The original documents are located in Box 20, folder "Parens Patriae Bill (Antitrust) - H.R. 8532" of the Loen and Leppert Files at the Gerald R. Ford Presidential Library.

Passed on a voice vote - 2/18
Signed into law 9/30/74

Background on
H.R. 8532 (Parens Patriae)

The Administration developed its position last summer on the parens patriae legislation and communicated its support in a September 25, 1975 letter from Assistant Attorney General Kauper to Chairman Rodino. The Administration endorses the concept of authorizing a state attorney general to sue on behalf of the state's citizens to recover damages that result from violations of the Sherman Antitrust Act. With certain exceptions discussed below, H.R. 8532 appears to be close to the Administration's position.

A. Need for Legislation: The rationale for such legislation is as follows:

1. Compensation for Consumers. Private treble damage suits are authorized by Section 4 of the Clayton Act. Whereas this remedy has been effective for large businesses with a few transactions, it has not been effective in price fixing cases where many transactions of a relatively small size are involved, particularly purchases by consumers that may cost less than a dollar. Examples are small overcharges on such items as snack foods, soft drinks and bakery and dairy products. Such consumers generally do not have documentation of purchases, have only a small stake, and are less likely to have either the sophistication or resources necessary to prosecute their individual claims.

   Private class action suits have not been able to overcome these practical barriers, despite the fact that the suit could involve millions of dollars in damages and be spread over a multitude of plaintiffs. Further, these actions cannot overcome problems in the Federal Rules of Civil Procedure which were never intended to accommodate such suits.

   As a result, there is an inequity in antitrust enforcement which does not as effectively deter violations affecting many small consumers in contrast to those which affect a few large purchasers of a product.

2. Deterrence of Antitrust Violations. President Ford has said that "vigorous antitrust action must be part of the effort to promote competition". An important part of his antitrust program, already enacted into law in December, 1974, was the increase in penalties for antitrust violations (from $50,000 to $1 million for corporations and $100,000 for individuals).

Increase in antitrust penalties were considered a long overdue measure for deterring violations of the antitrust laws.

Similarly, the parens patriae bill penalizes offenders by preventing "unjust enrichment" that results from these actions. There are certain antitrust violations which could be handled effectively by a parens patriae suit for damages rather than a federal criminal proceeding or action for injunctive relief. Such a suit deprives a violator of the profits gained from his illegal conduct and provides relief which compensates injured customers.

3. Role of the States in Antitrust Enforcement and Consumer Protection. The parens patriae legislation, is viewed as an important step toward vigorous anti-trust enforcement and consumer protection. It encourages States to develop their antitrust capabilities and reflects the fact that, in many cases, state attorneys general would be more successful than the U.S. Attorney General in uncovering "localized" price-fixing and other antitrust violations. In this way, the States can provide an important complement to Federal antitrust enforcement. As a result of a number of recent court cases, states have been prevented from establishing this capability, absent specific Federal authorizing legislation to do so.

B. A summary of the provisions of H.R. 8532 is set forth at Attachment A. The main points of disagreement are as follows:

1. Private Class Actions. H.R. 8532 would extend the concept of statistically calculated damages, beyond parens patriae legislation, to all private antitrust class actions. Although there is an argument for this provision from the standpoint of consistency, it does raise the question whether parens patriae legislation is an appropriate vehicle for changes in consumer class action legislation. The Administration has not taken a position on this new provision.

2. Scope. The Administration would limit the applicability of parens patriae to violations of the Sherman Act. The bill now includes certain Clayton Act provisions but excludes Section 2 (price discrimination) and Section 7 (merger) violations.

3. Mandatory vs. Discretionary Awards. The Justice Department has argued in testimony on other legislation for discretionary not mandatory awards of attorney's fees to plaintiffs, but the Administration has taken no position on the provision for mandatory awards in the House bill. The Administration has passively supported mandatory treble damage awards, but others believe that the court should be permitted to reduce awards based on the willfulness of the violation.

4. Contingency Fees. Although the House bill does not allow state attorneys general to permit contingency fees for private lawyers, there is some interest in removing a "flat ban" on contingency fees. The Administration has not supported such a provision.

Attachment A

Extract from AEI Legislative Analysis of H.R. 8532 (Parens Patriae)

The pending bill, as reported to the House, may be summarized as follows:

Actions by State Attorneys General. Any state attorney general would be authorized to bring a civil action in federal court on behalf of any residents of his state who may have been damaged by an alleged violation of the federal antitrust laws. The bill would not permit a state attorney general to farm out such cases to private attorneys on a contingent fee basis.

Treble Damages. If a violation of the federal antitrust laws were established, the state, as parens patriae, would be entitled to recover "threefold the damages and the cost of suit, including a reasonable attorney's fee."

Notice by Publication. Notice to all persons in the state on whose behalf such a suit is filed would be given by publication in accordance with applicable state law, or in whatever manner the court specified.

Exclusion of Claimants upon Request. Any claimant could elect not to be represented by the attorney general and could be excluded from such a suit by filing a request within sixty days after notice of the suit is given. Any person in the class involved who failed to file such a notice (except for good cause) would be bound by the decision of the court.

No Compromises without Court Approval. Suits brought under the proposed statute could not be dismissed or compromised without approval of the court.

Estimation of Damages. The court would be permitted to determine the lump sum to be recovered by the state by any "reasonable system of estimating aggregate damages" without requiring separate proof by the individuals on whose behalf a suit is brought. Thus the bill provides that damages could be assessed "in the aggregate by statistical or sampling methods."

Distribution of Damages. The amounts recovered would be distributed by the state "in such manner as the district court may in its discretion authorize" provided that each person is given "a reasonable opportunity to secure his appropriate portion..."

Assistance by the U.S. Attorney General. Whenever the attorney general of the United States files an antitrust suit and believes that any state attorney general would be entitled to bring a class action based substantially on the same alleged violation, he would notify the state attorney general. In addition, the U.S. attorney general would be required to make available to the state authorities any relevant investigative files and other materials to the extent permitted by law.

Republican Policy Committee
U.S. HOUSE OF REPRESENTATIVES
1620 LONGWORTH BUILDING
WASHINGTON, D.C. 20515
202/225-6168

94th Congress
Second Session

March 8, 1976
Statement #6
H.R. 8532

STATE LEVEL CONSUMER DAMAGE ANTITRUST SUITS

In the 93rd Congress, the Policy Committee affirmed support for strict enforcement of effective antitrust laws in order to assure consumers the benefits of a free economy (1974, Statement #13). Republicans in Congress continue to adhere to that policy, but not every bill bearing the labels "consumer" and "antitrust" meets those goals. After careful study of H.R. 8532, the "Antitrust Parens Patriae Act," we must conclude that it would provide relatively little, if any, protection for individual consumers and might even harm consumer interests by forcing some businesses out of existence. Our desire to protect consumers does not automatically mean that business must be punished. The Republican Policy Committee cannot support this bill as it presently stands.

The background of this bill is complex. Under present law, individual consumers who have suffered small losses -- often a few dollars or less -- because of price-fixing or other antitrust violations rarely undertake the trouble and considerable expense of initiating individual suits to recover those damages. Existing law prevents states from acting "parens patriae" on behalf of their citizens in antitrust damage suits and requires that those initiating class action suits notify individually every member of the class, an expensive and often impossible effort.

The proposed bill is intended to remedy these problems by authorizing any State attorney general to bring a damage suit in federal court on behalf of all persons residing in the state who may have been injured by an alleged violation of federal antitrust laws.

So far, so good. But the bill's drafters have added several other "minor" provisions which undermine the merits of this bill. Some of these provisions to which we object are discussed below.

First, the bill eliminates the necessity of notifying by mail individual members of the class damaged by the alleged violation. Yet it was the expense and difficulty of this notification that necessitated enactment of this legislation in the first place. Replacing individual notification by newspaper ads and the like may subject the bill to challenge on grounds of unconstitutionality.

Second, the reason for awarding damages seems to have gotten lost in the drafting process. The bill provides that instead of actual documented losses suffered by identical claimants, damages will be ascertained by statistical sampling and other reckoning. These "guestimates" will then be tripled to arrive at the potentially staggering total penalty at stake. If an antitrust violation is found, damages under this bill will be awarded by the court like a "pot of gold" for some "highly imaginative" or "innovative" public purpose. Together these provisions erase the link between damages and incentives for antitrust action -- the individual consumers have little chance of benefiting from the damages awarded. The amount is a rigid one which cannot be adjusted by the court to bear any relation to the actual damages, the seriousness of the antitrust violation, or the continued ability of the defendant to continue doing business, providing services or products, and offering employment. In short, the penalty procedure offers neither recompense, incentive or justice.

Third, this bill opens the door to possible mixing of politics with antitrust enforcement by giving state attornies general a ready-made opportunity for fame and public acclaim from a series of well-timed antitrust cases designed to boost their stock as defenders of the consumers against the rapacious interests of "greedy business fat cats." Their zeal may cause so much multiple litigation against businesses operating in many states that the companies may be unable to bear the cost of defending themselves in a series of protracted, possibly simul-

taneous and even spurious suits. If the federal antitrust division is not doing its job, Congress should find out why; we should not divide the job in this manner which encourages competition in litigiousness and results in harassment of business.

The "parens patriae" bill itself smacks somewhat of similar political motivation -- the role of "consumer advocate" is a popular one in an election year. There is, however, some question as to how much protection the consumers need. Of the estimated 180,000 corporations with annual sales over $1 million, the antitrust division in Fiscal 1974 found only 21 cases with evidence of price-fixing sufficient to warrant prosecution. State governments have shied away from enacting legislation to give themselves a parens patriae role in antitrust suits. Why then is Congress so eager to take action on such a controversial, dubious and often-delayed bill?

The 94th Congress has already tried to bludgeon the consumer interest with H.R. 7575 to create a consumer protection bureaucracy. Now it appears bent on once again "saving" the consumers, this time from a plight so incidental that most have failed to notice their predicament.

H.R. 8532 is at best a questionable piece of legislation, at worst another fraud on consumers -- this time at the expense of business. The Republican Policy Committee opposes enactment of the Antitrust Parens Patriae Bill in its present form.

****

ROBERT McCLORY
13TH DISTRICT, ILLINOIS

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

JUDICIARY COMMITTEE

U.S. INTERPARLIAMENTARY
UNION DELEGATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

DISTRICT OFFICES
KANE COUNTY
MUNICIPAL BUILDING
150 DEXTER COURT
ELGIN, ILLINOIS 60120
(312) 697-5005

LAKE COUNTY
POST OFFICE BUILDING
325 NORTH GENESEE STREET
WAUKEGAN, ILLINOIS 60085
(312) 336-4584

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

March 16, 1976

Dear Colleague:

The Antitrust Parens Patriae Act is scheduled for floor action this Thursday. If the House adopts an amendment which I will offer, I will support it fully. My amendment should make the bill more acceptable to those Members of the House who are concerned that, in its present form, the bill might have adverse economic consequences for corporations found to have violated the antitrust laws despite good faith efforts to comply with those laws.

When companies willfully violate the antitrust laws (e.g., by illegally fixing prices), the trebling of damages is an entirely appropriate remedy in a parens patriae case where the State attorney general is suing on behalf of consumers.

Many companies, on the other hand, may inadvertantly violate the antitrust laws. For these companies, treble damages in parens patriae cases may well be an unnecessary and undesirable remedy. These are not the companies which need to be punished. Significantly, in the normal private damage case under the antitrust laws, the trebling of damages is intended to provide an incentive for an injured person to sue an antitrust violator. The trebling of damages does not create such an incentive in parens patriae cases, however, because the State does not keep the damages it recovers for consumers. In good faith cases, trebling is not needed.

My amendment, therefore, provides that there shall be single damages in parens patriae cases where the defendant has acted in good faith and treble damages only in those cases where the defendant has not acted in good faith.

In addition, the amendment deletes the provision concerning aggregation of damages in antitrust class actions other than parens patriae cases. This provision is extraneous to the parens patriae sections of the bill.

I would like to quote the views of the Administration's Assistant Attorney General in charge of antitrust enforcement. Addressing himself to H.R. 8532, Assistant Attorney General Thomas Kauper declared:

> The Administration has taken a position in support of the basic concept of permitting a State to sue on behalf of its citizens for damages sustained because of violations of the Sherman Act. H.R. 8532 would establish a workable mechanism for assuring that those antitrust violations which have the broadest scope and perhaps the most direct impact on consumers do not escape civil liability...
>
> The parens patriae concept, as embodied in H.R. 8532, is both desirable and useful from the perspective of better antitrust enforcement.

Finally, this legislation, as modified by my amendment, should encourage full and fair competition -- which is the single most vital ingredient of a free enterprise system.

Sincerely yours,

Robert McClory
Member of Congress

RMcC:lr

FOR IMMEDIATE RELEASE March 17, 1976

Office of the White House Press Secretary

THE WHITE HOUSE

TEXT OF A LETTER FROM THE PRESIDENT TO
JOHN J. RHODES, MINORITY LEADER OF THE
HOUSE OF REPRESENTATIVES

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

# # #

THE WHITE HOUSE

WASHINGTON

MARCH 21, 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.

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Sincerely,

Gerald R. Ford

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

CONGRESS OF THE UNITED STATES

Charles E. Wiggins

Member of Congress • 39th District, California

March 17, 1976

Committees:
JUDICIARY
HOUSE ADMINISTRATION

Administrative Assistant
MICHAEL W. BLOMMER

Legislative Assistant
JOHN E. MERCER

District Representative
M. ROY KNAUFT

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Washington, D.C.
ZIP 20515
202—225-4111

District Office
Brashears Center—
Suite 103
1400 North Harbor Blvd.
Fullerton, Ca. 92635
714—870-7266

Dear Colleague:

Parens Patriae is an ancient legal doctrine which recognized, historically, the power of the sovereign to sue as the "father of the country" on behalf of those possessing legal disabilities. In our history, the State, as parens patriae, has acted to represent the interests of infants and mental defectives in its jurisdiction.

Today or tomorrow, we shall be asked to refashion this legal tool, conceived as an instrument of benevolence, into a dangerous political and economic bludgeon.

H.R. 8532, the Anti-Trust Parens Patriae Act, should be defeated.

The proponents of the bill seek to persuade that it is a consumer protection measure. It is not.

The bill is, in fact, anti-consumer, anti-labor and anti-business. It is clearly, and perhaps solely, for the benefit of attorneys who thirst to reap massive fees on behalf of faceless, unknown and unknowable, "clients".

A recent "Dear Colleague" letter in support of this measure demonstrates its potential for mischief. The letter stated that in the City of Seattle, users of bread suffered $35 million in damages as the result of illegal overcharges, but that no individual lost more than $8.00 during the relevant period.

The bill would authorize the Attorney General of the State of Washington to sue the bread manufacturers on behalf of all of the consumers of bread in Washington. If the claimed damage for consumers in the Seattle area is $35 million, it might fairly be assumed that the alleged loss

State-wide would be at least twice that sum, or, let us assume, $70 million. The complaint would seek to treble the damages, raising the total demand to $210 million.

The bread industry would clearly be threatened. No corporate entity could absorb a $210 million loss without collapse or liquidation. The jobs of all those in the industry, its investors and its consumers would similarly be threatened.

The only solution would be to settle. The risks are too high to litigate.

Let us assume that the industry -- with its economic life on the line -- settled for $20 million. Who would get the money?

Off the top comes the expense of the lawsuit, including plaintiffs' attorneys' fees. Typical fees in cases such as the one postulated have been in the range of 10% or more, or, let us assume, $2 million.

The attorneys, now having taken $2 million off the top, attempt to devise a scheme to identify bread users, so as to distribute approximately $3.00 to each of them. The cost of doing so would further reduce the fund available for distribution.

Is it unfair to conclude that the entire lawsuit was conceived and conducted for the benefit of the attorneys, rather than the consumer?

And if the scenario is played out to its finale, what happens to the price of bread?

The club which this bill places in the hands of Attorney Generals, some of whom have been known to launch crusades for political reasons, and the possibility of collusive arrangements between Attorney Generals and the private bar representing the State in such actions, is evident and unacceptable.

No one condones anti-competitive practices which injure the consumers in any amount. But remedies exist now. The Department of Justice may now bring criminal charges against the offender and fines may be levied up to $1 million. State Attorney Generals may now enjoin the misconduct. Consumers willing to finance their own lawsuits may now bring treble damage actions.

The proposed parens patriae remedy is worse than the wrong.

The bill should be defeated soundly.

Sincerely,

Chuck

CHARLES E. WIGGINS
Member of Congress

CEW:lm

Ninety-Fourth Congress
U.S. House of Representatives
Committee on Rules
Washington, D.C. 20515

August 3, 1976

NOTICE OF REVISED AGENDA

The Judiciary Committee is requesting a rule to amend the Senate amendment to H. R. 8532, the Antitrust Parens Patriae Act, by including the provisions of three House bills (H.R. 8532, the Antitrust Parens Patriae Act, H.R. 13489, the Antitrust Civil Process Act Amendments of 1976, and H.R. 14580, the Antitrust Premerger Notification Act). This request will be considered before the New River legislation at 1:00 p.m. on Wednesday, August 4, 1976.

D. Gregory Nicosia
Chief Counsel

JAMES B. ALLEN
ALABAMA

United States Senate

WASHINGTON, D.C. 20510

September 14, 1976

Hon. Robert McClory
House of Representatives
Washington, D. C.

Re: H R 8532 - the Antitrust Amendments Bill

Dear Mr. McClory:

We are hopeful that the House will amend the Senate Amendment to the House Amendment to the Senate Amendment to H R 8532, the Antitrust Amendments Bill, by striking out the Senate Amendment's provisions on treble damages in parens patriae proceedings and on contingency fees and inserting in lieu thereof the provisions contained in the bill as passed by the House, allowing only single damages where the defendant acted in good faith and using the House language on contingency fees.

From statements which you and Mr. Railsback made in the House, the Members of the House who consulted with Senate Members on a so-called compromise insisted that any compromise reached should contain these provisions as passed by the House. Since the Senate Amendment to the House Amendment to the Senate Amendment did not contain the House language on these two points it is understandable that the House would not wish to accept the provisions of the bill which is now before the House for action.

In an effort to shape the bill in a manner to correspond with the House position on these two points, we wish to assure you that if the House does strike the Senate language at these two points and inserts the House language and sends the bill back to the Senate, so amended, we will not debate the matter further and will urge the Senate to bring the bill to a vote as finally amended by the House in the manner set forth above.

Hon. Robert McClory

It is our judgment that the bill, amended as suggested, would encounter no further difficulty in coming to a vote in the Senate and we would work in good faith to see that such result ensues.

Respectfully submitted,

Roman L. Hruska

Roman L. Hruska, U. S. S.

Strom Thurmond

Strom Thurmond, U. S. S.

James B. Allen

James B. Allen, U. S. S.

September 23

THE WHITE HOUSE
WASHINGTON

TO: CHARLIE LEPPERT

FROM: JOHN O. MARSH, JR.

_____ For Direct Reply

_____ For Draft Response

XX For Your Information

_____ Please Advise

SEP 23 1976

THE WHITE HOUSE

WASHINGTON

September 23, 1976

Dear Mr. Lamothe:

Thank you for your telegram indicating your views on the antitrust legislation.

I appreciate your communicating them to us and they will be carefully considered. I have also brought them to the attention of members of the President's staff who have been working on this subject.

Sincerely,

John O. Marsh, Jr.
Counsellor to the President

Mr. W. E. Lamothe
President
Kellogg Company
Battle Creek, Michigan 49015

THE WHITE HOUSE

WASHINGTON

September 21, 1976

MEMORANDUM FOR: JACK MARSH

THRU: MAX FRIEDERSDORF M.F.

FROM: CHARLES LEPPERT, JR. C.L.

Enclosed is a copy of a telegram which I received yesterday from the Kellogg Company regarding H. R. 8532.

SEP 20 1976

The White House
Washington

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PMS CHARLES LEPPERT, JR., SPECIAL ASSISTANT FOR LEGISLATIVE AFFAIRS
PLS HAND DELV
THE WHITE HOUSE
WASHINGTON, D.C. 20500
HR 8532 AS PASSED BY THE HOUSE YESTERDAY RETAINS THE "PARENS PATRIAE" TRIPLE DAMAGE IONTI GENCY SEE PROVISION. THIS COULD INSPIRE LAWSUITS BY PRIVATE LAW FIRMS TO COLLECT LARGE FEES CONTINGENT UPON WINNING THE CASE, REGARDLESS OF GOOD FAITH OR IGNORANCE OF BREAKING ANTI-TRUST LAWS.

WE ARE CONVINCED THAT THIS IS WRONG. WE ASK YOU TO LEND YOUR SUPPORT IN URGING THE PRESIDENT TO VETO THIS BILL.
W. E. LAMOTHE

PRESIDENT
KELLOGG COMPANY
NNNN

THE WHITE HOUSE

WASHINGTON

September 21, 1976

MEMORANDUM FOR: JACK MARSH

THRU: MAX FRIEDERSDORF

FROM: CHARLES LEPPERT, JR. CLJr.

Enclosed is a copy of a telegram which I received yesterday from the Kellogg Company regarding H. R. 8532.

9/23 – Donna called – Mr. Marsh will reply

September 21, 1976

Dear Mr. Lamothe:

Thank you for your telegram of September 17 concerning H.R. 8532 as passed by the House.

I will be pleased to bring your views to the attention of the President and the appropriate members of the staff for their consideration and review.

With kind regards, I am

Sincerely,

Charles Leppert, Jr.
Deputy Assistant
to the President

Mr. W. E. Lamothe
President
Kellogg Company
Battle Creek, Michigan 91776

CL/jm

THE WHITE HOUSE
WASHINGTON

Janet:
Acknowledge telling him that we will pass along his views to the P.

Clem.

P.S. Also do memo to [illegible] on the enclosed copy of telegram. Clem

WHD024 430P EDT SEP 17 76 WAC200(1448)(2-021707C261006)PD 09/17
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1976 SEP 17 PM 4 47
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PMS CHARLES LEPPERT, JR., SPECIAL ASSISTANT FOR LEGISLATIVE AFFAIRS
PLS HAND DELV

THE WHITE HOUSE
WASHINGTON, D.C. 20500
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WE ARE CONVINCED THAT THIS IS WRONG. WE ASK YOU TO LEND YOUR SUPPORT IN URGING THE PRESIDENT TO VETO THIS BILL.
W. E. LAMOTHE

PRESIDENT
KELLOGG COMPANY
NNNN

FOR IMMEDIATE RELEASE September 30, 1976

Office of the White House Press Secretary

- -

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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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.

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

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

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

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

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

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

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

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

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

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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.

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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.

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