The original documents are located in Box 58, folder "1976/09/30 HR8532 Hart-Scott-Rodino Antitrust Amendments Act of 1976 (3)" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

STATEMENT BY THE PRESIDENT

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

COMPETITION AND ANTITRUST POLICIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT BY THE PRESIDENT

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TO THE HOUSE OF REPRESENTATIVES:

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

COMPETITION AND ANTITRUST POLICIES

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

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

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

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

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

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

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

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

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

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

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

HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

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

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

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

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

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

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

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

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

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

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

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

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

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