The original documents are located in Box 29, folder "Regulatory Reform (12)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

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cc: Quern

Fred Paperwork

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

5/4/76

APR 17 1976

Jim -
What are we doing about this?
Jim

Honorable James M. Cannon
Executive Director
Domestic Council
The White House
Washington, D.C. 20500

Dear Mr. Cannon:

Since the President announced his government-wide effort to reduce the number of reports, 37 percent of the President's goal was met in the first two months (as of April 30, 1976). While this achievement is commendable, we have a particularly tough task ahead. By June 30, 325 more reports must be eliminated government wide.

I would like to share with you, the President's thoughts in recent speeches.

> "When I was in the Congress, when I was Vice President, and now as President, I keep hearing that individuals and businesses are overwhelmed with forms, government information requests, so I asked the Office of Management and Budget how many Federal Government forms are there that are sent out to individuals or groups or businesses. It was 5,200. I issued an order - and it darn well better be lived up to - they (Federal departments and agencies) had to cut that 10 percent...and they have a couple of months to go."
>
> The President's remarks at the
> Mary F. Sawyer Municipal Auditorium
> in LaCrosse, Wisconsin.
> March 27, 1976

His message is clear and has been made in Milwaukee, Dallas, Indianapolis, and other cities around the country during the past few weeks.

In order to properly evaluate how we stand in achieving the initial goal of the President's paperwork reduction program, I am requesting that each department and agency submit a brief progress report to OMB by May 26 with:

1. A list of repetitive forms eliminated to date;
2. Candidates in the agency inventory for elimination by June 30;
3. Total percentage reduction in repetitive forms expected by June 30 and estimated savings in reporting burden; and
4. Problems encountered to date and expected in achieving the President's goal.

If you have any questions, please direct them to the Clearance Office, 395-4529.

Sincerely,

Fernando Oaxaca
Associate Director for
Management and Operations

Reg Regan Antitrust

THE WHITE HOUSE

WASHINGTON

May 18, 1976

MEETING TO DISCUSS
ADMINISTRATION'S POSITION ON ANTITRUST LEGISLATION
Wednesday, May 19, 1976
9:00 AM - (30 Minutes)
The Oval Office

From: Edward Schmults

I. PURPOSE

To meet with Senator Hruska and the Attorney General to review the status of pending antitrust legislation and discuss the Administration's position.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: On April 6, the Senate Judiciary Committee completed mark-up on the Hart/Scott Antitrust Improvements Act (S. 1284). The bill is scheduled for Floor action this week.

In the House, three of the major provisions of S. 1284 are being considered in separate legislation. The so-called parens patriae bill has been passed and the Civil Process Act amendments were approved on May 18 by the House Judiciary Committee without objection.

On April 2 Senators Hart and Scott met with Justice Department and White House Staff to urge Administration support for their legislation and to determine possible areas of compromise. We reemphasized the views expressed in your letters to John Rhodes on parens patriae and Peter Rodino on the Civil Process Act Amendments.

On May 4, 1976, you met with the Attorney General, Assistant Attorney General Kauper and White House Staff to discuss the Administration's position on the pending antitrust legislation. At the meeting you indicated that you wanted to hear Senator Hruska's views prior to making any decisions concerning negotiations aimed at finding an acceptable bill in the Senate.

On May 7, you met with Senator Hruska on Air Force One and heard his objections to S. 1284.

As you know, we are being urged by Senators Hart and Scott to enter into negotiations aimed at producing an acceptable bill.

B. Participants: Senator Hruska, The Attorney General, Philip Buchen, Max Friedersdorf, James Lynn, Jack Marsh, Jim Cannon, Bill Kendall, Ed Schmults.

C. Press Plan: None. Meeting not to be announced. White House photographer only.

III. TALKING POINTS

1. The purpose of this meeting is to review the status of antitrust legislation currently before the Congress and decide what approach we should take in working with the Congress.

2. Roman, perhaps you would begin by giving us an overview of the Senate's plans for action on S. 1284 and what you would like to see the Administration do.

IV. ATTACHMENTS

Tab A - Outline of major features of the pending bills.

Tab B - Options Memorandum, with attachments, prepared by Ed Schmults

Major Antitrust Legislation Before the Congress

	Senate [1]	House	Stated Administration Positions
1.	Civil Process Act Amendments (S. 1284)	Civil Process Act Amendments (H.R. 39) passed House Judiciary Subcommittee by voice vote on April 28.	
	Provides for use of Civil Process Act powers in regulatory proceedings.	No provision	Opposes
	Provides for mandatory reimbursement of third parties for expenses, without specific authorization for appropriations.	Reimbursement only of witnesses according to current standards.	No stated position
	No exemption of information from disclosure under Freedom of Information Act.	Provides an explicit exemption	Favors explicit exemption
	Provides grand jury information to FTC and private antitrust plaintiffs after completion of civil or criminal proceedings.	No provision	No stated position
2.	Premerger Notification and Automatic Stay (S. 1284)	Premerger Notification and Automatic Stay (H.R. 13131) Judiciary Subcommittee hearings are scheduled for May 6.	
	Provides for 30 day notification with 20 day extension, prior to consummation of very large mergers and acquisitions (involving transactions between $100 million and $10 million companies).	Similar provision	Supports
	Provides for automatic stay, not to exceed 60 days, with burden on defendant to show why stay should not be issued.	Similar provision	Opposed-retain existing decisional law

[1] An omnibus antitrust bill (S. 1284), containing five titles, was favorably reported to the full Senate on April 6. The Senate Judiciary Committee vote was 10-5. Opposed were Eastland, McClellan, Hruska, Thurmond, W. Scott.

Senate	House	Stated Administration Position
Parens Patriae (S. 1284)	Parens Patriae (H.R. 8539) passed House by voice vote on March 18	2/
Scope: Limited to Sherman Act violations	Practical effect is limitation to willful price-fixing	Limitation to price-fixing
Damages:		
--Provides for mandatory award of treble damages	Court determined reduction from treble to single damages if defendant acted in good faith	Favors limitation to single damages
--Provides for statistical aggregation of damages in private class actions	No provision	Opposes
Attorney's Fees:		
--Court may award attorney's fees to a defendant if state attorney general acted in bad faith	Similar provision	Favor
--Court may approve contingency fees according to standard criteria	Flat ban against contingency fees	No stated position
Miscellaneous Provisions (S. 1284)	No comparable House provisions	
Broadens Clayton Act (including Robinson-Patman Act) to include violations "affecting" rather than "in" interstate commerce.		Supports provision applying to Clayton 7 (mergers); opposes applying to other sections of Clayton Act, including Robinson-Patman Act
Dismissal of claims of party relying upon foreign statutes to justify refusal to comply with discovery order.		Opposes
Mandatory award of attorney's fees for injunctive relief under Clayton Act.		Favors discretionary awards
Declaration of Policy (S. 1284)	None	No stated position
Sets forth assertions and conclusions about Nation's commitment to a free enterprise system, the decline of competition because of monopoly and anti-competitive behavior and the need for vigorous antitrust enforcement.		

The President's letter of March 17 to Congressman Rhodes expressed serious reservations about the principle of parens patriae. The President also expressed concern regarding specific provisions.

THE WHITE HOUSE

WASHINGTON

April 14, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: EDWARD C. SCHMULTS

SUBJECT: Antitrust Legislation Now Before Congress

Issue

This memorandum outlines the status of omnibus antitrust legislation pending before the Congress and requests your guidance as to how we should proceed.

Background

The Administration has in the past been the champion of vigorous antitrust enforcement and reducing government regulation while Congress has largely been playing "catch-up" ball. Recently the Administration's positive antitrust policy has been criticized by Members of Congress and others because of our position on antitrust legislation before the Congress. (See attached letter from Chairman Rodino at Tab A.)

Nevertheless, Senators Hart and Scott, as a culmination of years of work, are anxious to see important antitrust legislation enacted into law this year and are anxious to work with the Administration to arrive at an acceptable bill.

Status of the Legislation

On April 2, Senators Hart and Scott met with White House senior staff to urge firm Administration support for the legislation and to determine possible areas of compromise. We outlined to them the Administration's objections to this legislation and reemphasized the views expressed in your letters to John Rhodes on parens patriae and Peter Rodino on the CID bill (see Tab B). Shortly thereafter, on April 6, the Judiciary Committee completed mark-up on its legislative proposal, the Hart-Scott Antitrust

Improvements Act (S.1284). In the course of that mark-up, both Senators referred to the White House meeting and indicated their belief that suitable negotiations could begin soon after the mark-up. They stressed flexibility and a desire to accommodate Administration views.

In the House, three of the major provisions of S.1284 are being considered in separate legislation. Following your letter to Minority Leader Rhodes on the parens patriae legislation, the House passed this bill, but modified it to reflect some of your reservations concerning specific provisions. The House Judiciary Committee will soon take up the Administration's proposed amendments to the Civil Process Act. Your March 31 letter to Chairman Rodino urged favorable consideration of this legislation and requested the Department of Justice to work closely with the Committee on this bill.

Following action on the Civil Process Act amendments the House Judiciary Committee is also expected to consider premerger notification and mandatory stay legislation. The Senate bill has a similar provision.

On March 31, Justice, Treasury, Commerce and the FTC agreed on a position on the major provisions of the Senate and House legislation. We have compared this position with the bill reported from the Senate Judiciary Committee on April 6 and believe that it would be possible to negotiate an outcome close to this position. It is probable that if legislation is enacted, it will be an omnibus bill. Therefore, we are outlining below the main features of this bill.

1. Parens Patriae. Any such omnibus legislation probably would include a modified parens patriae provision as both Houses are determined to make parens a condition for enactment of the Administration's civil process bill. Your March 17 letter to Minority Leader Rhodes expressed serious reservations regarding the basic principle of parens patriae, which allows state attorneys general to seek damages in Federal courts as a result of Federal antitrust violations.

   In addition to your problems with the basic concept of parens patriae, there are other major points of difference between the Administration's position and the legislation being considered in the Congress.

The current Senate version of the parens patriae bill is a significantly broader bill than that which recently passed the House. The Senate bill as it now stands is subject to the same criticisms we have directed at the ~~House bill. Nevertheless, it seems quite likely~~ that substantial amendments in this provision could be accepted by the Senate.

Negotiable areas of importance to the Administration are: limitation of scope to price fixing, elimination of statistical aggregation in private class actions, reduction to single damages, prohibition of contingency fees and discretionary rather than mandatory award of attorney's fees. For a further discussion of these issues, see Tab C.

2. Antitrust Civil Process Act Amendments. The Senate and House bills are in most respects compatible with the Administration's position.

The Administration favors deleting the use of the expanded civil process powers in regulatory agency proceedings. It is anticipated that the House will delete this provision.

The Administration also seeks exemption of information obtained through this process from public disclosure under the Freedom of Information Act. Although it is not clear that such an exemption is necessary, many businesses fear the possible applicability of the FOIA. The Senate may be reluctant to grant such exemptions, and it may be easier to achieve the exemption in conference.

Also, the Justice Department opposes a recent amendment in the Senate bill which would require them to reimburse third parties for expenses incurred in an antitrust investigation.

There appears to be a good chance that these modifications will be accepted. However, there will be some business opposition to the Civil Process Act amendments. Bill Seidman's memorandum to you on this subject is at Tab D.

3. Premerger Notification and Stay Amendments. In addition to establishing a premerger notification procedure, the Senate bill creates an automatic injunction against mergers which are challenged by Federal enforcement agencies. The Administration has stated its opposition to any stay provision, while reaffirming its support for a properly modified pre-merger notification procedure. The final Senate mark-up provides that if a merger is challenged by the Government, consummation of the merger may be stayed until the court issues a decision on a request for a preliminary injunction. However, the stay can not exceed 60 days.

   The burden would be on the defendant to demonstrate why a preliminary injunction should not be issued. Senator Scott has indicated a willingness to narrow this further by shifting the burden of proof from the defendant to the Government and to reducing the stay period.

   The House will consider a similar provision. Although there is strong support for some such provision, the Administration has been against any automatic stay provision.

4. Miscellaneous Amendments. The Senate bill also contains a variety of miscellaneous provisions but the Administration only supports a provision which would amend Section 7 of the Clayton Act (mergers). This change is necessary because of a recent Supreme Court decision limiting the scope of Section 7 of the Clayton Act to reach only violations "in" rather than "affecting" interstate commerce. The Administration continues to oppose expanding the scope to other sections of the Clayton Act and the Robinson-Patman Act.

   The Administration also opposes a provision which would authorize dismissal of claims or defenses of any party who relies upon foreign statutes to justify a refusal to comply with a discovery order. The Justice Department would also like to modify a provision requiring mandatory award of attorney's fees for injunctive relief under the Clayton Act. Justice prefers discretionary awards. No similar miscellaneous provisions are likely to be considered in the House.

5. Declaration of Policy. Finally, the Senate omnibus bill contains a collection of assertions and conclusions about the commitment of this country to a free enterprise system, the decline of competition as a result of oligopoly and monopoly, and the positive impact of vigorous antitrust enforcement. It has been criticized as not being based on economic consensus nor logically connected to the procedural matters dealt with in the body of S.1284. The Administration has previously taken no position on this provision.

   Although some of the least supportable language has been eliminated in the Senate mark-up, the Administration would favor the elimination of this policy statement. However, the Departments do not view further modification or elimination as important as the modification of certain substantive portions of the bill which are considered above. Attached at Tab E is a table summarizing the various provisions of the House and Senate bills.

Options:

At this stage, we have the following options:

1. Do not compromise the present Administration position.
2. Negotiate with the Senate to try to produce an acceptable bill prior to a Senate floor vote early next month.
3. Schedule a meeting to discuss these options.

The first option has a number of risks. If the Administration takes no action, then it is likely that the Congress will pass an unacceptable bill thus generating pressure for a veto sometime this summer. On the other hand, there is some chance that Administration silence at this time could slow down the legislation in both Houses so that the legislation would not be enacted. For example, an effort to filibuster the bill in the Senate is possible.

Option 2 could substantially increase the chances of Congress passing an acceptable bill. With your support, it is likely that the White House staff and the Justice Department can work with Senators Hart and Scott to agree to desirable amendments prior to a Senate vote early next month and avoid undesirable amendments on the Senate floor. This

option would also help stimulate the House to move on the Civil Process Act amendments and an acceptable premerger notification bill.

Option 3 recommends a policy meeting on this subject, prior to your choosing between options 1 and 2. We believe that, in light of the complexity of the issues and the highly fluid political environment, we should meet with you as soon as possible.

Decision:

Option 1: Do not compromise Administration position until Senate and House conference a bill (Supported by _____)

Option 2: Work affirmatively with Senators Hart and Scott to try to produce an acceptable bill prior to a Senate floor vote early next month (Supported by _____)

Option 3: Schedule a meeting (Supported by _____)

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

Telephone: 202-225-3951

March 17, 1976

The President
The White House

Dear Mr. President:

I was extremely distressed to learn today that you have withdrawn your Administration's carefully articulated and frequently repeated support for H.R. 8532, the Antitrust Enforcement Improvement Act (Parens Patriae).

In my judgment, enactment of this bill would constitute unquestionably the most significant contribution to antitrust enforcement and the deterrence of widespread antitrust violations in more than a quarter century.

The basic premise of the bill is that many if not most antitrust violations have their principal impact upon the consumer, who pays more for goods and services than he would if there were free and open competition. The need for the bill arises because under our present antitrust enforcement scheme, the consumer has no effective mechanism for seeking redress, in light of the small value of individual claims and the enormous cost and complexity of antitrust litigation. As a result, many violations go unpunished and corporate violators reap -- and retain -- billions of dollars in illegal profits every year.

The bill would fill this enforcement void by empowering state attorneys general to bring antitrust suits on behalf of consumers in their states injured by antitrust violations. It would create no new substantive antitrust liability. It would merely provide for the first time an effective mechanism for the vindication of existing consumer claims and the enforcement of long-standing policy.

The case for this bill has been made repeatedly and most persuasively by authorized representatives of your own Administration. On March 18, 1974, Thomas E. Kauper, Assistant Attorney General in charge of the Antitrust Division, testified generally in favor of an earlier version of

H.R. 8532. He suggested a number of amendments, many of which were incorporated in the draft approved by the House Judiciary Committee on July 24, 1975. The Administration's views regarding the Committee bill, the present H.R. 8532, were sought again following Committee action. Once again, Mr. Kauper was forthright in his support of the measure. In a letter to me dated September 25, 1975, Mr. Kauper stated:

> 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.

Mr. Kauper went on to suggest one or two amendments designed to strengthen the enforcement potential of H.R. 8532, concluding:

> While we think the further refinements suggested above would strengthen the bill, we would still urge enactment of this legislation.

Mr. Kauper's letter made it clear that this was the mature and considered position of the entire Administration:

> The Office of Management and Budget has advised this Department that it has no objection to the submission of this report from the standpoint of the Administration's program.

Within the last month, while testifying on another matter, Mr. Kauper went out of his way to praise H.R. 8532 and the Judiciary Committee's contribution to antitrust enforcement in reporting it to the House.

These views were echoed recently in a significant speech by Deputy Assistant Attorney General Joe Sims, who stated in Dallas, Texas, on February 27, 1976 that "as we put more resouces into the field, we continue to find that price-fixing is a common business practice." Pointing to the need for pending legislation to provide greater antitrust enforcement capability, Mr. Sims went on:

> Strangely enough, while the business community is taking a strong public stand for free enterprise as a concept, it is also mounting an enormous lobbying effort in an attempt to delay, to cut back or to prevent the passage of such legislation.
>
> And so again, the call for a return to free enterprise takes on a somewhat hollow ring.

The Administration's support for the provisions of H.R. 8532 has likewise been repeatedly expressed in the Senate. Mr. Kauper testified in favor of Title IV of S. 1284, the counterpart of H.R. 8532, in May of 1975, and as recently as February 19, 1976, Deputy Attorney General Harold Tyler expressly reaffirmed the Administration's support for Title IV in a letter to the Minority Leader of the Senate, the Honorable Hugh Scott, who is a cosponsor of S. 1284.

Even more is at stake than the credibility of considered statements by high ranking and fully authorized officials of your Administration. Your withdrawal of this long-standing support for H.R. 8532 is utterly at odds with your own repeated statements favoring vigorous and effective enforcement of the antitrust laws.

I could not put the case for the necessity of effective antitrust enforcement to the continuation of a free competitive economy better than you have on numerous occasions. On October 8, 1974, you told a Joint Session of Congress:

> To increase productivity and contain prices, we must end restrictive and costly practices, whether instituted by Government, industry, labor, or others. And I am determined to return to the vigorous enforcement of the antitrust laws.

On April 18, 1975, you told the White House Conference on Domestic and Economic Affairs that "Vigorous antitrust enforcement must be part of the effort to promote competition."

In your most recent State of the Union message, on January 19, 1976, you told the Congress that "This Administration . . . will strictly enforce the federal antitrust laws."

You put the matter perhaps most eloquently in your remarks to the American Hardware Manufacturers Association on August 25, 1975:

> It is sad but true -- too often the Government walks with the industry along the road to monopoly.
> The end result of such special treatment provides special benefits for a few, but powerful, groups in the economy at the expense of the taxpayer and the consumer.
> Let me emphasize this is not -- and never will be -- an Administration of special interests. This is an Administration of public interest, and always will be just that.
> Therefore, we will not permit the continuation of monopoly privilege, which is not in the public interest. It is my job and your job to open the American marketplace to all comers.

Despite these ringing declarations of commitment to antitrust policy and enforcement, your actions in recent weeks have struck repeated

blows at the hopes of the American people that these goals would be realized. On February 19, 1976, despite previous affirmations of Administration support, you withdrew, through Deputy Attorney General Tyler, your blessing from important injunctive provisions of Title V of S. 1284.

On March 4, 1976, an obviously distressed Assistant Attorney General Kauper had to tell our Committee that the Administration opposed S. 1136, already passed by the Senate, which would have committed significant additional funds to the federal antitrust enforcement effort.

And yesterday you withdrew from almost two years of public support for the concept of H.R. 8532.

I hope that you will reconsider your pronouncement of yesterday and reaffirm your earlier support for a bill designed to put sorely needed teeth in our antitrust enforcement scheme.

Otherwise, everyone will have lost significantly. The considered pronouncements of your Administration on pending legislation will lose all credibility if the rug is to be pulled out repeatedly by last-minute presidential action. More important, the consumers and businessmen of this country who stand to benefit from free and open competition and the attendant reduction of inflation will have lost the assistance of a truly significant piece of legislation.

The antitrust laws are the basic charter of our free enterprise system, and I urge you to join in the effort to secure their vigorous enforcement in the public interest.

Very truly yours,

PETER W. RODINO, JR.
Chairman

PWR:edg

FOR IMMEDIATE RELEASE March 17, 1976 TAB B

Office of the White House Press Secretary

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

TAB B

THE WHITE HOUSE

WASHINGTON

March 31, 1976

Dear Chairman Rodino:

During the last year and a half, my Administration has supported effective, vigorous, and responsible antitrust enforcement. In December 1974, I signed legislation increasing penalties for antitrust violations. In addition, I have submitted several legislative proposals for regulatory reform which would expand competition in regulated industries. Assuring a free and competitive economy is a keystone of my Administration's economic program.

In October 1974, I announced my support of amendments to the Antitrust Civil Process Act which would provide important tools to the Justice Department in enforcing our antitrust laws. My Administration reintroduced this legislation at the beginning of this Congress and I strongly urge its favorable consideration.

I have asked the Department of Justice to work closely with your Committee in considering this antitrust legislation. I would hope that the result of this cooperation will be effective and responsible antitrust legislation.

Sincerely,

Gerald R. Ford

The Honorable Peter W. Rodino, Jr.
Chairman
The Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

TAB C

Parens Patriae

The House-passed parens patriae bill (H.R. 8532) and Title IV of S. 1284, the Senate counterpart on which the Judiciary Committee completed action on April 6, differ in a number of respects.

Title IV had been a significantly broader bill which was narrowed in the Senate mark-up in two ways:

1. A provision which would authorize a State to recover damages to the "general economy" of that State or its political subdivisions was deleted.

2. The bill was modified to apply in general to future violations, rather than retrospectively.

The House-passed bill, which was narrowed substantially, compares with Title IV as follows:

1. Scope. The House bill was, in practical effect, narrowed to willful price-fixing violations only, by permitting statistical aggregation of damages only in such cases. The Senate version applies to violations of the Sherman Act.

2. Statistical Aggregation in Private Class Actions. The House eliminated a provision to permit aggregation in consumer class action suit. The Senate retained this provision.

3. Damages. The House provided for a court determined reduction of damages from treble to single damages if a defendant could prove he was acting in good faith or without reason to believe he violated the antitrust laws. The Senate bill provides for mandatory award of treble damage.

4. Attorneys Fees. Both the House and Senate provide that a court may award reasonable attorney's fees to a prevailing defendant upon finding the state attorney general acted in bad faith.

5. Contingency Fees. The House provided for a flat ban against contingency fee arrangement. The Senate bill requires the approval of the court for any attorney fee arrangement according to standard criteria (e.g., number of hours of time multiplied by reasonable hourly rate, adjusted up or down for risk, complexity, or other factors).

Although a fundamental issue as to the principle of parens patriae legislation remains, the House bill is much closer to the modifications favored by the concerned Departments. These are: limitation of scope to price-fixing; elimination of statistical aggregation in private actions and reduction to single damages in certain cases (possibly even a flat limitation to single damages); prohibition of contingency fees.

The Justice Department is also exploring options that would require prior Federal action or approval, before an action could be taken by a state attorney general under the parens patriae provision.

TAB D

THE WHITE HOUSE

WASHINGTON

March 29, 1976

MEMORANDUM FOR: THE PRESIDENT

FROM: L. WILLIAM SEIDMAN

SUBJECT: Administration Antitrust Legislation

Issue

Should the Administration reaffirm its support for the amendments to the Antitrust Civil Process Act (the CID bill)? If so, should a Presidential letter stating this position be forwarded to the Judiciary Committees?

Background

Congress is moving toward enactment this spring of omnibus antitrust legislation. The Senate Judiciary Committee is in the process of marking up S. 1284, "the Hart-Scott Omnibus Antitrust Act," and a final vote is expected on April 6. A brief summary, prepared by the Justice Department, of S. 1284 and the positions taken to date by the Administration on its various provisions is set forth at Tab A.

In the House, the various titles incorporated in S. 1284 are being considered separately. H.R. 8532, the parens patriae bill, recently passed the House with amendments that reflected some of the concerns raised in the March 17 letter to Congressman Rhodes. A pre-merger notification bill similar to Title V of S. 1284 will be introduced shortly by Chairman Rodino. Finally, the House Judiciary Subcommittee is scheduled to mark up on March 31 the Administration's proposal for amendments to the Antitrust Civil Process Act (H.R. 39), which would allow the Department of Justice to take testimony in pre-complaint antitrust investigations.

This legislation has come under heavy attack from the business community. The modifications of the Administration's position on the injunctive relief provisions for mergers in S. 1284 and the House parens patriae bill have been

interpreted as resulting from business pressure. Consequently, Senator Scott has requested that he and Senator Hart meet with you to explore the development of an acceptable position on the Senate bill.

The timing of legislative action requires that the Administration position on the House and Senate legislation be communicated quickly.

The Civil Process Act Amendments (H.R. 39)

These amendments, together with legislation to increase antitrust penalties, were endorsed in your Economic Address of October 8, 1974. The increase in penalties was enacted and signed into law in December 1974, but the Civil Process Act amendments died in the 93rd Congress. Attorney General Levi resubmitted this legislation to the 94th Congress and hearings have been held in both Houses.

The present Civil Process Act was enacted in 1962 to assist the Department of Justice in investigating possible antitrust violations. The Act helps the Department determine, in advance of filing a suit, whether a violation has occurred. It was enacted because pre-complaint discovery was preferable to having the government file complaints based upon sketchy or inaccurate information. It was designed to make possible more informed decisions by Justice prior to creating the burden, expense, and adverse publicity of a full government lawsuit.

The 1962 Act, however, was a limited effort. The Antitrust Division may only serve the Civil Investigative Demand (CID)--a pre-complaint subpoena--on suspected violators, the so-called "targets". The CID may only be served on businesses for the purpose of obtaining documents relevant to the investigation.

The proposed legislation would permit CID's to be issued not only to "targets" of the investigation, but also to third parties--customers, suppliers, competitors--who may have information relevant to the investigation even though they themselves are not suspected violators. CID's could thus be served not only on a business entity, but also on individuals (e.g., a witness to a meeting). Also, a CID recipient could be compelled not only to produce documents, but also to give oral testimony and answer written questions.

The Justice Department views enactment of this legislation as a vital step designed to close a gap in their antitrust enforcement authority. They believe it is necessary to assure that the major increase in funds appropriated to antitrust enforcement efforts during the last two budgets will be utilized in the most efficient and effective manner.

The bill will accord the Department of Justice essentially the same investigatory power now possessed by the FTC and numerous other Federal agencies (e.g., Treasury, Agriculture, Labor, Veterans Administration, and most regulatory agencies). In addition, at least 18 states (including Virginia, Texas, Arizona, New Hampshire, Florida, and New York) have enacted similar legislation, most within the last ten years.

Despite the inclusion in the bill of a variety of safeguards to protect against even the appearance of governmental overreaching, and numerous changes in the legislation accepted by the Justice Department and Judiciary Committee staffs, opposition to the legislation from the business community continues. Attached at Tab B is a discussion of the major objections that have been raised.

Option 1: Reaffirm Administration support for the Civil Process Act amendments and related legislation with a letter to the House and Senate Judiciary Committees.

In light of the Administration's recent modifications in its position on premerger notification and parens patriae, the Justice Department believes it is essential to reaffirm in writing our support for the amendments to the Antitrust Civil Process Act. A proposed Presidential letter to the Chairmen of the House and Senate Judiciary Committees reaffirming your support for the amendments is attached at Tab C. This letter also indicates that you have asked the Justice Department to work with the Committees to achieve passage of this legislation.

Option 2: Reaffirm Administration support for the Civil Process Act amendments by instructing Justice to indicate such support during the House mark-up sessi

This approach would reaffirm the Administration's support without highlighting your personal involvement. However, Justice indicates that several members of the House Judiciary Committee have said that in light of the change of Administration position on parens patriae and much media speculation on this issue, they cannot accept an expression by the Department of Justice as a reliable expression of your position on this issue.

Option 3: Instruct Justice to indicate Administration opposition to the Civil Process Act amendments during the House mark-up session.

Such a reversal of support almost certainly would result in increased attacks on the credibility of the Administration's antitrust program. It would also tend to undermine the integrity of the Administration's process of clearing legislation.

Decision

Option 1 _____ Reaffirm Administration support for the Civil Process Act amendments and related legislation with a letter to the House and Senate Judiciary Committees.

Supported by: Treasury, Commerce, Justice, Counsel's Office, OMB, CEA

Option 2 _____ Reaffirm Administration support for the Civil Process Act amendments by instructing Justice to indicate such support during the House mark-up session.

Supported by: Marsh, Friedersdorf

Option 3 _____ Instruct Justice to indicate Administration opposition to the Civil Process Act amendments during the House mark-up session.

(CHART REVISED AND NOW AT TAB A.)

ECONOMIC POLICY BOARD
EXECUTIVE COMMITTEE

May 21, 1976
8:30 a.m.
Roosevelt Room

PRINCIPALS ONLY

1. Task Forces to Reduce Waste in Regulation — MacAvoy

COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

May 18, 1976

MEMORANDUM TO: EXECUTIVE COMMITTEE, ECONOMIC POLICY BOARD

FROM: Paul W. MacAvoy

SUBJECT: Presidential Task Forces to Reduce Waste in Regulation: Progress Report #1

In his speech before the Small Business Administration Conference of May 13, the President announced the creation of Task Forces to reduce the costs and delays from regulation by the Federal Energy Administration (FEA) and the Occupational Safety and Health Administration (OSHA). This memorandum reports on the follow-on efforts to put these and other Task Forces in operation.

1. Steps Taken to Date on OSHA and FEA Task Forces

The work plans for these two Task Forces have been prepared and approved by both CEA-OMB staff involved and by those in the agencies concerned with this effort (attached Tabs A and B). The plans focus on operations of the two agencies that (a) would likely benefit from reduced or simplified regulations (b) are now the subject of a limited reform effort from within the agencies, and (c) can be affected by a reform effort within this Calendar Year. The FEA plan expects some results by late August, while the OSHA plan calls for dissemination of simplified regulations on Parts D and L of the mandatory standards by the autumn, and announcement of proposed changes in Parts P and O before the end of the Calendar Year. There is a substantial probability, however, that the work will not be far enough along to make an announcement of results this Calendar Year.

The staffing of the Task Forces has begun. Individuals will be detailed from other agencies to the object agency, usually to the Office of the Secretary of the object agency for a period of six months. A number of candidates have been interviewed both to determine whether they are knowledgeable in the current problems of the object agency and whether they are interested in taking part in the Task Force effort. Requests for detailing individuals will be made next week. Requests have already been made for detailing Philip Harter (Administrative Conference), Douglas Harlan (HEW), and Jonathan Rose (Justice) to work with me in setting up and chairing task forces.

2. Next Steps

Additional Task Forces should be put together in other dependent regulatory commissions or agencies. Work is underway to evaluate the prospects for successful Task Force operations in HEW, HUD, and Commerce. Those in HUD and Commerce now do not look promising on the three criteria outlined above. Further "opportunities" are needed.

Attachments

Tab A

Task Force on Improving FEA Regulation

I. INTRODUCTION:

FEA is currently systematically phasing out many of the price and allocation regulations which have been in force since the embargo of 1973-74. The Task Force on FEA will study and make recommendations concerning simplifications in FEA's post-decontrol price and allocation regulations, and the procedures and regulations associated with FEA's Mandatory Oil Imports Program. Also, the Task Force will make improvements in the development process by which FEA brings new regulations on-stream or modifies existing regulations.

The regulations for "decontrolled" products are being put on standby status for use in the event of another severe supply interruption. The Task Force will consider the regulations for all products, but particularly for those still under control by FEA, to determine how these regulations can be simplified in the current mode. Also, the group will consider standby regulations with a view toward recommending simplifications to these standby programs should they ever be reimplemented.

II. MISSION:

- to recommend simplifications in on-going and standby FEA allocation and price regulations, and to recommend similar changes in the regulations and procedures for FEA's Mandatory Oil Imports Program.

- to recommend improvements in FEA procedures for developing and promulgating regulations.

III. FUNCTIONS:

1. Regulation Simplification

   a. Identify existing regulations to be reviewed, specifying:

      - paragraph number and act which apply,

      - the objective of each regulation, that is, what it is attempting to accomplish.

b. Identify the problems (i.e., subparts having significant impact) or other characteristics associated with each regulation, such as:

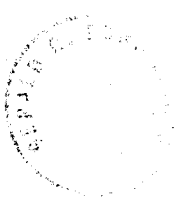
   - the workload necessary to comply (this includes the costs for reporting and record-keeping),
   - the impact of the regulation on various-size firms,
   - benefits accruing to those regulated, or to other sectors (i.e. consumers, other businesses, etc.) - relate the benefits to the underlying objectives of the regulation,
   - regulations which overlap, contradict, etc.,
   - those sections of the regulation where costs are not warranted with respect to benefits,
   - regulations where firm compliance is very difficult, and where the costs of enforcing the regulations do not warrant their continuation.

c. Propose simplified methods to accomplish the basic objectives, considering:

   - the possibility of proposing that no regulation be promulgated,
   - a method of achieving a higher level of self-enforcement,
   - merging related programs.

d. Recommend simplified regulations:

   - prepare option paper on alternative proposals,
   - select preferred options.



2. Procedural Improvements

   a. Determine the basic requirements in developing and promulgating regulations, specifying legal constraints, the need for public comments, and outside agency oversight authority.

   b. Delineate the current FEA system of regulations development, specifying:

      . responsibilities of all participants,

      . time-sequence of work flow,

      . tasks performed by all participants.

   c. Cite specific historical cases for subsequent study.

   d. Identify operational problems (e.g., bottlenecks) in the current system, specifying underlying causes. Specify difficulties such as:

      . insufficient input from groups both inside and outside the agency,

      . problems in the relationship of different FEA components involved in the process (specifically, the relationship and respective responsibilities of the Offices of Regulatory Programs, Policy and Analysis, and the General Counsel),

      . delays due to outside agency oversight and review practices,

      . delays due to manpower needs.

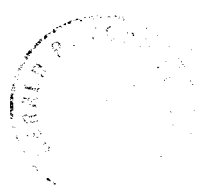
   e. Propose improvements in procedures, including:

      . changes in management control and responsibilities,

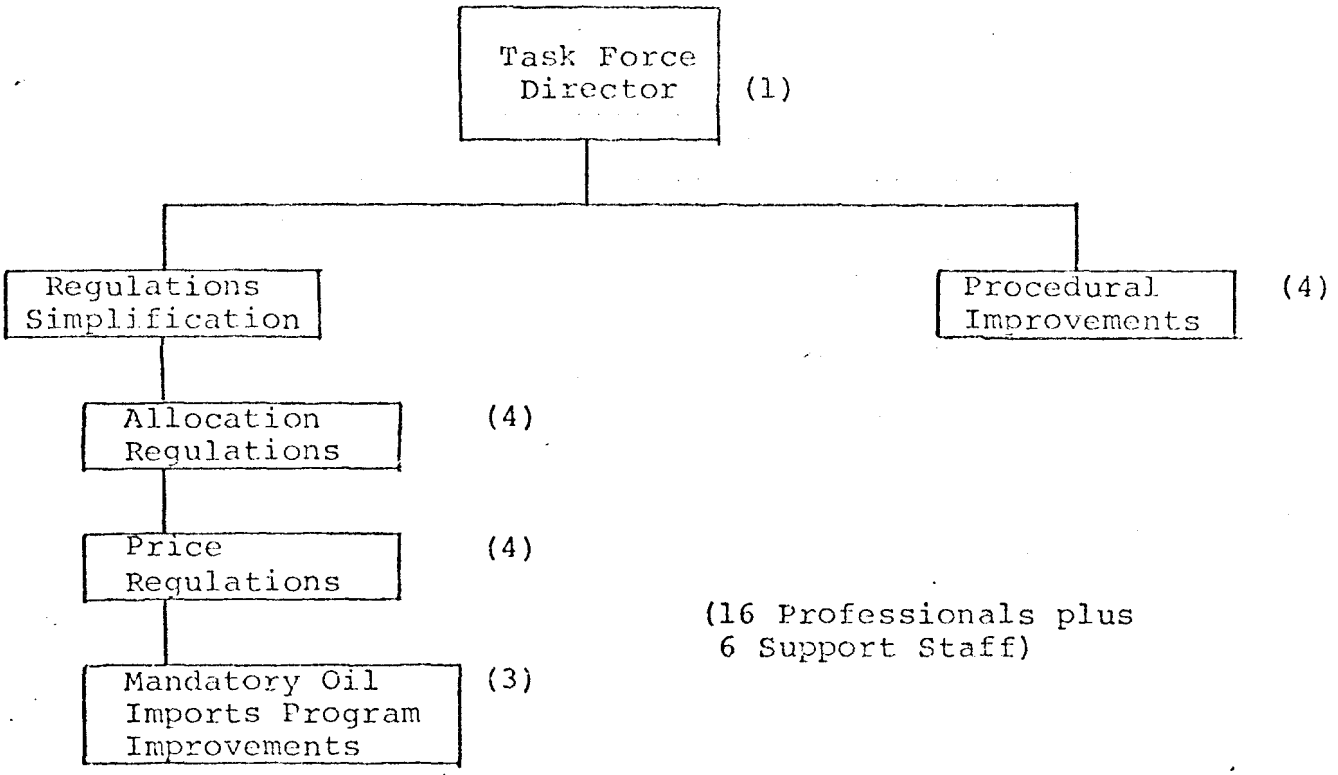
      . changes in review powers of inernal and external offices.,

      . improvements in access to supporting information.

   f. Recommend improvements in regulations development process. Includes preparation of options papers on alternate proposals, and selection of preferred option to be implemented by FEA.



IV. ORGANIZATION:



V. PERSONNEL REQUIREMENTS:

1. Regulations Simplification

Allocation Regulations - Four senior professionals (GS-14 or above) familiar with the concepts of allocation of petroleum or scarce commodities, but not employed by FEA. Should be familiar with petroleum production, refining and distribution systems.

	Possible Source
1 - Lawyer	Department of Justice
1 - Enforcement Specialist	Internal Revenue Service
1 - Systems Analyst	OMB
1 - Petroleum/Industrial Engineer	Department of Interior

Price Regulations - Four senior professionals (GS-14 or above) familiar with the petroleum industry and price control mechanisms, but not employed by FEA.

	Possible Source
1 - Laywer	Department of Justice
1 - Enforcement Specialist	Internal Revenue Service
1 - Systems Analyst	OMB
1 - Economist	Department of Treasury

Mandatory Oil Imports Program Improvements - Three senior professionals (GS-14 or above) familiar with the petroleum industry, with particular emphasis on refinery economics.

	Possible Source
1 - Lawyer	Department of Justice
1 - Economist	Department of of Commerce
1 - Refinery Engineer	Department of Interior

2. Procedural Improvements - Four senior professionals (GS-14 or above) familiar with organizational and management practices in government, with particular emphasis on the development of regulations.

	Possible Source
1 - Lawyer	FPC, ICC
1 - Operations Analyst	Department of Defense
1 - Management Analyst	Department of Commerce Department of Interior
1 - Program Analyst	Department of Transportation, etc.

Tab B

Task Force on Improving OSHA Regulation

The OSHA Task Force will center its attention on revising the national consensus safety standards that apply to general industry. These 50,000 standards have been the subject of much criticism as being confusing, complex, unrelated to safety conditions, and difficult to understand. The Task Force will attempt to clarify and simplify and, where redundant, to eliminate standards. In addition, where there are gaps in coverage, new standards will be added.

For some months the Department of Labor has had in operation an extensive program to revise two major subparts of the general industry safety standards (Subpart D - Walking and Working Surfaces, and Subpart L - Fire Protection) and a standard for anhydrous ammonia, together representing about one-seventh of the consensus standards. This effort was undertaken in order to update and simplify those in effect since OSHA adopted as mandatory the national voluntary consensus in 1971. The Department of Labor is carrying out an extensive solicitation of written public comments as a first step in revising these standards. In addition to the request for comments, a series of public meetings has been announced for various locations in the United States, to provide direct input from the public. Following the meetings and a full consideration of all comments received, OSHA will propose as soon as possible any necessary revision of these standards.

The Presidential Task Force will accelerate and extend this initiative to revise consensus standards. It is estimated that without additional staff resources, the OSHA effort to revise all of the consensus safety standards would take two or more years to be completed. The Task Force effort will add lawyers and technicians to complete preparation of standards for comment and assist in analyzing the public responses. The target for the Task Force effort is to initiate public review of Subpart O (Machine and Machinery Guarding) and Subpart P (Hand and Portable Power Tools) by early fall. In addition the Task Force will address general issues concerning OSHA's standards such as specification of design versus performance standards, and the problems of incorporating rapidly changing external standards by reference.

Organization of the Task Force

The membership in the Task Force will be made up of individuals both from within the Department of Labor and from other agencies. It is necessary to have DOL personnel in order to obtain the expertise to complete the work accurately and quickly. It is also necessary to add individuals from other agencies to enable DOL to carry on this expanded work. Therefore the Task Force will have as co-chairmen Joseph Kirk of OSHA, and Philip Harter of The Administrative Conference of the United States. The operating Director of the Task Force will be Anson Keller from OSHA. There will be three additional members from within DOL, two from the OSHA Safety staff and one from the DOL Solicitor's office. The remaining members of the Task Force will be composed of six attorneys and six engineers familiar with health and safety regulation. Mr. Francis Lunnie will handle the administrative details for the Task Force. In addition, the Task Force will require four secretaries.

The selected personnel would be detailed from government agencies for six months to the Committee on Regulation in the Office of the Secretary of DOL. They would be under the direction of the co-chairmen of the Task Force and would be given office space in the Department of Labor.

Work Plan

Work will begin immediately on preparation of the two additional subparts of the consensus standards. This work would put into place the process of review that is now being undertaken for Subparts D and L. The subparts would be prepared for publication in the Federal Register, request for comments and information would be made to business and trade organizations, meetings would be scheduled and written comments processed when received.

The preparation for publication in the Federal Register is the most important detailed step. Previous comments have to be compiled, whether received from individuals or national standards organizations. The enforcement experience to date has to be reviewed, including relevant commission decisions and cases. At this point, staff

analysis of basic issues is also critical, including issues as to whether more could be done to simplify the standards by referring to certified equipment rather than specifying the exact detail of each item as a piece of that equipment. The final product of the review is the preparation of a paragraph-by-paragraph presentation of existing standards and comments received for the Federal Register.

Meetings on the additional subparts will be scheduled, and comments will be received for sixty days after publication in the Federal Register. After the comments have been considered, OSHA technical experts will prepare the proposed revised and simplified standards with the members of the Task Force.

cc: Leach

THE WHITE HOUSE

WASHINGTON

Ed —
Excellent —
Good work
Jim

May 21, 1976

MEMORANDUM FOR: DICK CHENEY
JIM CANNON ✓
BOB HARTMANN
JACK MARSH
BILL SEIDMAN

FROM: ED SCHMULTS

As the attached editorials from the Christian Science Monitor, the New York Times and the Wall Street Journal indicate, I believe the President's Agenda for Government Reform Act is off to a good start. The local press around the country is also reporting it favorably. We are looking for ways to maintain the President's "out front" position on government reform.

Attachments

THE CHRISTIAN S

SCIENCE MONITOR 5/21/76

"First the blade, then the ear,

The Monitor's view

Reforming the regulators

NY Times 5/19/76

Caging the Elephant

REVIEW & OUTLOOK

Selling Regulatory Reform