

If you are going to veto, you may wish to do so as early as possible in order to give the Congress a chance to readopt the bill without the parens section before they adjourn.

THE PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

September 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD SCHMULTS

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

On the merits, I recommend that you veto the antitrust bill. My reasons relate primarily to the parens patriae provisions of Title III. In particular, the mandatory treble damage and contingency fee provisions are especially troublesome. The treble damage provision aggravates the problems presented by the bill's novel statistical aggregation concept. Once parens patriae is embedded in our antitrust laws, I believe its scope will widen over time.

Substantive objections to the bill are more fully set forth in the memoranda to you from the Attorney General and the Secretary of the Treasury.

From a political standpoint, I have the following observations:

1. Opposition from the business community is widespread and deep. This bill is feared by small business. For example, real estate brokers are concerned that this bill will be used by state attorneys general and contingency fee lawyers to overturn an accommodation that the Real Estate Association has worked out with Justice.

2. Some election commentators have asserted that you lack a solid base of constituencies. A veto of the antitrust bill would be helpful with thousands of small businessmen, as well as with larger companies.

3. Carter has sought to "out Nader Nader" and he and Mondale will continue to attack you as being insensitive

to the needs of consumers, the poor and small taxpayers. It seems to me that signing the antitrust bill will not diminish their attacks one wit and will not win you any support from consumer groups or the like. Stated another way, does it really make any difference whether Carter cites the tax laws, the Consumer Protection Agency proposal and the antitrust bill, or merely has the first two to illustrate his charges.

4. Although the initial outcry, which a veto will provoke, will be sharp, I believe you can mitigate any loss by prefacing your veto statement with an outline of your antitrust and competition policy record, which is a good one. Attached is a suggested outline which is in the process of being staffed.

5. If you decide to veto the bill, I would recommend that you call upon the Senate to enact immediately the separate bills that the House has passed on the civil investigative demand and pre-merger notification provisions of Titles I and II, respectively, of the Hart/Scott/Rodino bill. This strategy would call for a prompt veto of the bill to permit the Senate to act (of course, it has the dangers of allowing time for an override vote).

Attachment

THE PRESIDENT HAS SEEN....

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.

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.

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.

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.