By memorandum dated April 23, 1969 from Deputy Attorney General Richard Kleindienst, acting as Attorney General*, and Assistant Attorney General Richard McLaren, head of the Antitrust Division, to John Ehrlichman, Counsel to the President, Kleindienst and McLaren urged approval of the commencement of an antitrust action against the International Telephone and Telegraph Corporation (ITT) challenging its acquisition of Canteen Corporation. Commencement of the suit was approved and on April 28, 1969 the suit was begun in the United States District Court for the Northern District of Illinois.

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1.1 Memorandum from Richard Kleindienst and Richard McLaren to John Ehrlichman, April 23, 1969 with draft complaint attached (received from White House).

1.2 Memorandum from Richard McLaren to Richard Kleindienst, April 25, 1969, 3 Kleindienst Confirmation Hearings (KCH) 1237.

1.3 United States v. International Telephone and Telegraph Corporation, Civ. No. 69c-924, Docket, 2.

1.4 Richard Kleindienst testimony, 2 KCH 96.

1.5 John Mitchell testimony, 2 KCH 539-40.

1.6 Memorandum from Richard McLaren for the Attorney General, April 7, 1969 (received from Department of Justice).
2. On August 1, 1969 two antitrust suits similar to the Canteen suit were commenced in the United States District Court for the District of Connecticut challenging ITT's acquisition of the Hartford Fire Insurance Company and Grinnell Corporation.


2.3 Memorandum from Richard McLaren for the Attorney General, June 20, 1969 (received from Department of Justice).

2.4 Memorandum from Richard McLaren for the Deputy Attorney General, July 25, 1969 (received from Department of Justice).
3. During 1969, 1970 and 1971, Harold S. Geneen, President of ITT, met on numerous occasions with White House staff members, other Administration officials and members of both houses of Congress to discuss various matters, including international monetary policy, the Office of Foreign Direct Investment policy, antitrust policy, balance of payments, revenue sharing and expropriation by foreign governments. During the summer of 1969 Geneen sought a personal meeting with the President to discuss the ITT antitrust cases. His request was denied because the President's advisers thought that such a meeting was inappropriate.

3.1 Harold Geneen testimony, 2 KCH 776-80.

3.2 Memorandum from Hugh Sloan to John Ehrlichman, June 30, 1969 (received from White House).

3.3 Memorandum from Dwight Chapin to Peter Flanigan, July 16, 1969 (received from White House).

During September 1969 Colonel James Hughes, Military Assistant to the President, spoke with Dita Beard, an ITT lobbyist, about the pending antitrust suit. Hughes reported on the conversation in a memorandum to Ehrlichman dated September 19, 1969.

4.1 Memorandum from Colonel James Hughes to John Ehrlichman, September 19, 1969 (received from White House).
5. In August 1970 officials and representatives of ITT held five meetings with Administration officials, including Vice President Spiro Agnew, Secretary of Commerce Maurice Stans, Assistant Attorney General McLaren and White House counsel John Ehrlichman and Charles Colson to discuss antitrust matters in general and the ITT antitrust litigation in particular. In another meeting, Geneen and Attorney General Mitchell met to discuss overall antitrust policy with respect to conglomerates. At these meetings and in subsequent letters and memoranda ITT officials sought to persuade Administration officials that McLaren's antitrust views, as reflected in his conduct of the ITT litigation, were ill-advised and inconsistent with the Administration's antitrust policy.

5.1 Memorandum from Tod Hulin to John Ehrlichman, August 4, 1970 (received from White House).

5.2 Letter from Richard McLaren to Tod Hulin, July 30, 1970, with attached memorandum from Richard McLaren to John Ehrlichman (received from White House).

5.3 Memorandum from Richard McLaren to Tod Hulin, August 3, 1970, with attachments (received from White House).

5.4 Letter from "Ned" (Edward Gerrity?) to Vice President Spiro Agnew, August 7, 1970, with attached memorandum (received from House Foreign and Interstate Commerce Committee).

5.5 Memorandum from John Poole to Files, August 7, 1970 (received from Department of Justice).

5.6 Memorandum from Tod Hulin to Richard McLaren, August 10, 1970 (received from White House).
5.7 Letter from Thomas Casey to Charles Colson, August 7, 1970, with attachment (received from White House).

5.8 Memorandum from Charles Colson to John Ehrlichman, August 10, 1970 (received from White House).

5.9 Memorandum from Tod Hullin to John Mitchell, August 11, 1970 (received from White House).


5.11 Memorandum from Edward Gerrity to John Ryan, August 10, 1970 (received from Michael Mitchell).

6. On September 15, 1970 the trial in ITT-Grinnell began. In memoranda dated September 17, 1970 from Ehrlichman to Attorney General Mitchell and October 1, 1970 from Colson to Ehrlichman, the ITT litigation was discussed. Ehrlichman and Colson stated their concern that McLaren's conduct of the ITT cases constituted an attack on "bigness per se" contrary to the Administration's expressed antitrust policy.


6.2 Memorandum from John Ehrlichman to John Mitchell, September 17, 1970 (received from White House).

6.3 Memorandum from Charles Colson to John Ehrlichman, October 1, 1970, with attachment (received from White House).
7. The trial of ITT-Grinnell was completed on October 30, 1970 and the case was taken under advisement. A judgment for ITT on the merits was rendered on December 31, 1970. A notice of appeal was filed on March 1, 1971.


8. On March 3, 1971 at ITT's request Geneen and William Merriam, ITT Vice President and Director of Washington Relations, met with Ehrlichman to discuss antitrust matters.

8.1 John Ehrlichman log, March 3, 1971 (received from SSC).

8.2 Letter from William Merriam to John Ehrlichman, March 4, 1971 (received from White House).

8.3 William Merriam testimony, 3 KCH 951.
9. On March 20, 1971, on the motion of Solicitor General Erwin Griswold, the time for the government to perfect its appeal in *ITT-Grinnell* by filing its jurisdictional statement was extended from March 31, 1971 to April 20, 1971.

9.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time and Order of the Supreme Court, March 20, 1971, and letter from the Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice).
10. On March 30, 1971 Merriam and Thomas Casey, ITT Director of Corporate Planning, met with Peter Peterson, Assistant to the President for International Economic Affairs, to discuss a wide range of subjects including antitrust matters.

10.1 Peter Peterson affidavit, April 29, 1974.

10.2 Letter from William Merriam to Peter Peterson, April 7, 1971 (received from Peter Peterson).
11. At the request of Ehrlichman who said he spoke for the President, Peterson met with Geneen and Merriam on Friday, April 16, 1971. They discussed various subjects relating to economic policy, including overall antitrust policy related to bigness. At the end of the meeting, Geneen and Merriam discussed ITT's specific antitrust problems, including the fact that the deadline for the government to perfect the ITT-Grinnell appeal was the following Tuesday, April 20. After the meeting Peterson telephoned Ehrlichman and reported on the meeting including the discussion of the ITT-Grinnell appeal. Ehrlichman indicated to Peterson that action was under way to postpone the appeal. The following week Peterson reported to the President on the meeting and his subsequent telephone call to Ehrlichman.

11.1 Peter Peterson affidavit, April 29, 1974.

11.2 Memorandum from Peter Peterson to the President, April 23, 1971 (received from White House).
Also on April 16, 1971 Lawrence Walsh, a member of a law firm that had long represented ITT, telephoned Deputy Attorney General Kleindienst. Pursuant to that telephone conversation Walsh caused to be delivered to Kleindienst a letter and memorandum urging that before the Department of Justice decided to pursue the ITT-Grinnell appeal to the Supreme Court it should undertake a review by all interested federal agencies of the economic consequences of a Supreme Court decision favorable to the government. Copies of the Walsh letter and memorandum were delivered later that day to Peterson and Ehrlichman.

12.1 Richard Kleindienst testimony, 2 KCH 250.

12.2 Lawrence Walsh testimony, 3 KCH 1038-39.

12.3 Letter from Lawrence Walsh to Richard Kleindienst, April 16, 1971 with attached memorandum of law, 2 KCH 265-68 (received from White House).

12.4 Memorandum from William Merriam to Peter Peterson, April 16, 1971 with attached letter (received from Peter Peterson).

12.5 Letter from William Merriam to John Ehrlichman, April 16, 1971 with attached letter and memorandum of law (received from White House).
13. On Monday morning, April 19, 1971, Kleindienst told Walsh by telephone that Kleindienst did not think the ITT-Grinnell appeal would be delayed. In a memorandum dated April 19, 1971 to Kleindienst, McLaren disputed the position taken by Walsh in his letter and memorandum of April 16 and urged that the ITT-Grinnell appeal not be delayed.

13.1 Lawrence Walsh testimony, 3 KCH 1039.

13.2 Memorandum from Richard McLaren to Richard Kleindienst, April 19, 1971 (received from Department of Justice).
14. Beginning at 3:03 p.m. on the afternoon of April 19, 1971 the
President met with Ehrlichman and George Shultz, Director of the
Office of Management and Budget. The antitrust actions against ITT were
among the subjects discussed. Ehrlichman said that the deadline for the
ITT-Grinnell appeal was the following day and he reported that, despite
his attempts to give the Justice Department "signals," the appeal was
being pursued. The President then telephoned Kleindienst and ordered
him to drop the appeal. After the telephone conversation the President
expressed his concern that McLaren's actions with respect to conglomerates
were contrary to the administration's antitrust policy.

14.1 Tape recording of conversation among the President,
John Ehrlichman and George Shultz, April 19, 1971,
3:03 - 3:34 p.m., and House Judiciary Committee
transcript thereof.

14.2 Tape recording of telephone conversation between
the President and Richard Kleindienst, April 19,
1971, 3:04 - 3:09 p.m., and House Judiciary Com-
mittee transcript thereof.
15. After the President's telephone call Kleindienst met with McLaren and Solicitor General Erwin Griswold and directed that the Solicitor General apply to the Supreme Court for another extension of time. At 4:30 p.m. Kleindienst telephoned Walsh and informed him that the Solicitor General was arranging for an extension of time for the government to perfect its appeal.

15.1 Richard Kleindienst testimony, 2 KCH 250.
15.2 Richard McLaren testimony, 2 KCH 252.
15.3 Erwin Griswold statement, 2 KCH 242-43.
15.4 Erwin Griswold testimony, 2 KCH 373, 378-80.
15.5 Lawrence Walsh testimony, 3 KCH 1039.
16. On Tuesday, April 20, 1971, on the motion of Solicitor General Griswold, the time for the government to perfect its appeal in ITT-Grinnell by filing its jurisdictional statement was extended from April 20, 1971 to May 20, 1971.

16.1 United States v. International Telephone and Telegraph Corporation, Application for Extension of Time filed by the Solicitor General and Order of the United States Supreme Court, April 20, 1971, with letter from the Clerk of the Supreme Court to Solicitor General Erwin Griswold (received from Department of Justice).

16.2 United States v. International Telephone and Telegraph Corporation, Supreme Court Docket.
17. Also on April 20, 1971 Felix Rohatyn, an investment banker who was a director of ITT, met with Kleindienst to discuss the economic and financial ramifications of divestiture of the Hartford Fire Insurance Company by ITT. At the meeting Rohatyn asked to present these arguments to McLaren, and such a presentation was later arranged for April 29.

17.1 Richard Kleindienst testimony, 2 KCH 96-97.
17.2 Felix Rohatyn testimony, 2 KCH 114.
18. On April 21, 1971 the President met with Attorney General Mitchell and discussed, among other things, the ITT-Grinnell appeal. The President said that he did not care about the merits of the case but that the business community believed that the Administration was being even rougher on it in antitrust matters than had previous administrations. Mitchell argued that it was a political mistake to interfere with the appeal. The President agreed to heed Mitchell's advice to permit the appeal to be perfected.

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18.1 Tape recording of the end of a meeting between the President and John Mitchell, April 21, 1971, 4:18 - 6:13 p.m., and House Judiciary Committee transcript thereof.
1. By memorandum dated April 23, 1969 from Deputy Attorney General Richard Kleindienst, acting as Attorney General*, and Assistant Attorney General Richard McLaren, head of the Antitrust Division, to John Ehrlichman, Counsel to the President, Kleindienst and McLaren urged approval of the commencement of an antitrust action against the International Telephone and Telegraph Corporation (ITT) challenging its acquisition of Canteen Corporation. Commencement of the suit was approved and on April 28, 1969 the suit was begun in the United States District Court for the Northern District of Illinois.

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MEMORANDUM FOR:

Honorable John Ehrlichman
Counsel to the President
The White House

Re: ITT-Canteen Merger

In accordance with telephone conversation this morning, enclosed is a Memorandum for the Attorney General dated April 7, 1969, and a draft of proposed complaint to be filed under Section 7 of the Clayton Act in opposition to the ITT-Canteen merger. As you will note, the theory of the complaint is that this merger would adversely affect competition in the vending and inplant feeding business in the United States by reason of the vertical and reciprocity effects potentially resulting therefrom.

Active reciprocity, as you probably know, involves the use, normally by a diversified firm, of its purchasing power to assist its sales efforts. Reciprocity tends to exclude small and undiversified firms from the market. It is generally recognized that active reciprocity by a firm of significant size involves a violation of the Sherman Act (see Flynn, "Reciprocity and Related Topics Under the Sherman Act", 37 ABA Antitrust Law Journal, 156-168, 178-182 (1968)).

The Supreme Court has also stated: "Reciprocity in trading as a result of an acquisition violates Section 7 if the probability of a lessening of competition is shown" FTC v. Consolidated Foods Corp., 380 U.S. 592, 595 (1965). In Consolidated Foods, the case was tried after the merger
had taken place and the Court found that there had been seven instances of affirmative use by the acquiring company to make sales on the basis of a reciprocity pitch. The next question is whether we must wait for completion of a merger involving substantial reciprocity power and opportunity until after the merger is consummated. The court in United States v. Ingersoll Rand Co., 218 F. Supp. 530, 552; affirmed 320 F. 2d 509, pointed out "the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing the goodwill of the possessor." In other words, where the large diversified company makes substantial purchases from many suppliers, these suppliers are going to feel a "reciprocity effect" even without affirmative use of reciprocity by the purchaser.

It has been our position (contrary to that taken by the prior Administration) that conglomerate mergers involving very large firms violate Section 7 of the Clayton Act where (1) significant potential horizontal competition is eliminated; (2) the merger will create reciprocity power which will substantially lessen competition in lines of commerce occupied by either the acquired or the acquiring firm; and (3) where economic concentration and the triggering of further mergers may be anticipated, with effects condemned by Congress when it amended Section 7 of the Clayton Act in 1950.

In the instant case, our interpretation of Section 7 of the Clayton Act is nevertheless consistent with the somewhat narrower interpretation of Section 7 of the Clayton Act held by the prior Administration. Under the Justice Department "Guidelines" issued in May 1968, a rule was set out condemning mergers which create the
danger of reciprocal buying (paragraph 19(a)). This guideline is set forth in full in the margin. 1/ For present purposes, Canteen is "the selling firm" and ITT is the "buying firm". None of Canteen's competitors is affiliated with an industrial purchaser of anything approaching the size of ITT. We estimate that ITT makes purchases from suppliers accounting for approximately 1/3 of the industrial work force in the nation. Thus these suppliers, employing 1/3 of the work force, certainly account for more than 15% of inplant feeding. The second half of the guideline is satisfied by the fact that ITT would be "both a substantial supplier [of industrial products] and a more substantial buyer than all or most of the competitors of" Canteen. We know of no "special market factor" that makes remote the possibility that reciprocal buying behavior will actually occur.

1/ (a) Since reciprocal buying (i.e., favoring one's customer when making purchases of a product which is sold by the customer) is an economically unjustified business practice which confers a competitive advantage on the favored firm unrelated to the merits of its product, the Department will ordinarily challenge any merger which creates a significant danger of reciprocal buying. Unless it clearly appears that some special market factor makes remote the possibility that reciprocal buying behavior will actually occur, the Department considers that a significant danger of reciprocal buying is present whenever approximately 15% or more of the total purchases in a market in which one of the merging firms ("the selling firm") sells are accounted for by firms which also make substantial sales in markets where the other merging firm ("the buying firm") is both a substantial buyer and a more substantial buyer than all or most of the competitors of the selling firm.
ITT's argument is that it would not engage in active reciprocity; that reciprocity is unlikely in the vending and inplant feeding industries because service is an important element and employees have a substantial voice in the selection of the supplier; and that ITT's purchases from industrial suppliers are a small percentage of the total sales of those suppliers and therefore would not be influential in swinging their vending or inplant feeding purchasing.

The answers to these arguments are as follows. First, the fact that ITT might not aggressively use reciprocity will not eliminate the reciprocity effect, which could influence up to 30% of the business, and even a 6% foreclosure would be an adverse effect condemned by the statute; notwithstanding the service nature of the business and employee voice in selection, we have evidence that reciprocity does play a part in the inplant feeding business; finally, even though ITT as a buyer may account for a small proportion of the sales of a large firm, all other things being equal (price, service, etc.), even $100,000 worth of business per year is a matter of significance and clearly could give Canteen a decisive advantage over competitors who do not have affiliation with a large diversified firm such as ITT. 2/

2/ A survey by Purchasing Magazine reveals that reciprocity influences purchasing decisions in large companies (over $50 million) far more frequently than in smaller companies. Chemical Week Magazine, in a similar study, also noted that chemical purchasing agents encounter reciprocity pressures only in dealing with large accounts.
We should add that, in connection with a specific investigation of reciprocity practices, we have found that reciprocity is particularly widespread, for example, in the steel industry, and that where one important member of an industry begins to use reciprocity, other members are virtually forced to follow suit.

In conclusion, we would like to make clear that the opportunity for the operation of reciprocity has been a substantial basis for antitrust challenges to "conglomerate" mergers under Section 7 in at least five cases. One of these—the FTC's case against Consolidated Foods—was decided in favor of the Commission by the Supreme Court. Two others—the Department's suits against acquisitions by General Dynamics and Ingersoll Rand—were decided in the Government's favor by the district courts and did not reach the Supreme Court. A fourth case—a suit by the Department against Penick & Ford—is now pending in the district court—while the fifth—the Department's suit against the acquisition of Jones & Laughlin Steel by LTV—was recently filed by the Department. Moreover, the Department's policy of challenging mergers on this basis has been clearly conveyed to the business community in the previous Administration's Merger Guidelines and is well recognized by business and the antitrust bar. We believe that the proposed case against the ITT-Canteen acquisition is squarely within this line of cases.

We find that the Justice Department's action in proceeding against mergers among the very largest companies has been very favorably received by business as well as by Congress and the public at large. We are very concerned that reduced activity along this line will ultimately result in unduly restrictive legislation, and perhaps a Public Utility Holding Company Act "death sentence" provision to undo the concentration which will result from a continuation of the present trend.
Vigorous enforcement of the antitrust laws, including preservation of small and medium-sized business and prevention of undue concentration, is traditional Republican doctrine. Our Section 7 policy is designed to implement that doctrine, and to avoid the dangers to the economy posed by the current big-company merger movement, as outlined in Mr. McLaren's testimony before the House Ways and Means Committee on March 12, 1969 (copy attached, see pages 10-22). We understand that the Council of Economic Advisers fully supports our Section 7 policy and would strongly favor its continuance.

Accordingly, we urge that the proposed suit against the ITT-Canteen merger be approved, and that we be authorized to negotiate with ITT a "standstill agreement" which would permit the merger to be completed, but would preserve the identity of Canteen, assure a prompt trial, and provide for divestiture in the event that a violation of Section 7 is found.

RICHARD G. KLEINDIENST
Deputy Attorney General

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION and
CANTEEN CORPORATION,

Defendants.

COMPLAINT

The United States of America, plaintiff, by its attorneys, brings this civil action against the above named defendants and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against the defendants under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain the violation by the defendants, as hereinafter alleged, of Section 7 of that Act.
2. The defendants, International Telephone and Telegraph Corporation and Canteen Corporation, transact business and may be found within the Northern District of Illinois, Eastern Division.

II

DEFENDANTS

3. International Telephone and Telegraph Corporation is made a defendant herein. International Telephone and Telegraph Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 320 Park Avenue, New York, New York. It and all companies controlled by it are hereinafter referred to as "ITT." ITT ranks among the 12 largest industrial concerns in the United States. The 1967 revenues of International Telephone and Telegraph Corporation and all companies controlled by it at the end of 1968 were $3.578 billion. ITT engages in substantial interstate and foreign commerce in a wide variety of business activities throughout the United States and in many foreign countries including international telecommunications, the operation of overseas telephone companies and various manufacturing and service businesses. ITT's domestic divisions and subsidiaries include Continental Baking Company, the largest baking company in the United States; Sheraton Corporation of America, one of the two largest hotel chains in the United States; Levitt & Sons, Inc., one of the largest residential construction firms in the United States; Avis, Inc., the second
largest car-rental firm in the United States; and Rayonier, Inc., a leading producer of chemical cellulose.

4. ITT is growing extremely rapidly. In the period 1955 through 1968, its total sales increased from $502,760,050 to approximately $3,578,000,000 (1967 sales of ITT including the companies it acquired in 1968). Much of ITT's recent growth has resulted from some 35 mergers and acquisitions which it made during the period 1960 through 1968. In 1968 alone ITT acquired Continental Baking, Sheraton, Levitt, and Rayonier, whose total combined 1967 revenues were $1,157,980,552 when acquired. Continental Baking and Rayonier were among the country's 500 largest industrial corporations. At the present time, ITT has approximately 109,000 employees in the United States employed at numerous industrial plants, laboratories, and other locations.

5. Canteen Corporation, hereinafter referred to as "Canteen," is named a defendant herein. Canteen is a corporation organized and existing under laws of the State of Delaware, with its principal place of business at the Merchandise Mart, Chicago, Illinois. Canteen's Rowe Cigarette Division operates cigarette machines in restaurants and other public places throughout the United States. Canteen's Food and Vending Service Division operates vending machines
located in industrial plants, business offices, and other locations. This Division also provides manual food services for industrial and business firms. Canteen's Hospital Host and Campus Host services provide specialized food service to hospitals and to schools, respectively. Canteen also manages restaurants (Nationwide Restaurant Management) and concessions at sports facilities (Nationwide Concessions Divisions). Canteen engages in substantial interstate commerce in vending and food services. With operations in some 43 states, Canteen and its franchised distributors constitute one of the few nationwide vending organizations. Canteen's 1968 revenues were $322,202,000.

III

DEFINITIONS

6. The term "vending," as used herein, means the business of retailing food and related items through coin-operated vending machines. The items sold by the vending industry include cigarettes, cigars, confections, soft drinks, coffee, ice cream, milk, hot canned foods, and prepared foods such as sandwiches and casseroles.

7. The term "full-line vending," as used herein, means the business of vending a wide variety of food and
through vending machines. Full-line venders have the capability to provide complete meals at a single location.

8. The term "manual food service," as used herein, means the business of providing meals and related food items through such facilities as executive dining rooms, employee cafeterias, and snack bars.

9. Vending operators, by contract or informal agreement, locate their machines in various places and locations controlled by others. Usually, venders pay commissions based on sales for the right to so locate their machines. In 1967, approximately 34% of vending sales were at public locations, 32% at plants and factories, 11% at schools and colleges, 8% at offices, and 13% at other locations. In 1967, retail vending sales were approximately $4.5 billion.

10. There are approximately 6,200 operators in the domestic vending industry. They range in size from one-man operations to nationwide companies such as Canteen. The smallest operators generally specialize in one or two vended products, principally cigarettes. The primary market for
such vendors, sometimes called "street vendors," is the public location such as a restaurant or tavern. Most vendors offer a broader selection of vended products and for these more diversified vendors such locations as industrial plants, offices, and schools are also important.

11. Somewhat less than half of all vendors have the capability to serve a full meal through vending machines, and thereby provide full-line vending. Approximately one-third of such full-line vendors also provide manual food services. For full-line vendors, industrial plants are a very important market.

12. Many industrial plants, in addition to requiring vending machines which provide snacks, refreshments, and cigarettes, also require in-plant facilities to feed their employees on the job and contract with outside firms to provide such service. Such in-plant feeding can be provided by full-line vending, by manual food service, or by a combination of both. While the exact size of this service is not presently known, it is clear that retail sales in this area exceed one billion dollars. It is estimated that Canteen and its largest competitor each account for over 10% of this in-plant feeding business.
13. The few large nationwide food and vending companies such as Canteen possess substantial advantages over their smaller competitors. Many industrial locations, principally larger ones, require both vending and manual food service. While it is possible for a vender who has no manual food service, or a manual food service operator who has no vending, to compete for portions of such business, industrial plants often prefer to contract with one operator to provide all of such services. In addition, industrial firms with locations in various parts of the United States often prefer to contract with one nationwide firm like Canteen to provide vending and in-plant feeding services at such locations.

14. A trend of mergers has begun between firms with a full-line vending and manual food service capability on the one hand and large diversified firms on the other. In 1964, Greyhound Corporation, the largest bus operating company in the United States, acquired The Prophet Company. And in 1967, Ogden Corporation, another diversified firm, acquired ABC Consolidated Corporation.

15. "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity
effect" refers to the tendency of a firm selling or desiring to sell to another company to channel its purchases to that company.

16. A firm's reciprocity power and ability to benefit from reciprocity effect grow as its purchasing capacity and product diversity are increased. At the present time, ITT makes purchases of goods and services well in excess of $550,000,000 from numerous domestic suppliers. In 1967, ITT purchased more than $100,000 in goods or services from each of approximately 725 companies, including 61 of the top 100 corporations on the Fortune list of industrial companies, 99 of the top 200, and 150 of the top 500. It is estimated that ITT's actual and potential suppliers employ about one-third of the nation's industrial labor force.

17. The number of ITT's actual and potential suppliers will increase as ITT and other industrial firms continue to grow rapidly by acquisition and merger. The scale and pace of merger activity is increasing rapidly. Mergers in 1967 involved the acquisition of concerns with $8.25 billion in manufacturing and mining assets and, in 1968, of concerns with more than $12.5 billion in such assets. The proportion of the total assets of the nation's manufacturing corporations
held by the 200 largest firms has increased from 48.1% in 1948 to 54.2% in 1960 and 53.7% in 1967. The great bulk of this increase in concentration has resulted from mergers and acquisitions.

V

OFFENSE CHARGED

18. On or about November 14, 1968, ITT and Canteen entered into an agreement pursuant to which ITT will acquire all of the stock of Canteen. This acquisition is due to be consummated on or about April 25, 1969.

19. The effect of the aforesaid acquisition may be substantially to lessen competition or tend to create a monopoly in the aforesaid trade and commerce in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) The power of ITT and Canteen to employ reciprocity or benefit from reciprocity effect in the furnishing of vending and in-plant feeding services will be substantially increased;

(b) Actual and potential competitors of Canteen may be foreclosed from competing for vending
and in-plant food business at industrial
and business locations owned by ITT and
its subsidiaries;

(c) The competitive advantages which will accrue
to Canteen, a leading firm, as a result
of this merger will raise barriers to entry
and discourage smaller firms from competi-
tion in the vending and in-plant feeding
businesses;

(d) This acquisition will tend to trigger other
mergers by competitors of Canteen seeking
to protect themselves from the impact of
this acquisition or to obtain similar com-
petitive advantages.

VI

PRAYER

WHEREFORE, the plaintiff prays:

1. That a preliminary injunction be issued enjoining
the defendants, their officers, directors, agents, and
employees and all other persons acting in their behalf from
taking any further action to carry out or consummate the
aforesaid acquisition or otherwise from transferring all
or any part of the stock or the business of Canteen to ITT pending final adjudication of the merits of this Complaint.

2. That ITT’s acquisition of the stock of Canteen be adjudged a violation of Section 7 of the Clayton Act.

3. That ITT and Canteen and their officers, directors, agents, and all other persons acting on behalf of either ITT or Canteen or both be enjoined from carrying out the aforesaid agreement or any agreement for the acquisition of stock or assets of Canteen by ITT.

4. That the plaintiff have such other and further relief as the Court may deem just and proper.

5. That the plaintiff recover the costs of this suit.

RICHARD G. KLEINDIENST
Deputy Attorney General

JOHN W. POOLE, JR.

GARY M. COHEN

JOSEPH A. TATE
Attorneys, Department of Justice

CHARLES D. MAHAFIE, JR.
Attorneys, Department of Justice

United States Attorney
CITY OF WASHINGTON } ss:
DISTRICT OF COLUMBIA } 

JOHN W. POOLE, JR., being duly sworn, deposes and says that he is an attorney employed by the Department of Justice of the United States; that he has been actively engaged in the preparation of this proceeding; that he has read the foregoing complaint and knows the contents and is familiar with the subject matter thereof; that he is informed and believes the allegations of fact contained therein are true; and that the sources of his information are written statements, data, and documents submitted to the Department of Justice by the defendants, public documents, data, and publications, and interviews and communications with persons engaged in the industries described in the complaint.

__________________________________________
JOHN W. POOLE, JR.

Subscribed and sworn to before me
this _____ day of ________, 1969.

__________________________________________
Notary Public
RICHARD G. KLEINDIENST—RESUMED

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SECOND CONGRESS
SECOND SESSION
ON
NOMINATION OF RICHARD G. KLEINDIENST, OF ARIZONA,
TO BE ATTORNEY GENERAL

PART 3
APRIL 10, 11, 12, 13, 14, 17, 18, 19, 20, AND 21, 1972

Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1972

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Washington, D.C., 20402 - Price $3.75
exchanges here, and on the credit rating which its outstanding debt securities receive. Dean Willis Winn, in his remarks particularly referred to the importance of the credit worthiness of a U.S. based company in the United States to successful financing abroad, a major requirement for companies with foreign operations like ITT's in light of the current balance of payments situation.

A major reduction in available cash such as that demonstrated above, will, in addition to having the obvious adverse operational impacts which inevitably follow a contraction of cash, have an adverse impact on equity values as dividends on the common stock come under pressure. Such a cash shortfall would also undoubtedly have an adverse impact on the holders of outstanding ITT debt instruments and on ITT's ability to raise additional funds through debt financing here, but more significantly, abroad.

Among the adverse consequences to the nation that would inevitably follow from the requisite contraction by ITT of its foreign operations is loss of market shares to major foreign competitors such as Ericsson, Siemens, Philips, Nippon Electric and Hitachi. Loss of market shares abroad can only result in a diminution of the cash which ITT would have otherwise repatriated to the United States. It would appear contrary to the national interests of this country to take conscious actions which would have such an adverse impact on the balance of payments.

Thank you once again for the courtesies which were extended to me, Dr. Saulnier, Dean Winn, and counsel. We very much appreciated the opportunity to discuss the overall policy implications of this situation with you, Mr. Kleindienst and Mr. MacLaury.

Very truly yours,

FELIX G. ROHATYN.

MEMORANDUM FROM RICHARD W. MCLAREN TO RICHARD G. KLEINDIENST, APRIL 23, 1969, ON FILING ITT-CANTEEN COMPLAINT

To: Richard G. Kleindienst, Deputy Attorney General.
From: Richard W. McLaren, Assistant Attorney General.
Subject: ITT-Canteen.

The determination has now been made to go ahead and file the complaint in this case on Tuesday, April 29. The complaint will be coming up to you for signature on Monday.

MEMORANDUM FROM DONALD BAKER TO RICHARD MCLAREN, APRIL 22, 1969, EXPLAINING CANTEEN CASE REGARDING RECIPROCITY THEORY AND MERGER GUIDELINES


To: Richard W. McLaren, Assistant Attorney General, Antitrust Division.
From: Donald I. Baker, Chief, Evaluation Section.
Subject: ITT Canteen—Reciprocity Theory.

You asked me for an explanation as to whether the proposed ITT-Canteen case would fall within our Merger Guidelines. Having talked with Bob Hammond, I think that I can say that it would.

The relevant provision is Paragraph 19(a)—a difficult provision—dealing with structural conditions giving rise to reciprocity:


(a) Since reciprocal buying (i.e., favoring one's customer when making purchases of a product which is sold by the customer) is an economically unjustified business practice which confers a competitive advantage on the favored firm unrelated to the merits of its product, the Department will ordinarily challenge any merger which creates a significant danger of reciprocal buying. Unless it clearly appears that some special market factor makes remote the possibility that reciprocal buying behavior will actually occur, the Department considers that a significant danger of reciprocal buying is present whenever approximately 1/4 or more of the total purchases in a market in which one of the merging firms ("the selling firm") sells are accounted for by firms which also make substantial sales in markets where the other merging firm ("the buying firm") is both a substantial buyer and a more substantial buyer than all or most of the competitors of the selling firm.

73-S53 O—72—pt. 3—25
CIVIL DOCKET
UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA, Plaintiff,
VS
INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, Defendant.

A TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK

By
DEPUTY CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
DATE: FEB 6 1974

STATISTICAL RECORD
J.S. 5 mailed
J.S. 6 mailed
Basis of Action: ANTI-TRUST Clayton Act. Seeks: injunction
Action arose at:

For plaintiff:
Thomas A. Ford—William J. Bauer
U. S. Attorney
Ro! L. Ferre, Peter H. Goldberg
John W. Poole, Jr.
John E. Sarbaugh
Atty's, Dept. of Justice
Room 2634, U.S. Courthouse
219 S. Dearborn, 60604
353-7538

Richard W. McLaren
Assistant Attorney General
Washington, D.C.
John W. Poole, Jr.
Antitrust Division, Dept. of Justice
Washington, D.C. 20530
Jeffrey J.
For defendant: Thomas F. Gardner, Kenneth
Hammond E. Chaffetz, William R. Jentes
and John H. Morrison for
Kirkland, Ellis, Hodson, Chaffetz & Master
2900 Prudential Plaza
60601
Ra. 6-2929

David P. List & Robert E. Mason for
Leibman, Williams, Bennett, Baird & Minor
200 S. LaSalle
60604-70
346-2200 One First Nat'l Plaza

Edward T. Tait for
Whitlock, Markey and Tait
Shreham Bldg.
Washington, D.C. 20005
202-783-7995

COSTS
Clerk
Marshal
Docket fee
Witness fees
Depositions

DATE

NAME OR RECEIPT NO.

REC.

DIST.
<table>
<thead>
<tr>
<th>DATE</th>
<th>PROCEEDINGS</th>
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<tbody>
<tr>
<td>4-28-69</td>
<td>Filed complaint (JS-5)</td>
</tr>
<tr>
<td>4-28-69</td>
<td>Filed designation</td>
</tr>
<tr>
<td>4-28-69</td>
<td>Filed attorney's instructions regarding service of summons JWH</td>
</tr>
<tr>
<td>4-29-69</td>
<td>Issued summons and one copy with one copy of complaint JWH</td>
</tr>
<tr>
<td>4-29-69</td>
<td>Filed appearance of defendant and that of attorneys together with six (6) Affidavits under rule 39. Y</td>
</tr>
<tr>
<td>5-8-69</td>
<td>Cause continued to May 27, 1969 at 9:00 A.M. for pretrial conference in Chambers, Room 2588. - Austin, J Mailed notices 5-9-69 Y</td>
</tr>
<tr>
<td>5-15-69</td>
<td>Filed stipulation. Enter order upon stipulation to extend to June 17, 1969 defendant's time to answer, move or otherwise plead to the Complaint. - Austin, J Mailed notices 5-16-69 Y</td>
</tr>
<tr>
<td>5-27-69</td>
<td>Pre-trial conference held and adjourned to June 30, 1969 at 9:00 A.M. - Austin, J Mailed notices 5-28-69 Y</td>
</tr>
<tr>
<td>5-27-69</td>
<td>Filed letter dated May 27, 1969 from Kirkland, Ellis, Hodson, Chaffetz and Masters attorneys for defendant to Hon. Richard W. McLaren Assistant Atty. General</td>
</tr>
<tr>
<td>6-9-69</td>
<td>Filed Plaintiff's notice and Motion for Production of Documents. Y</td>
</tr>
<tr>
<td>6-9-69</td>
<td>Filed Stipulation.</td>
</tr>
<tr>
<td>6-17-69</td>
<td>Filed answer of Defendant</td>
</tr>
<tr>
<td>6-19-69</td>
<td>Filed summons returned served. $5.32</td>
</tr>
<tr>
<td>6-25-69</td>
<td>Filed Plaintiff's interrogatories to Defendant. Y</td>
</tr>
<tr>
<td>6-30-69</td>
<td>Pretrial conference held and adjourned to September 30, 1969 at 9:30 A.M. - Austin, J Mailed notices 7-1-69 Y</td>
</tr>
<tr>
<td>7-1-69</td>
<td>Filed defendant's interrogatories, set No. 1 to be answered by the Plaintiff. Y</td>
</tr>
<tr>
<td>7-3-69</td>
<td>Filed Plaintiff's notice to take deposition upon oral examination of Maurice Glockner.</td>
</tr>
<tr>
<td>7-3-69</td>
<td>Filed Plaintiff's notice to take deposition upon oral examination of James T. McGuire.</td>
</tr>
<tr>
<td>7-3-69</td>
<td>Filed Plaintiff's notice to take deposition upon oral examination of Patrick L. O'Valley.</td>
</tr>
<tr>
<td>7-3-69</td>
<td>Filed Plaintiff's notice to take deposition upon oral examination of Charles J. Ritzen.</td>
</tr>
</tbody>
</table>
RICHARD G. KLEINDIENST—RESUMED

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SECOND CONGRESS
SECOND SESSION
ON
NOMINATION OF RICHARD G. KLEINDIENST, OF ARIZONA,
TO BE ATTORNEY GENERAL

PART 2
MARCH 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 26, and 29, 1972

Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1972

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Washington, D.C. 20402 - Price $3.50
The reason why I asked for this hearing, Mr. Chairman, and members of the committee, is because charges have been made that I influenced the settlement of Government antitrust litigation for partisan political reasons. These are serious charges, and by virtue of the fact that the confirmation of my nomination as the Attorney General of the United States is before the U.S. Senate, I would not want that confirmation to take place with a cloud over my head, so to speak, nor would I want the U.S. Senate to act upon my nomination if there was any substantial doubt in the minds of any of the Members of the U.S. Senate to the effect that while I performed my official duties on behalf of the U.S. Government in the past 3 years as the Deputy Attorney General, that I engaged in any improper conduct or in any conduct that would go to or be relevant to the consideration of my confirmation by the U.S. Senate.

I am here this morning with respect to the matters involving the ITT Co. and its antitrust matters before the Department of Justice to tell you what I did. And I have here with me this morning Judge McLaren, the Federal District Judge of the Northern District of Illinois, and Mr. Felix Rohatyn, a member of the board of directors of ITT, being the two persons with whom I had any dealings in connection with these matters to also have them tell you what they did. And to the extent that it involves me, to have them tell you what I did. I was involved in any way with respect to these antitrust matters by virtue of the fact that the Attorney General, in 1969, disqualified himself from the consideration of any matters involving the I.T. & T. Corp. The reason why he disqualified himself is that his former law firm has performed legal services, I believe, for subsidiaries of I.T. & T. and, therefore, felt from the standpoint of proper conduct that he should not become involved in any matter or consideration or decision that would involve these companies.

In 1969, at the recommendation of then Assistant Attorney General McLaren in the Antitrust Division I signed as the Attorney General in these cases, and as required by law, the complaints or authorized the filing of complaints against the acquisition or proposed acquisition by I.T. & T. in connection with three corporations, the Canteen Corp., the Grinnell Corp., and the Hartford Corp. Those complaints and the nature of those actions will be discussed in more detail, I believe, by Judge McLaren this morning.

But, in any event, all three of those complaints, seeking on behalf of the Government to prevent their acquisition by I.T. & T. were filed in the year 1969 by the Department of Justice.

I really had very little to do or relationship with or knowledge about the ordinary process of those cases in the year 1969. Indeed, I have no recollection of having any meetings other than routine, or of a very nominal nature in that year with respect to any one of those cases.

Approximately April 20, 1969, I received a call from Mr. Felix Rohatyn, who is sitting here to my left, in which he identified himself to me as a member of the board of directors of I.T. & T., and he stated that he was not a lawyer and that he would like to come to my office to discuss some of the economic consequences of the policy of the Department of Justice to require by I.T. & T. a divestiture of the Hartford Insurance Co. As a result of our discussion on the telephone Mr. Rohatyn came to my office on April 20, 1969. He again opened up the conversation, and incidentally, only Mr. Rohatyn and I were
RICHARD G. KLEINDIENST—RESUMED

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SECOND CONGRESS
SECOND SESSION
ON
NOMINATION OF RICHARD G. KLEINDIENST, OF ARIZONA,
TO BE ATTORNEY GENERAL

PART 2
MARCH 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 26, and 29, 1972

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
73-853
WASHINGTON : 1972

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Washington, D.C. 20402 - Price $3.75
The committee met, pursuant to recess, at 11:20 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland, chairman, presiding.


Also present: John H. Holloman, chief counsel, Francis C. Rosenberger, Peter M. Stockett, Tom Hart, Hite McLean, Thomas B. Collins, and Robert B. Young, of the committee staff, and various assistants to Senators.

The CHAIRMAN. Will you stand up, please, sir.

Do you solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth so help you God?

Mr. MITCHELL. I do, Mr. Chairman.

The CHAIRMAN. Mr. Attorney General, identify yourself for the record.

Mr. MITCHELL. Mr. Chairman, I have a short statement that I would like to read.

Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you. I would like to address myself to the three points which relate to my relationship—or rather my non-relationship—to the subject matter of this hearing.

The first pertains to the litigation initiated by the Antitrust Division against ITT. When the first of three such matters reached the stage for consideration by the Attorney General in April 1969, in accordance with departmental practice, I disqualified myself on the grounds that my former law firm had done legal work for one of ITT's subsidiaries.

After that date, all matters pertaining to the ITT litigation rested in the hands of the Deputy Attorney General and the Assistant

(539)
Attny General in charge of the Antitrust Division. I was not informed of the progress of the litigation or negotiations between the Department and ITT.

The second point has to do with my contacts with representatives of ITT.

At no time have I talked to any representative of ITT or any of its subsidiaries concerning the litigation or the settlement negotiations. Based on the records of my office as Attorney General and on my own recollection, I have had contact with three representatives of ITT. I present them in chronological order.

First contact was with Mr. Harold Geneen, president of ITT. The first time I met Mr. Geneen was the evening of May 27, 1970 at a dinner in the White House attended by 45 business leaders. The contact with Mr. Geneen that evening was purely social, and I had no substantive discussions of any kind.

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 35 minutes. It might have been shorter. The meeting was held at Mr. Geneen’s request to discuss the overall antitrust policy of the Department with respect to conglomerates. I assented to the meeting on the express condition that the pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

At the meeting Mr. Geneen contended that the Department’s antitrust policy with respect to conglomerates was to bring suits solely on the bigness theory. I told him this was not the Department’s policy and advised him that our policy was to bring litigation only where there was a showing of anticompetitive practices.

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Next, Mr. Felix Rohatyn. I met Mr. Rohatyn on four occasions, two of them on April 29, 1971, one on September 3, 1971 and one on November 29, 1971.

None of these had anything to do with ITT, and the Department’s litigation against ITT was never mentioned or discussed.

My participation in these meetings was as a member of an ad hoc government committee formed in 1970 to deal with the financial problems that various brokerage houses were having at that time. Mr. Rohatyn, a partner of the New York firm of Lazard Freres, participated as chairman of the surveillance committee of the New York Stock Exchange. Among other things, that ad hoc committee worked on the SIPEC legislation during the summer of 1970.

I would like particularly to call the committee’s attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the du Pont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:40 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Myerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr. Rohatyn
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

DEPARTMENT OF JUSTICE
Washington, D.C. 20530

APR 7 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Canteen Corporation by International Telephone and Telegraph Corporation: Proposed Complaint Seeking Preliminary Injunction

Submitted herewith for your approval is a Complaint seeking a preliminary injunction, as well as permanent relief, against the proposed acquisition of Canteen Corporation ("Canteen") by International Telephone and Telegraph Corporation ("ITT").

At our request, the acquisition, which has the necessary shareholder approval, has been delayed until at least April 10, 1969. Our last advice was that the parties were still awaiting a tax ruling by IRS. In any event, we can reasonably expect consummation of the merger on or shortly after April 10.

The Complaint charges that the acquisition may lessen competition and tend to create a monopoly in the vending and in-plant feeding businesses in the United States as a whole. Canteen and its franchised distributors are the largest organization in the United States in the business of retailing food and related items through coin-operated vending machines. They are one of the largest organizations in the business of providing in-plant feeding and vending to industrial plants. ITT industrial plants are part of the market for companies like Canteen. Furthermore, ITT makes purchases from many companies which are actual or prospective customers for Canteen. We contend that through vertical integration and reciprocity this acquisition will foreclose a substantial portion of the relevant markets from competition, entrench a leading firm, raise barriers
to entry and very likely trigger similar mergers by other leading food and vending firms. Food and vending has traditionally been a service business where the small independent who was willing to work hard could compete effectively. A few mergers of the sort we have here could seriously change that healthy industry structure.

We believe that a preliminary injunction is particularly necessary here. If we allow Canteen's public ownership to be bought out, another corporation will likely be the eventual purchaser of Canteen. Almost any merger of Canteen with another corporation will augment Canteen's reciprocity power advantage over many of its smaller competitors.

**The Companies Involved**

**ITT**

By virtue of an aggressive acquisition program, ITT, once principally an overseas operator of telecommunications and manufacturer of telecommunications equipment, has become the United States' largest conglomerate. 1967 sales of ITT and the companies it acquired in 1968 were approximately $3,578,000,000 (which would make it about the 12th largest industrial corporation). About 60% of ITT's revenues come from domestic manufacturing and services including electronic equipment, pumps and air conditioning, chemicals, publishing, automobile rentals (Avis Rent-a-Car, acquired in 1965) and airport-parking (APCOA, acquired in 1966). ITT's acquisition program reached a new peak in 1968 when it acquired corporations with combined sales of over a billion dollars, including Continental Baking Co., the nation's largest baking company, Sheraton Corporation of America, one of the two largest hotel chains, Levitt & Sons, a leading residential construction firm, and Rayonier, Inc., a leading producer of chemical cellulose. Continental Baking and Rayonier were among the Fortune top 500 industrial corporations.

This acquisition program does not seem to be diminishing. ITT is now planning to acquire Grinnell Corporation, another one of the top 500 industrial
Retyped from indistinct original

corporations, and Hartford Fire and Casualty, a leading firm in fire and casualty insurance.

Canteen

Canteen (formerly Automatic Canteen Corporation) was the first nationwide vending company and its organization is still the leader in the vending industry. Canteen and its franchised distributors had 1968 combined vended sales of approximately $290,000,000 or 6% of industry sales.

Of Canteen's 1968 total sales of $322,000,000, about $207,000,000 were in vending. Most of the rest were attributable to other kinds of food service--"manual" cafeterias and snack bars for industrial plants, specialized feeding for hospitals and schools, restaurants and special concessions. Until recently, Canteen was the largest food service company in the United States. It is now second to Automatic Retailers of America ("ARA").

The Trade and Commerce Involved

We treat this case in terms of three lines of commerce:

The Vending Industry is a well recognized industry retailing food and related items through coin-operated machines. There are approximately 6,200 operators in the industry ranging from one-man cigarette venders to a few large nationwide or large regional companies. 1967 industry sales were about $4.5 billion and as indicated, Canteen is the leader with about 6% of sales. About 40% of all vending sales are made at industrial or business locations by contract or arrangement with the proprietor.

Full-Line Vending is the vending of full meals through machine. Although the concept of full-line venders is an accepted one there are no definitive statistics on this submarket. Industry sources estimate that somewhat less than half of all venders have full-line capability.

The In-Plant Feeding and Vending were traditionally two businesses--the business of catering for employees at industrial locations through in-plant facilities such as cafeterias and snack bars, and the supplementary
vending of cigarettes and candy at such locations. How in-plant feeding can be done through vending machine and diversified companies like Canteen try to contract with an employer to provide all of his manual and vending service. Thus, there is a new cluster of services combining in-plant feeding and vending. Companies like Canteen are no longer called venders; they are "food and vending" companies. Again we cannot plot the exact size and shape of the market but it is general industry knowledge that ARA and Canteen are the most important companies in "in-plant food and vending" and we estimate that Canteen has at least 10% of sales. The proposed acquisition will have its heaviest impact in this market.

Although these markets are not heavily concentrated a definite trend toward concentration is underway. Many of the leading firms in these businesses have been created since 1959 by mergers or acquisitions. A substantial acquisition trend continues.

There are also the beginnings of a conglomerate merger trend. The largest company to buy into this market was Litton Industries (about half the size of ITT) which in 1967 bought Stouffer Foods Corp., which had a relatively small in-plant feeding business. ITT's acquisition of a leading nationwide firm creates reciprocity problems of a new magnitude.

The Impact of the Acquisition

ITT has now identified those domestic suppliers who sold it $100,000 or more of goods and services in 1967. This list of less than 750 suppliers is sufficient to show that the anticompetitive effects of this merger could be direct and substantial. The list includes 99 of the top 200 corporations on the Fortune 500. It shows that ITT had purchases of a million dollars or more from over a hundred corporations and that the industries from which ITT purchased a million dollars or more included automotive, foods, packaging, steel, aluminum, copper, tires, chemicals, oil, electrical & electronic equipment, computers, home appliances and lumber. We estimate that over a third of the American industrial work force is employed by these industries.
The acquisition could put immediate pressure on Canteen's competitors. Of ARA's leading industrial accounts in 1968, at least 16 of the top 30 and 36 of the top 100 were ITT suppliers. The 36 accounted for over $57,000,000 of ARA's sales. Similarly, Interstate United Corporation, the fourth largest food and vending company, does 24% of its total business with six companies in the automotive and steel industries where ITT makes purchases of many millions of dollars.

It is clear that a substantial portion of Canteen's existing business will tend to be insulated from competition. Of Canteen's 700 food and vending service accounts, at least 81 were ITT suppliers in 1967; 5 were ITT divisions or subsidiaries.

It should be pointed out that we have a double-barreled market foreclosure--reciprocity coupled with vertical integration. While this vertical integration involves less than 1% of the in-plant food and vending market it is nonetheless substantial. ARA and Canteen together do more than $1,000,000 of business with ITT and many other food and vending companies have ITT business.

A good many companies in this industry including leaders like ARA and Interstate United and numerous small independents have expressed strong opposition to the merger and insist that it could have a serious impact on industry structure. We agree. ITT's 1967 purchases from business firms were a minimum of $550,000,000; this is considerably higher than the total sales of ARA and hundreds of times larger than the sales of smaller operators. It seems inevitable that Canteen's competitors will seek to merge with conglomerates or with each other in order to protect themselves against this tremendous imbalance of purchasing power. A series of such mergers could subject virtually all of the in-plant food and vending business to reciprocity by a few leading firms. If Antitrust is ever to take action to prevent such a restructuring of the market, this acquisition of a leading firm by the largest conglomerate is the one to challenge.
Legal Precedent for the Case

Reciprocity 1/ resulting from a merger has been held to violate § 7 of the Clayton Act, F.T.C. v. Consolidated Foods Corp., 380 U.S. 592; United States v. General Dynamics Corp., 258 F. Supp. 36. As stated by the Supreme Court in Consolidated Foods, 380 U.S. at 595:

Reciprocity in trading as a result of an acquisition violates § 7 if the probability of a lessening of competition is shown.

The primary reason why reciprocity is "one of the congeries of anticompetitive practice of which the antitrust laws are aimed", Consolidated Foods, supra at 594, is that it is a way of obtaining business other than on a product's merits and which effectively can be practiced by large and diversified firms. Reciprocity, therefore, is an "irrelevant and alien factor" in the marketplace which imposes entry and growth barriers to small single product firms, op. cit. 592.

This case goes somewhat further than both Consolidated Foods and General Dynamics in that we have no evidence of a systematic reciprocity program practiced by the merged firms after their union. Rather, this action is filed prior to the consummation of the merger to enjoin in its incipiency a competitive danger. See Brown Shoe Co. v. United States, 320 U.S. 294; Consolidated Foods, supra at 598. The competitive danger upon which we rely is the power to practice reciprocity created by the merger. That the creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect was recognized by the Supreme Court in Consolidated Foods; as stated in United States v. Ingersoll-Rand Co. 218 F. Supp. 530, 552, affirmed 320, F.2d 509:

... [t]he mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is

1/ A firm's reliance upon its purchasing power to induce others to buy its products.
frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing the goodwill of the possessor.

We relied upon this theory in attacking the acquisition of Penick & Ford, Ltd. by R.J. Reynolds Tobacco Company. In that case, we were denied a preliminary injunction because the District Court placed heavy reliance upon testimony of the Reynolds' officers that they would not engage in a reciprocity program. United States v. R.J. Reynolds Tobacco Co., 242 F. Supp. 518 (D. N.J. 1965). We would hope to convince the court in this case that an injunction should issue and that the Court erred in Penick & Ford.

We are prepared to present some evidence that reciprocity has in the past influenced procurement decisions in the in-plant food and vending market. This would be to illustrate the vulnerability of that industry to reciprocity and not establish that the merged ITT and Canteen will practice it.

We believe that this merger would create a vast complex of buyer-seller relationships not enjoyed by any competitor of Canteen. This would give Canteen an unfair competitive advantage. Canteen's position as one of the few nationwide firms in the vending field, and as a leader in the industry, makes the danger of its position being further enhanced through reciprocal dealing of substantial competitive significance. Cf. FTC v. Procter and Gamble Co., 386 U.S. 568.

Conclusion

I recommend that the attached complaint be approved and that we be authorized to seek a temporary restraining order pending a hearing on a motion for preliminary injunction.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:

Date:

Retyped from indistinct original
Department of Justice
Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Canteen Corporation by International Telephone and Telegraph Corporation: Proposed Complaint Seeking Preliminary Injunction

Submitted herewith for your approval is a Complaint seeking a preliminary injunction, as well as permanent relief, against the proposed acquisition of Canteen Corporation ("Canteen") by International Telephone and Telegraph Corporation ("ITT").

At our request, the acquisition, which has the necessary shareholder approval, has been delayed until at least April 10, 1969. Our last advice was that the parties were still awaiting a tax ruling by IRS. In any event, we can reasonably expect consummation of the merger on or shortly after April 10.

The Complaint charges that the acquisition may lessen competition and tend to create a monopoly in the vending and in-plant feeding businesses in the United States as a whole. Canteen and its franchised distributors are the largest organization in the United States in the business of retailing food and related items through coin-operated vending machines. They are one of the largest organizations in the business of providing in-plant feeding and vending to industrial plants. ITT industrial plants are part of the market for companies like Canteen. Furthermore, ITT makes purchases from many companies which are actual or prospective customers for Canteen. We contend that through vertical integration and reciprocity this acquisition will foreclose a substantial portion of the relevant markets from competition, entrench a leading firm, raise barriers

[4693]
to entry and very likely trigger similar mergers by other leading food and vending firms. Food and vending has traditionally been a service business where the small independent who was willing to work hard could compete effectively. A few mergers of the sort we have here could seriously change that healthy industry structure.

We believe that a preliminary injunction is particularly necessary here. If we allow Canteen's public ownership to be bought out, another corporation will likely be the eventual purchaser of Canteen. Almost any merger of Canteen with another corporation will augment Canteen's reciprocity power advantage over many of its smaller competitors.

The Companies Involved

ITT

By virtue of an aggressive acquisition program,ITT, once principally an overseas operator of telecommunications and manufacturer of telecommunications equipment, has become the United States' largest conglomerate. 1967 sales of ITT and the companies it acquired in 1968 were approximately $3,578,000,000 (which would make it about the 12th largest industrial corporation). About 60% of ITT's revenues come from domestic manufacturing and services including electronic equipment, pumps and air conditioning, chemicals, publishing, automobile rentals (Avis Rent-a-Car, acquired in 1965) and airport-parking (APCOA, acquired in 1966). ITT's acquisition program reached a new peak in 1968 when it acquired corporations with combined sales of over a billion dollars, including Continental Baking Co., the nation's largest baking company, Sheraton Corporation of America, one of the two largest hotel chains, Levitt & Sons, a leading residential construction firm, and Rayonier, Inc., a leading producer of chemical cellulose. Continental Baking and Rayonier were among the Fortune top 500 industrial corporations.

This acquisition program does not seem to be diminishing. ITT is now planning to acquire Grinnell Corporation, another one of the top 500 industrial
corporations, and Hartford Fire and Casualty, a leading firm in fire and casualty insurance.

Canteen

Canteen (formerly Automatic Canteen Corporation) was the first nationwide vending company and its organization is still the leader in the vending industry. Canteen and its franchised distributors had 1968 combined vended sales of approximately $290,000,000 or 6% of industry sales.

Of Canteen's 1968 total sales of $322,000,000, about $207,000,000 were in vending. Most of the rest were attributable to other kinds of food service—"manual" cafeterias and snack bars for industrial plants, specialized feeding for hospitals and schools, restaurants and special concessions. Until recently, Canteen was the largest food service company in the United States. It is now second to Automatic Retailers of America ("ARA").

The Trade and Commerce Involved

We treat this case in terms of three lines of commerce:

The Vending Industry is a well recognized industry retailing food and related items through coin-operated machines. There are approximately 6,200 operators in the industry ranging from one-man cigarette venders to a few large nationwide or large regional companies. 1967 industry sales were about $4.5 billion and as indicated, Canteen is the leader with about 6% of sales. About 40% of all vending sales are made at industrial or business locations by contract or arrangement with the proprietor.

Full-Line Vending is the vending of full meals through machine. Although the concept of full-line venders is an accepted one there are no definitive statistics on this submarket. Industry sources estimate that somewhat less than half of all venders have full-line capability.

The In-Plant Feeding and Vending were traditionally two businesses—the business of catering for employees at industrial locations through in-plant facilities such as cafeterias and snack bars, and the supplementary
vending of cigarettes and candy at such locations. Now in-plant feeding can be done through vending machine and diversified companies like Canteen try to contract with an employer to provide all of his manual and vending service. Thus, there is a new cluster of services combining in-plant feeding and vending. Companies like Canteen are no longer called vendors; they are "food and vending" companies. Again we cannot plot the exact size and shape of the market but it is general industry knowledge that ARA and Canteen are the most important companies in "in-plant food and vending" and we estimate that Canteen has at least 10% of sales. The proposed acquisition will have its heaviest impact in this market.

Although these markets are not heavily concentrated a definite trend toward concentration is underway. Many of the leading firms in these businesses have been created since 1959 by mergers or acquisitions. A substantial acquisition trend continues.

There are also the beginnings of a conglomerate merger trend. The largest company to buy into this market was Litton Industries (about half the size of ITT) which in 1967 bought Stouffer Foods Corp., which had a relatively small in-plant feeding business. ITT's acquisition of a leading nationwide firm creates reciprocity problems of a new magnitude.

The Impact of the Acquisition

ITT has now identified those domestic suppliers who sold it $100,000 or more of goods and services in 1967. This list of less than 750 suppliers is sufficient to show that the anticompetitive effects of this merger could be direct and substantial. The list includes 99 of the top 200 corporations on the Fortune 500. It shows that ITT had purchases of a million dollars or more from over a hundred corporations and that the industries from which ITT purchased a million dollars or more included automotive, foods, packaging, steel, aluminum, copper, tires, chemicals, oil, electrical & electronic equipment, computers, home appliances and lumber. We estimate that over a third of the American industrial work force is employed by these industries.
The acquisition could put immediate pressure on Canteen's competitors. Of ARA's leading industrial accounts in 1963, at least 16 of the top 30 and 36 of the top 100 were ITT suppliers. The 36 accounted for over $57,000,000 of ARA's sales. Similarly, Interstate United Corporation, the fourth largest food and vending company, does 24% of its total business with six companies in the automotive and steel industries where ITT makes purchases of many millions of dollars.

It is clear that a substantial portion of Canteen's existing business will tend to be insulated from competition. Of Canteen's 700 food and vending service accounts, at least 81 were ITT suppliers in 1967; 5 were ITT divisions or subsidiaries.

It should be pointed out that we have a double-barreled market foreclosure—reciprocity coupled with vertical integration. While this vertical integration involves less than 1% of the in-plant food and vending market it is nonetheless substantial. ARA and Canteen together do more than $1,000,000 of business with ITT and many other food and vending companies have ITT business.

A good many companies in this industry including leaders like ARA and Interstate United and numerous small independents have expressed strong opposition to the merger and insist that it could have a serious impact on industry structure. We agree. ITT's 1967 purchases from business firms were a minimum of $50,000,000; this is considerably higher than the total sales of ARA and hundreds of times larger than the sales of smaller operators. It seems inevitable that Canteen's competitors will seek to merge with conglomerates or with each other in order to protect themselves against this tremendous imbalance of purchasing power. A series of such mergers could subject virtually all of the in-plant food and vending business to reciprocity by a few leading firms. If Antitrust is ever to take action to prevent such a restructuring of the market, this acquisition of a leading firm by the largest conglomerate is the one to challenge.
Legal Precedent for the Case

Reciprocity resulting from a merger has been held to violate § 7 of the Clayton Act, F.T.C. v. Consolidated Foods Corp., 380 U.S. 592; United States v. General Dynamics Corp., 258 F. Supp. 36. As stated by the Supreme Court in Consolidated Foods, 380 U.S. at 595:

Reciprocity in trading as a result of an acquisition violates § 7 if the probability of a lessening of competition is shown.

The primary reason why reciprocity is "one of the congeries of anticompetitive practice of which the anti-trust laws are aimed", Consolidated Foods, supra at 594, is that it is a way of obtaining business other than on a product's merits and which effectively can be practiced by large and diversified firms. Reciprocity, therefore, is an "irrelevant and alien factor" in the marketplace which imposes entry and growth barriers to small single product firms, cp. cit. 592.

This case goes somewhat further than both Consolidated Foods and General Dynamics in that we have no evidence of a systematic reciprocity program practiced by the merged firms after their union. Rather, this action is filed prior to the consummation of the merger to enjoin in its incipience a competitive danger. See Brown Shoe Co. v. United States, 320 U.S. 294; Consolidated Foods, supra at 598. The competitive danger upon which we rely is the power to practice reciprocity created by the merger. That the creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect was recognized by the Supreme Court in Consolidated Foods; as stated in United States v. Ingersoll-Rand Co., 213 F. Supp. 530, 552, affirmed 320, F.2d 509:

...[t]he mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is

1/ A firm's reliance upon its purchasing power to induce others to buy its products.
frequently sufficient, as sophisticated businessmen are quick to see the advantages in securing
the goodwill of the possessor.

We relied upon this theory in attacking the acquisition of Penick & Ford, Ltd. by R. J. Reynolds Tobacco Company. In that case, we were denied a preliminary injunction because the District Court placed heavy reliance upon testimony of the Reynolds' officers that they would not engage in a reciprocity program. United States v. R. J. Reynolds Tobacco Co., 242 F. Supp. 518 (D. N.J. 1965). We would hope to convince the court in this case that an injunction should issue and that the Court erred in Penick & Ford.

We are prepared to present some evidence that reciprocity has in the past influenced procurement decisions in the in-plant food and vending market. This would be to illustrate the vulnerability of that industry to reciprocity and not establish that the merged ITT and Canteen will practice it.

We believe that this merger would create a vast complex of buyer-seller relationships not enjoyed by any competitor of Canteen. This would give Canteen an unfair competitive advantage. Canteen's position as one of the few nationwide firms in the vending field, and as a leader in the industry, makes the danger of its position being further enhanced through reciprocal dealing of substantial competitive significance. Cf. FTC v. Procter and Gamble Co., 386 U.S. 568.

**Conclusion**

I recommend that the attached complaint be approved and that we be authorized to seek a temporary restraining order pending a hearing on a motion for preliminary injunction.

[Signature]

RICHARD U. MCLAREN
Assistant Attorney General
Antitrust Division

Approved:

Date:
On August 1, 1969 two antitrust suits similar to the Canteen suit were commenced in the United States District Court for the District of Connecticut challenging ITT's acquisition of the Hartford Fire Insurance Company and Grinnell Corporation.


2.3 Memorandum from Richard McLaren for the Attorney General, June 20, 1969 (received from Department of Justice).

2.4 Memorandum from Richard McLaren for the Deputy Attorney General, July 25, 1969 (received from Department of Justice).
<table>
<thead>
<tr>
<th>TITLE OF CASE</th>
<th>ATTORNEYS</th>
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<tr>
<td>UNITED STATES OF AMERICA VS INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION AND-GRINNELL CORPORATION</td>
<td>For plaintiff: Richard C. Kleindienst Richard W. McLaren Baddie J. Restui Robert L. Hormel Lewis Bernstein Joseph H. Widmar Howard B. Myers Donald J. Frickel / Department of Justice</td>
</tr>
<tr>
<td>Joseph P. Conney Conney, Scully &amp; Bowling 799 Main Street Hartford, Conn. 06103</td>
<td>John Cassidante Federal Building New Haven, Conn.</td>
</tr>
<tr>
<td>Bruce W. Kantorshach (For: A-T-O, Inc.) 799 Main Street Hartford, Conn. 06103</td>
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<td>DATE</td>
<td>PROCEEDINGS</td>
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<tr>
<td>8/1</td>
<td>Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.</td>
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<tr>
<td>8/6</td>
<td>Motion for Preliminary Injunction and Notice of Motion, filed by plaintiff.</td>
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<tr>
<td></td>
<td>Affidavit in Support of Plaintiff's Motion for a Preliminary Injunction, filed by Stephen A. Arnow.</td>
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<tr>
<td></td>
<td>Affidavit of Gordon A. Moore, filed.</td>
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<td></td>
<td>Affidavit of Joseph H. Widmar in Support of Motion for a Preliminary Injunction, filed.</td>
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<tr>
<td></td>
<td>Affidavit of Joseph H. Widmar in Verification of Government's Exhibits 1-55, filed.</td>
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<tr>
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<td>Government Exhibits 1-55, filed.</td>
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<td>Certificate of Service of above documents, filed by plaintiff.</td>
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<tr>
<td>8/8</td>
<td>Appearance of H. Meade Alcorn, Jr. and Ralph G. Elliott, entered for defendant, Grinnell Corporation.</td>
</tr>
<tr>
<td>8/11</td>
<td>Appearance of Ralph C. Dixon of Day, Berry &amp; Howard entered for the defendant International Telephone and Telegraph Corp.</td>
</tr>
<tr>
<td>8/13</td>
<td>Stipulation for Enlargement of Time of the defendants to answer or otherwise plead to and including Sept. 3, 1969, filed.</td>
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<td>Copies mailed Messrs. Dixon, Elliot and Jones. M-8/14/69.</td>
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<tr>
<td>8/15</td>
<td>Marshals Return showing service on Grinnell Corp., filed.</td>
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<tr>
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<td>Summons &amp; Complaint.</td>
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<tr>
<td></td>
<td>Memorandum in Support of Plaintiff's Motion for Preliminary Injunction, filed by plaintiff.</td>
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<tr>
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<td>Certificate of Service of Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction, filed by plaintiff.</td>
</tr>
<tr>
<td>8/15</td>
<td>Stipulation filed that the following schedule for the preliminary injunction proceedings be follows: Plaintiff will file its motion and supporting papers on August 7; Defendant will file its papers September 3; Plaintiff will file its reply papers September 12; and Hearing will begin September 17. So Ordered.</td>
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<td>Timbers, J. M-9/16/69. Copies mailed Atty Widmar; Atty Sailer Alcorn and Dixon; copy handed U.S. Army.</td>
</tr>
<tr>
<td>9/5</td>
<td>Answer, filed by defendant Grinnell Corp.</td>
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<tr>
<td>9/5</td>
<td>Memorandum of Defendant Grinnell Corp. Opposing Motion for Preliminary Injunction, filed.</td>
</tr>
<tr>
<td>9/5</td>
<td>Answer, filed by Defendant International Telephone &amp; Telegraph Corp.</td>
</tr>
<tr>
<td>9/5</td>
<td>Memorandum of International Telephone and Telegraph Corp. in Opposition to Plaintiff's Motion for a Preliminary Injunction, with exhibits attached thereto, filed.</td>
</tr>
<tr>
<td>9/16</td>
<td>Reply Memorandum and Exhibits 56 - 82, filed by United States.</td>
</tr>
<tr>
<td></td>
<td>Affidavit of Joseph H. Widmar in Verification of Government's Exhibits 56 - 82, filed by U.S.</td>
</tr>
<tr>
<td></td>
<td>Certificate of Service, filed by United States.</td>
</tr>
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</table>
| 9/17 | Hearing on Government's Motion for Preliminary Injunction, Assistant U.S. Attorney Daniel Hawtin moves for the admission of Joseph H. Widmar, Howard R. Nye and Donald J. Frickel for
# Civil Docket

**United States District Court**

**Assigned to Judge Blumenfeld**

**For All Purposes**

## Title of Case

<table>
<thead>
<tr>
<th>For plaintiff:</th>
<th>For defendant:</th>
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<tr>
<td><strong>United States of America</strong></td>
<td><strong>Dwight Schweitzer (For: Bruner)</strong></td>
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</table>

**VS**

**International Telephone and Telegraph Corporation and The Hartford Fire Insurance Company**

**Bruce Hayor**

**190 Trumbull Court**

**Hartford, Conn. 06103**

**Of Counsel:**

**Alan B. Morrison**

**225-Fleorden St., N.W.**

**Washington, D.C. 20005-20036**

**Docket:**

**United States District Court**

**D.C.**

**Case No. 107 Rev.**

**Jury Demand Date:**

### Attorneys

**For plaintiff:**

<table>
<thead>
<tr>
<th>Richard G. Kleiman</th>
<th>Edward H. Lanyon</th>
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<tr>
<td>Richard W. McLaren</td>
<td>Howard I. Callan</td>
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**For defendant:**

<table>
<thead>
<tr>
<th>Stewart H. Jones</th>
<th>Washington, D.C. 20000</th>
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<tbody>
<tr>
<td>Federal Building</td>
<td>New Haven, Conn.</td>
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### Statistical Record

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<td>Marshal</td>
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<td>Deposition</td>
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**Basis of Action:**

**Action to Enjoin Defendants from Violating Section 7 of the Clayton Act on Motion to Amend.**

**Action Amended.**

**15 U.S.C. § 18**

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[4706]
DATE | PROCEEDINGS
---|---
1959 | 8/1 | Complaint filed. Summons issued and together with copies of same and of complaint, handed to the Marshal for service.
 | 8/11 | Appearance of Ralph C. Dixon of Day, Berry & Howard entered for the defendants.
 | 8/15 | Stipulation filed that the following schedule for the preliminary injunction proceedings be followed: Plaintiff will file its motion and supporting papers on August 20; defendant will file its papers on September 17; and the hearing will begin on a date following conclusion of Grinnell hearing. So Ordered. Timbers, J. M-2/18/59
 | 8/22 | Motion for Preliminary Injunction, Notice of Motion, Memorandum in Support of Motion and Original and Copy of Government’s Exhibits GX-1 thru GX-44 and GX-45 thru GX-118 (Two Volumes), filed, together with certificate of service of above documents.
 | 8/22 | Stipulation for Enlargement of Time of the defendants to move, answer, or otherwise plead to and including September 10, 1959, filed. So ordered: Time extended to 9/10/59. Timbers, J. Stipulation endorsed as follows: "8/21/59 I assume that this motion does not affect the hearing schedule herebefore ordered. M.T. 8/21/59" Copies mailed Coyle.
 | 8/10 | Answer, filed by defendant The Hartford Fire Ins. Co.
 | 9/1 | Memorandum of Defendant Hartford Fire Insurance Co. Opposing Motion for Preliminary Injunction, filed.
 | 9/11 | Prehearing Memorandum of International Telephone and Telegraph Corporation in Opposition to Plaintiff’s Motion for Preliminary Injunction, filed.
 | 9/12 | Appearance of Richard M. Reynolds, entered for defendants.
 | 9/17 | Reply Memorandum of the United States of America, filed.
 | 9/18 | Additional Government Exhibit GX-135, filed.
 | 9/18 | Hearing on Plaintiff's Motion for Preliminary Injunction.
 | 9/19 | Upon Motion of Ralph C. Dixon, Atty. John H. Schafer, III, Henry P. Sailer and Charles E. Parke are admitted for the purpose of this case only – representing I.T.T. Defendants exhibits DXS, DX32 and DX50 filed. Absent objection Defendants exhibits 1 thru 69 are received as full exhibits for the purpose of preliminary injunction hearing.
 | 9/19 | Absent objection Government exhibits 1 thru 24, 35 thru 135 are received as full exhibits. Gov’t. witness: Dr. William Muller of Madison, Wisconsin is sworn and testified. Gov’t. witness: Harold Lacroix of West Hartford, Conn. is sworn and testified. Gov’t. witness: Herbert D. Donohue of Philadelphia, Pa. is sworn and testified. 4:29 E.M. Government rests. Court adjourned at 4:25 to resume in this case at 10:00 A.M., Sept. 15, 1959. Timbers, J.
 | 9/19 | H-9/19/59 Continued hearing on Plaintiff’s Motion for Preliminary Injunction. Defendant’s witness Alvin E. Friedman of New York, N.Y. is sworn and testified. Continued examination of Erwin Friedman.

[Continued]
June 20, 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Hartford Fire Insurance Company by the International Telephone and Telegraph Corporation

I recommend that we challenge, as a violation of Section 7 of the Clayton Act, the proposed merger of Hartford Fire Insurance Company ("Hartford") and International Telephone and Telegraph Corporation ("ITT"). On the basis of revenues, ITT is the 11th largest industrial firm in the United States. Hartford is the sixth largest property and casualty insurance company in the nation, and ranks among the three leaders in certain lines of casualty insurance.

The merger agreement between ITT and Hartford was executed on April 8, 1969. The earliest consummation date appears to be early August. Sometime ago, however, I tentatively agreed to inform the parties of our decision by June 1st; this has been postponed to Monday, June 23rd.

The ITT-Hartford merger would combine companies with total consolidated assets of approximately $6 billion. As such, it would constitute one of the largest mergers, if not the largest one, ever consummated, and could well trigger other big company acquisitions of property and liability insurance companies. The likely anticompetitive consequences of this merger include reciprocity and other foreclosure in insurance, tying effect between insurance and other products, entrenchment of Grinnell Corporation in the sprinkler industry, and increased economic concentration both in and of itself and by triggering further mergers and the removal of a potential force for deconcentration of various markets.
I

THE COMPANIES INVOLVED

A. ITT

ITT, one of the nation’s largest conglomerates, had total 1968 sales in excess of $4 billion. Present assets of ITT and its subsidiaries are over $4 billion. On the basis of revenues, it is the nation's 11th largest industrial firm; on the basis of assets, it ranks 14th. ITT employs about 300,000 people worldwide, approximately 60% of whom are in the United States and Canada.

Much of ITT's growth has resulted from some 50 mergers and acquisitions made since January 1, 1960. Its domestic operations include Continental Baking Company, the nation's largest baking company; Sheraton Corporation of America, one of the two largest hotel chains; Levitt and Sons, a leading residential construction firm; Avis Rent-A-Car, the second largest car renting company; and Rayonier, Inc., a leading producer of chemical cellulose. All of these companies were acquired by merger and at least two, Continental Baking and Rayonier, were among the Fortune top 500 industrial corporations at the time of their acquisition. ITT also controls several life and health insurance companies and a small property and casualty insurer. ITT recently acquired Canteen Corporation, one of the nation's two leading vending and food service companies. This acquisition has been challenged by the Department as a violation of Section 7. ITT has also agreed to acquire Grinnell Corporation, a leading firm in the manufacture and installation of automatic sprinkler systems, power piping systems and pipe hangers. This proposed merger is also under investigation by the Antitrust Division.
B. Hartford

Hartford heads a group of 10 insurance companies whose total assets as of December 13, 1968, were $1,891,700,000. Its premium receipts in 1968 totaled $968,800,000, of which over 90% was derived from property and liability insurance. On the basis of premiums received, Hartford ranks sixth among all property and liability insurance companies. It ranks fourth among those companies operating under the agency system, writing property and liability insurance through approximately 17,000 independent agents throughout the country. Hartford is particularly significant in certain lines of insurance, and had the following shares of the market in 1967: fidelity, 7.0%; burglary and theft, 6.1%; inland marine (covering goods in transit), 5.7%; glass, 5.3%; miscellaneous (property damage and bodily injury) liability, 4.9%; and in the very large fire and extended coverage market, 4.8%.

II
ADVERSE COMPETITIVE EFFECTS

A. Reciprocity and other Foreclosure Effects in Insurance

Reciprocity and reciprocity effect are examples of the use of economic power in one market to promote a firm's business in another market. As a result, competitors in the affected market lose sales not because of the merits of their products

1/ Some 4,000 to 6,000 other agents represent the Hartford life insurance subsidiaries.

2/ "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company.
but because of another seller's economic power in a different market. The Supreme Court recognized the unfairness and illegality of reciprocity resulting from mergers in F.T.C. v. Consolidated Foods Corporation, 380 U.S. 592, 595: "Reciprocity in trading as a result of an acquisition violates §7 if the probability of a lessening of competition is shown." Since reciprocity is an "irrelevant and alien factor" (supra at 592), which imposes entry and growth barriers to small single-product firms, it is "one of the congeries of anticompetitive practice at which the antitrust laws are aimed" (supra at 594).

The competitive danger is the power to practice reciprocity which is created by the merger. The creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect. As stated in United States v. Ingersoll-Rand Company, 218 F. Supp. 530, 532, affirmed 320 F. 2d 509:

... the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages of securing the goodwill of the possessor.

The extent of the danger from reciprocity and reciprocity effect depends upon the volume of a firm's purchases of goods and services. ITT's total annual purchases from all suppliers are a minimum of $550 million. ITT purchases annually $100,000 or more in goods or services from each of some 750 suppliers, including 99 of the top 200 corporations on the Fortune's 500 list. In the case of 100 of these suppliers, ITT's purchases are $1 million or more annually. The industries from which it purchases more than a million dollars annually include automotive, foods, steel, aluminum, copper, tires, chemicals,
oil, electrical and electronic equipment, home appliances, insurance and lumber. Approximately one-third of the American industrial work force is employed in these industries which represent a vast market for the sale of group life, accident and health, and casualty insurance.

All the industries and all of the suppliers from whom ITT purchases have substantial need for property and liability insurance. In addition, there is need for workmen's compensation coverage. Property and liability insurance is a largely undifferentiated product, at least when written by the larger and better-known companies. Hartford presently is one of the largest and most respected writers of such insurance. Consequently, there will be strong opportunity for ITT suppliers to channel their insurance requirements to Hartford, thus resulting in substantial reciprocity effect. In a relatively unconcentrated market, such as property and liability insurance, any introduction of substantial potential for a leading firm to benefit from reciprocity and reciprocity effect will interfere with the functioning of the market and may result in further mergers to offset the merged firm's advantage.

According to numerous sources in the insurance industry, a major new development is group property insurance. Group plans offer insurance at fixed rates to any member of the group who wants to take it. Similar group plans are common in the life insurance field. The most common group is the employees of a business. Hartford, as one of the leading property insurance underwriters, no doubt will be a leader in the group property insurance development field. The potential for reciprocity effect with respect to the employees of ITT's major suppliers in the writing of group property insurance is very substantial. 3/

3/ Many of ITT's suppliers and their employees make substantial purchases of group life and health and accident insurance. Thus, there may be opportunity for reciprocity effect to operate in this area.
A second aspect is the vertical foreclosure which would result from the merger. ITT and its subsidiaries and employees are a substantial market for Hartford insurance. The total domestic insurance purchases of ITT in 1968 were $28 million. While this is an insubstantial percentage of total insurance purchases, it is a not insubstantial dollar amount. It is very likely that much of this insurance business will be transferred to Hartford after the acquisition. Moreover, there are specialized kinds of insurance where the extent of potential foreclosure would be significant. For example, car rental insurance is a distinct type of automobile insurance. Avis now accounts for over 20% of car rentals, all of which could be insured by Hartford.

Another foreclosure effect from the merger relates to Levitt and Sons. Levitt sold 4900 home units in the United States and another thousand in Puerto Rico in 1968, and projects sales of 11,000 units annually within five years. Levitt currently arranges for the home purchaser's hazard insurance. Although Levitt does not require Levitt-arranged insurance, it does provide the insurance papers and notifies the purchaser of the amount of the insurance bill. Under these circumstances, the purchaser is not likely to object to the Levitt-arranged insurance, as illustrated by the fact that 62% of Levitt home purchasers accepted Levitt-arranged insurance in 1968. This amounted to $245,000 in premiums from home purchasers in the United States.

The combined market foreclosure which could result through reciprocity and reciprocity effect, vertical foreclosure and channeling of insurance purchases through ITT subsidiaries, condemns this merger as one in violation of Section 7. This theory was a basis for our pending suits against LTV-J&L and Northwest Industries-Goodrich and our recommended case against First National City Bank-Chubb, and was the sole rationale of ITT-Canteen. The same potential for market foreclosure by ITT exists here as in Canteen. The same rationale should be used with respect to this acquisition as well.
B. Tying Effect and Entrenchment

In our memorandum of June 12 on the First National City-Chubb merger, we emphasized the possibility that the seller of a scarce product may secure advantages in selling other related products as a result of what we called "tying effect". Tying effect results when the purchaser of the scarce product believes that he could secure it, or could secure it on more favorable terms, if he purchased other products from the seller. Because the second, or tied product, is sold not entirely on its own economic merits, tying arrangements have always been treated strictly under the antitrust laws. For this reason, we think the principle of Consolidated Foods (discussed above) seems equally applicable where market foreclosure is secured by tying rather than reciprocity.

Tying has long been recognized as "serving hardly any purpose beyond the suppression of competition," Standard Oil Co. of Calif. v. U.S., 337 U.S. 293, 305-306, and as having a "pernicious effect on competition and [a] lack of any redeeming virtue ..." Northern Pacific R. Co. v. United States, 356 U.S. 1, 5-6. Therefore, tying is unlawful "whenever the seller can exert some power over some buyers in the market, even if this power is not complete over them and over all other buyers in the market." Fortser Enterprises, Inc. v. U.S. Steel Corp. O.T. 1968, No. 306, Slip Opinion, pp 7-8 (April 7, 1969).
In First National City-Chubb, the danger we emphasized was that credit, particularly in times of tight money, might be a source of tying power. Here, the risk is that many types of fire and casualty insurance are scarce products and hence the source of the type of tying effect emphasized above. In other words, a purchaser desiring scarce insurance would, after this merger, be tempted to buy some other product from ITT in the hope of obtaining favorable treatment in procuring the insurance.

This type of tying effect seems particular serious when it has a tendency to entrench a leading firm. Grinnell, which ITT proposed to acquire, is the leading manufacturer and installer of automatic fire protection sprinkler systems. Grinnell's share of the United States market of automatic sprinkler systems is approximately 25% or $60 million annually. Its two largest competitors share approximately another 25% of the market, with the remainder being occupied by several small manufacturers of such equipment and numerous small installers.

Even apart from tying effect, Grinnell might receive benefits tending to entrench it in its position as a result of its affiliation with Hartford. The incentive for installing a sprinkler system is to secure more favorable insurance rates. This factor is often pointed out by the insurance agent; and Hartford agents would be in a unique position to commend Grinnell's sprinklers. Since all sprinkler

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systems are basically the same. 4/ tying effect, or even agents recommendation, are likely to have some effect in increasing Grinnell's sales for non-economic reasons. The result in either event, is that Grinnell already the dominant firm in the sprinkler market, would be further entrenched in that position.

4/ All automatic sprinkler systems are either Underwriters' Laboratory or rating bureau approved in order for the insured to obtain reduced rates.
C. Increased Concentration and Elimination of Independent Factors in the Market

As discussed in greater detail in the LTV-J&L and Northwest Industries-Goodrich memoranda, the present conglomerate merger movement has substantially contributed to the rising level of concentration in the economy. As a result of this trend, many large firms which are substantial competitors in concentrated markets have been acquired by other similar entities. The effect has been to place a steadily increasing percentage of the nation's industrial wealth in the hands of a few giant companies. The portion of the total assets of the nation's manufacturing corporations held by the 200 largest firms has increased from 48.1% in 1948 to 54.2% in 1960 and 58.7% in 1967.

The disappearance of many large firms has substantially reduced the number of potential sources of entry into concentrated markets. In addition, the merger movement, which is causing an increasing number of leading firms in concentrated industries to become affiliated with leading firms in other concentrated industries, is entrenching these leading firms and raising barriers to entry. It is thus making deconcentration of those industries less and less likely. The overall result is that leading firms are becoming even more entrenched and barriers to entry are rising. 5/

5/ The insurance industry is already becoming more concentrated through a series of horizontal and conglomerate mergers. In 1968 alone, there were over 200 mergers involving insurance companies.
This merger of a $4 billion industrial corporation and a $2 billion insurance company would be one of the largest mergers, if not the largest one, in history. As such, it is a leading example of the type of conglomerate merger which increases concentration, reduces independent possibilities for deconcentration, and could trigger further acquisitions of insurance firms by manufacturing conglomerates. In addition, it removes Hartford as a potential force for deconcentration through independent entry into numerous manufacturing and consumer service industries.

That Hartford is a potential source of deconcentration in other industries seems clear. Hartford has a surplus of approximately $400 million above the amount necessary to support its present insurance writings. In late 1968, Hartford embarked upon an active program to study possible acquisitions. It appointed a special acquisitions committee of its Board; and this committee reported on October 22, 1968, that

... we should be looking at such businesses as manufacturers or consumer service organizations. The after-tax rate for banks is not the full corporate tax rate (it is about 40%). Mutual funds are generally not profitable enough to interest us initially because the only way to realize their complete profitability is to have other interests in the security business. Life insurance companies do not fit the tax qualification.

The committee actively considered numerous possibilities for acquisition -- including the Dow Chemical Company, Indian Head, Inc., Emhart Manufacturing Company, and Scovill Manufacturing Company.
All of these companies are on the Fortune 500 list (and each, incidentally, manufactures at least some products which overlap with products presently manufactured by ITT). This independent acquisition program lasted less than six months, and came to a halt when Hartford agreed to merge with ITT. It is nonetheless substantial indication that Hartford has both the incentive and the ability to diversify and enter concentrated markets. Thus, this acquisition, like that of Jones & Laughlin Steel, would remove one of the relatively few companies with sufficient resources to become a significant factor in numerous areas of the economy. It would thus foreclose opportunities for deconcentration and decrease the possibility of new entry whether de novo or by acquisition of smaller firms in a market.

CONCLUSION

In terms of assets involved, this merger is approximately twice as large as the LTV-J&L merger. In terms of the new market opened up to ITT, it is of substantially greater significance than either the Canteen or Grinnell acquisitions. In terms of the extent of reciprocity effect, this acquisition is no different than ITT-Canteen. In terms of the extent of tying effect, this acquisition is similar to that in First National City Bank-Chubb. These factors, coupled with the steadily increasing number and size of mergers in recent years, are all relevant to the purpose of Section 7. As the Supreme Court noted in Brown Shoe Company v. United States, 370 U.S. 294, 317, Section 7 is "... a keystone in the erection of a barrier to what Congress saw was the rising tide of economic concentration."

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The merger between ITT and Hartford creates substantial threats to competition in the areas outlined above. The basic dangers involved in this acquisition derive from the opportunities created for reciprocity and other market foreclosure, for tying effect, which is aggravated [sic] by the potential relationship between Hartford and Grinnell, and the increased concentration resulting from a $6 billion merger and the removal of Hartford as a potential force for deconcentration in various industries.

For the reasons indicated, I recommend that we oppose the merger of ITT and Hartford.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:

s/Richard G. Kleindienst

Date: 6/23/69
June 20, 1969

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Acquisition of Hartford Fire Insurance Company by the International Telephone and Telegraph Corporation

I recommend that we challenge, as a violation of Section 7 of the Clayton Act, the proposed merger of Hartford Fire Insurance Company ("Hartford") and International Telephone and Telegraph Corporation ("ITT"). On the basis of revenues, ITT is the 11th largest industrial firm in the United States. Hartford is the sixth largest property and casualty insurance company in the nation, and ranks among the three leaders in certain lines of casualty insurance.

The merger agreement between ITT and Hartford was executed on April 3, 1969. The earliest consummation date appears to be early August. Sometime ago, however, I tentatively agreed to inform the parties of our decision by June 1st; this has been postponed to Monday, June 23rd.

The ITT-Hartford merger would combine companies with total consolidated assets of approximately $6 billion. As such, it would constitute one of the largest mergers, if not the largest one, ever consummated, and could well trigger other big company acquisitions of property and liability insurance companies. The likely anticompetitive consequences of this merger include reciprocity and other foreclosure in insurance, tying effect between insurance and other products, entrenchment of Grinnell Corporation in the sprinkler industry, and increased economic concentration both in and of itself and by triggering further mergers and the removal of a potential force for deconcentration of various markets.

[DAG]

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A. ITT

ITT, one of the nation's largest conglomerates, had total 1963 sales in excess of $4 billion. Present assets of ITT and its subsidiaries are over $4 billion. On the basis of revenues, it is the nation's 11th largest industrial firm; on the basis of assets, it ranks 14th. ITT employs about 300,000 people worldwide, approximately 60% of whom are in the United States and Canada.

Much of ITT's growth has resulted from some 50 mergers and acquisitions made since January 1, 1960. Its domestic operations include Continental Baking Company, the nation's largest baking company; Sheraton Corporation of America, one of the two largest hotel chains; Levitt and Sons, a leading residential construction firm; Avis Rent-A-Car, the second largest car-renting company; and Rayonier, Inc., a leading producer of chemical cellulose. All of these companies were acquired by merger and at least two, Continental Baking and Rayonier, were among the Fortune top 500 industrial corporations at the time of their acquisition. ITT also controls several life and health insurance companies and a small property and casualty insurer. ITT recently acquired Canteen Corporation, one of the nation's two leading vending and food service companies. This acquisition has been challenged by the Department as a violation of Section 7. ITT has also agreed to acquire Grinnell Corporation, a leading firm in the manufacture and installation of automatic sprinkler systems, power piping systems and pipe hangers. This proposed merger is also under investigation by the Antitrust Division.
B. Hartford

Hartford heads a group of 10 insurance companies whose total assets as of December 13, 1963, were $1,391,700,000. Its premium receipts in 1963 totaled $968,600,000, of which over 90% was derived from property and liability insurance. On the basis of premiums received, Hartford ranks sixth among all property and liability insurance companies. It ranks fourth among those companies operating under the agency system, writing property and liability insurance through approximately 17,000 independent agents throughout the country 1/. Hartford is particularly significant in certain lines of insurance, and had the following shares of the market in 1967: fidelity, 7.0%; burglary and theft, 6.1%; inland marine (covering goods in transit), 5.7%; glass, 5.3%; miscellaneous (property damage and bodily injury) liability, 4.9%; and in the very large fire and extended coverage market, 4.3%.

II

ADVERSE COMPETITIVE EFFECTS

A. Reciprocity and Other Foreclosure Effects in Insurance

Reciprocity and reciprocity effect 2/ are examples of the use of economic power in one market to promote a firm's business in another market. As a result, competitors in the affected market lose sales not because of the merits of their products

1/ Some 4,000 to 6,000 other agents represent the Hartford life insurance subsidiaries.

2/ "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company.
but because of another seller's economic power in a different market. The Supreme Court recognized the unfairness and illegality of reciprocity resulting from mergers in *F.T.C. v. Consolidated Foods Corporation*, 330 U.S. 592, 595: "Reciprocity in trading as a result of an acquisition violates §7 if the probability of a lessening of competition is shown." Since reciprocity is an "irrelevant and alien factor" (supra at 592), which imposes entry and growth barriers to small single-product firms, it is "one of the congeries of anticompetitive practice at which the antitrust laws are aimed" (supra at 594).

The competitive danger is the power to practice reciprocity which is created by the merger. The creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect. As stated in *United States v. Ingersoll-Rand Company*, 218 F. Supp. 530, 532, affirmed 320 F. 2d 509:

...the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages of securing the goodwill of the possessor.

The extent of the danger from reciprocity and reciprocity effect depends upon the volume of a firm's purchases of goods and services. ITT's total annual purchases from all suppliers are a minimum of $550 million. ITT purchases annually $100,000 or more in goods or services from each of some 750 suppliers, including 99 of the top 200 corporations on the Fortune's 500 list. In the case of more than 100 of these suppliers, ITT's purchases are $1 million or more annually. The industries from which it purchases more than a million dollars annually include automotive, foods, steel, aluminum, copper, tires, chemicals,
oil, electrical and electronic equipment, home appliances, insurance and lumber. Approximately one-third of the American industrial work force is employed in these industries which represent a vast market for the sale of group life, accident and health, and casualty insurance.

All the industries and all of the suppliers from whom ITT purchases have substantial need for property and liability insurance. In addition, there is need for workmen's compensation coverage. Property and liability insurance is a largely undifferentiated product, at least when written by the larger and better-known companies. Hartford presently is one of the largest and most respected writers of such insurance. Consequently, there will be strong opportunity for ITT suppliers to channel their insurance requirements to Hartford, thus resulting in substantial reciprocity effect. In a relatively unconcentrated market, such as property and liability insurance, any introduction of substantial potential for a leading firm to benefit from reciprocity and reciprocity effect will interfere with the functioning of the market and may result in further mergers to offset the merged firm's advantage.

According to numerous sources in the insurance industry, a major new development is group property insurance. Group plans offer insurance at fixed rates to any member of the group who wants to take it. Similar group plans are common in the life insurance field. The most common group is the employees of a business. Hartford, as one of the leading property insurance underwriters, no doubt will be a leader in the group property insurance development field. The potential for reciprocity effect with respect to the employees of ITT's major suppliers in the writing of group property insurance is very substantial. 3/

3/ Many of ITT's suppliers and their employees make substantial purchases of group life and health and accident insurance. Thus, there may be opportunity for reciprocity effect to operate in this area.
A second aspect is the vertical foreclosure which would result from the merger. ITT and its subsidiaries and employees are a substantial market for Hartford insurance. The total domestic insurance purchases of ITT in 1963 were $23 million. While this is an insubstantial percentage of total insurance purchases, it is a not insubstantial dollar amount. It is very likely that much of this insurance business will be transferred to Hartford after the acquisition. Moreover, there are specialized kinds of insurance where the extent of potential foreclosure would be significant. For example, car rental insurance is a distinct type of automobile insurance. Avis now accounts for over 20% of car rentals, all of which could be insured by Hartford.

Another foreclosure effect from the merger relates to Levitt and Sons. Levitt sold 4900 home units in the United States and another thousand in Puerto Rico in 1963, and projects sales of 11,000 units annually within five years. Levitt currently arranges for the home purchaser's hazard insurance. Although Levitt does not require Levitt-arranged insurance, it does provide the insurance papers and notifies the purchaser of the amount of the insurance bill. Under these circumstances, the purchaser is not likely to object to the Levitt-arranged insurance, as illustrated by the fact that 62% of Levitt home purchasers accepted Levitt-arranged insurance in 1963. This amounted to $245,000 in premiums from home purchasers in the United States.

The combined market foreclosure which could result through reciprocity and reciprocity effect, vertical foreclosure and channeling of insurance purchases through ITT subsidiaries, condemns this merger as one in violation of Section 7. This theory was a basis for our pending suits against LTV-J&L and NorthWest Industries-Goodrich and our recommended case against First National City Bank-Chubb, and was the sole rationale of ITT-Canteen. The same potential for market foreclosure by ITT exists here as in Canteen. The same rationale should be used with respect to this acquisition as well.
In our precedents of June 12 on the First National City-Bank merger, we emphasized the possibility that the seller of a scarce product may secure advantage in selling other related products as a result of what we called "tying effect". Tying effect results when the purchaser of the scarce product believes that he could secure it, or could secure it on more favorable terms, if he purchased other products from the seller. Because the second, or tied product, is sold not entirely on its own economic merits, tying arrangements have always been treated strictly under the antitrust laws. For this reason, we think the principle of Consolidated Foods (discussed above) seems equally applicable where market foreclosure is secured by tying rather than reciprocity.

Tying has long been recognized as "serving hardly any purpose beyond the suppression of competition," Standard Oil Co. of Calif. v. U.S., 267 U.S. 252, 278-279, and as having a "pernicious effect on competition and lack of any redeeming virtue ..." Northern Pacific R.R. v. United States, 356 U.S. 1, 4.

Therefore, tying is unlawful "whenever the seller can exert some power over some buyers in the market, even if this power is not complete over them and over all other buyers in the market." United States v. United States Steel Corp., O.T. 1968, No. 306, Slip Opinion, pp 7-8 (April 7, 1969).
In First National City-Chubb, the danger we emphasized was that credit, particularly in times of tight money, might be a source of tying power. Here, the risk is that many types of fire and casualty insurance are scarce products and hence the source of the type of tying effect emphasized above. In other words, a purchaser desiring scarce insurance would, after this merger, be tempted to buy some other product from ITT in the hope of obtaining favorable treatment in procuring the insurance.

This type of tying effect seems particular serious when it has a tendency to entrench a leading firm. Grinnell, which ITT proposed to acquire, is the leading manufacturer and installer of automatic fire protection sprinkler systems. Grinnell's share of the United States market of automatic sprinkler systems is approximately 25% or $60 million annually. Its two largest competitors share approximately another 25% of the market, with the remainder being occupied by several small manufacturers of such equipment and numerous small installers.

Even apart from tying effect, Grinnell might receive benefits tending to entrench it in its position as a result of its affiliation with Hartford. The incentive for installing a sprinkler system is to secure more favorable insurance rates. This factor is often pointed out by the insurance agent; and Hartford agents would be in a unique position to commend Grinnell's sprinklers. Since all sprinkler
systems are basically the same, 4/ tying effect, or even agents recommendation, are likely to have some effect in increasing Grinnell’s sales for non-economic reasons. The result in either event, is that Grinnell already the dominant firm in the sprinkler market, would be further entrenched in that position.

4/ All automatic sprinkler systems are either Underwriters' Laboratory or rating bureau approved in order for the insured to obtain reduced rates.
C. Increased Concentration and Elimination of Independent Factors in the Market

As discussed in greater detail in the LTV-JAL and Northwest Industries-Boeing decisions, the present conglomerate merger movement has substantially contributed to the rising level of concentration in the economy. As a result of this trend, many large firms which are substantial competitors in concentrated markets have been acquired by other similar entities. The effect has been to place a steadily increasing percentage of the nation's industrial wealth in the hands of a few giant companies. The portion of the total assets of the nation's manufacturing corporations held by the 200 largest firms has increased from 43.1% in 1948 to 54.2% in 1960 and 53.7% in 1967.

The disappearance of many large firms has substantially reduced the number of potential sources of entry into concentrated markets. In addition, the merger movement, which is causing an increasing number of leading firms in concentrated industries to become affiliated with leading firms in other concentrated industries, is entrenching these leading firms and raising barriers to entry. It is thus making deconcentration of those industries less and less likely. The overall result is that leading firms are becoming even more entrenched and barriers to entry are rising. 5/

5/ The insurance industry is already becoming more concentrated through a series of horizontal and conglomerate mergers. In 1963 alone, there were over 200 mergers involving insurance companies.
This merger of a $4 billion industrial corporation and a $2 billion insurance company would be one of the largest mergers, if not the largest one, in history. As such, it is a leading example of the type of conglomerate merger which increases concentration, reduces independent possibilities for deconcentration, and could trigger further acquisitions of insurance firms by manufacturing conglomerates. In addition, it removes Hartford as a potential force for deconcentration through independent entry into numerous manufacturing and consumer service industries.

That Hartford is a potential source of deconcentration in other industries seems clear. Hartford has a surplus of approximately $400 million above the amount necessary to support its present insurance writings. In late 1963, Hartford embarked upon an active program to study possible acquisitions. It appointed a special acquisitions committee of its board, and this committee reported on October 22, 1963, that

...we should be looking at such businesses as manufacturers or consumer service organizations. The after-tax rate for banks is not the full corporate tax rate (it is about 40%). Mutual funds are generally not profitable enough to interest us initially because the only way to realize their complete profitability is to have other interests in the security business. Life insurance companies do not fit the tax qualification.

The committee actively considered numerous possibilities for acquisition -- including the Dow Chemical Company, Indian Head, Inc., Embart Manufacturing Company, and Seavill Manufacturing Company.

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All of these companies are on the Fortune 500 list (and each, incidentally, manufactures at least some products which overlap with products presently manufactured by ITT). This independent acquisition program lasted less than six months, and came to a halt when Hartford agreed to merge with ITT. It is nonetheless substantial indication that Hartford has both the incentive and the ability to diversify and enter concentrated markets. Thus, this acquisition, like that of Jones & Laughlin Steel, would remove one of the relatively few companies with sufficient resources to become a significant factor in numerous areas of the economy. It would thus foreclose opportunities for deconcentration and decrease the possibility of new entry whether de novo or by acquisition of smaller firms in a market.

CONCLUSION

In terms of assets involved, this merger is approximately twice as large as the ISU-RR merger. In terms of the new market opened up to ITT, it is of substantially greater significance than either the Canteen or Grinnell acquisitions. In terms of the extent of reciprocity effect, this acquisition is no different than ITT-Canteen. In terms of the extent of tying effect, this acquisition is similar to that in First National City Bank-Chubb. These factors, coupled with the steadily increasing number and size of mergers in recent years, are all relevant to the purpose of Section 7. As the Supreme Court noted in Brown Shoe Company v. United States, 370 U.S. 294, 317, Section 7 is "... a keystone in the erection of a barrier to what Congress saw was the rising tide of economic concentration."
The merger between IIT and Hartford creates substantial threats to competition in the areas outlined above. The basic dangers involved in this acquisition derive from the opportunities created for reciprocity and other market foreclosure, for tying effect, which is aggrandized by the potential relationship between Hartford and Grinnell, and the increased concentration resulting from a $6 billion merger and the removal of Hartford as a potential force for deconcentration in various industries.

For the reasons indicated, I recommend that we oppose the merger of IIT and Hartford.

RICHARD W. McLANEN
Assistant Attorney General
Antitrust Division

Approval:
S/Richard G. Kleinheinz
Dte. 4/23/69
MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Proposed Complaint to Enjoin Acquisition of Grinnell Corporation By International Telephone and Telegraph Corporation

Attached herewith for your approval and signature is a civil complaint seeking a preliminary and a permanent injunction against the proposed acquisition of Grinnell Corporation (Grinnell) by International Telephone and Telegraph Corporation (ITT). We expect that the merger will be consummated on or shortly after August 5, 1969.

The complaint alleges that the acquisition will violate Section 7 of the Clayton Act in that it may substantially lessen competition in the manufacture and installation of automatic sprinkler systems, the manufacture of pipe hangers and power pipe hangers, and the fabrication and installation of power piping systems. The primary anticompetitive effect resulting from this acquisition is entrenchment of Grinnell, a leading firm in several concentrated industries, through its acquisition by ITT, a very large firm. Grinnell is the dominant company in each of several industries and its competitors are, for the most part, relatively small firms. ITT is a major source of purchasing power, which will provide the opportunity for reciprocity and other market foreclosure benefitting Grinnell. In addition, the potential relationship between Grinnell and Hartford Fire, a leading fire insurance company which ITT also plans to acquire, would enable ITT, through Hartford, to promote and increase Grinnell's sales of automatic sprinkler systems. Finally, this acquisition may trigger other mergers by competitors of Grinnell and further the current trend of acquisitions of dominant firms in concentrated markets by large companies.
THE COMPANIES INVOLVED

A. ITT

ITT, one of the nation's largest conglomerates, now ranks among the eleven largest industrial concerns in the United States on the basis of revenues, and 14th in terms of assets. In the period 1955 through 1968, its total sales increased from $502,760,050 to $4,066,502,000 and its assets grew from $687,451,677 to $4,022,400,000. In a recent statement, ITT's president projected 1969 sales of more than $5,000,000,000.

Much of ITT's recent growth has resulted from more than 50 mergers and acquisitions which it made during the period 1961 through 1968. Its domestic operations include Continental Baking Company, the nation's largest baking company; Sheraton Corporation of America, one of the two largest hotel chains; Levitt and Sons, a leading residential construction firm; Avis Rent-A-Car, the second largest car renting company; and Rayonier, Inc., a leading producer of chemical cellulose. All of these companies were acquired by merger, and at least two, Continental Baking and Rayonier, were among the Fortune top 500 industrial corporations at the time of their acquisition. ITT recently acquired Canteen Corporation, one of the nation's two leading vending and food service companies. This acquisition has been challenged by the Department as a violation of Section 7.

ITT has also entered into an agreement of merger with the Hartford Fire Insurance Company. Hartford's consolidated assets at 1968 year-end were $1,891,684,021 and it ranked third in fire and extended coverage insurance. In response to a request from the parties, we have informed counsel for ITT and Hartford that we will oppose the merger; they have indicated that they intend nevertheless to proceed. Earliest consummation would appear to be August or early September.
B. Grinnell

Grinnell ranks number 268 on the 1968 Fortune list of the 500 largest industrial corporations in the United States. It had 1968 sales of $341,232,906 and assets of $184,453,229. Grinnell is the largest manufacturer and installer of automatic sprinkler systems in the United States, with sales of approximately $67,100,000 or 25% of the total market. It is the largest manufacturer of pipe hangers in the United States, having total 1966 sales of $13,348,000 or approximately 50% of the market. Its 1968 sales of power pipe hangers, a specialized type of pipe hanger used in power piping systems, approximated $6,000,000 or 45% of the industry total. Grinnell is also believed to be the largest factor in the pipe military industry with 1968 sales of $28,380,000.

THE TRADE AND COMMERCE INVOLVED

A. Automatic Sprinkler Systems

Automatic sprinkler systems consist basically of pipe and sprinkler devices. The sprinkler devices represent approximately 8% of the total installed cost of the system. The automatic sprinkler industry consists of both manufacturers of sprinkler devices and of installers, or so-called sprinkler contractors. The manufacturing of sprinkler devices is highly concentrated, with four companies accounting for approximately 70% of the total. Grinnell is one of the few manufacturers which installs its own systems rather than using independent contractors. It is the largest factor in the industry with total domestic revenues in 1968 from the manufacture and installation of sprinkler systems of $67 million. It is believed that this represents approximately 25% of the industry total.

The entire sprinkler industry is dependent upon the insurance business, since insurance companies offer
substantially reduced fire insurance premium rates if a sprinkler system is installed. Often the insurance agent calls this fact to the customer's attention and recommends the installation of a system. All sprinkler devices must be inspected and approved by the Underwriters' Laboratories or the Factory Mutual Association in order to qualify for reduced insurance rates. Such testing results in uniform standards of performance and thus all sprinkler systems are basically the same. Traditionally there has been no direct relationship between insurance companies and sprinkler companies, but, in October 1968, the Insurance Company of North America (INA) purchased the Star Sprinkler Company, one of the larger manufacturers. As noted above, ITT proposes to acquire the Hartford Fire Insurance Company as well as Grinnell.

B. Pipe Hangers

Pipe hangers are devices for supporting piping. There are hundreds of different types of hangers, depending on the size and weight of the pipe to be suspended and the material from which the support is to hang. Hangers vary from single U-shaped pieces of wire to complex suspension systems for power piping. Total sales of pipe hangers, including power pipe hangers, in 1966 were $26 million. Grinnell is the largest of the nation's twelve pipe hanger manufacturers and had sales in 1966 of approximately $13 million or 50% of the market.

C. Power Pipe Hangers

Power pipe hangers are specialized variable spring or constant support hangers used in power piping systems. These hangers have a spring mechanism which moves when the pipe to which it is attached expands due to pressure or temperature. Such hangers sell for as much as $2,500 each. There are only four manufacturers of power pipe hangers. Total 1968 sales are estimated at $13 million, of which Grinnell had $5,970,000, or approximately 45% of the total.
D. Power Piping Systems

Power piping systems are installed in utility power generating plants and segments of the process industries, primarily chemical and paper. Metallurgical stability and resistance to expansion and other structural changes are the principal requirements of such systems. Only three companies, including Grinnell, manufacture power pipe hangers, prefabricate the piping, and install the complete system. Several other companies do fabrication and installation. Grinnell had total power piping sales of $52 million in 1967 and $28 million in 1968. While total industry revenues are unavailable, Grinnell is believed to be the largest factor in the industry.

ADVERSE COMPETITIVE EFFECTS

A. Entrenchment of Grinnell Through Reciprocity and Other Foreclosure

Each of the markets in which Grinnell is important is dominated by relatively few firms, with the top three companies accounting for over 50% of the total industry sales. Grinnell is already the largest company in each of these markets and the resultant combination with ITT will create an extremely wide disparity in size and market power between it and the largest remaining firm in each of these fields.

As with the acquisition of Canteen, ITT's vast purchasing power throughout the economy will enable Grinnell, already a dominant firm in several concentrated markets, to benefit from reciprocity and reciprocity effect 1/ thus

1/ "Reciprocity" refers to a seller's practice of utilizing the volume or potential volume of its purchases to induce others to buy its products or services. "Reciprocity effect" refers to the tendency of a firm desiring to sell to another company to channel its purchases to that company.
further entrenching its position and increasing barriers to entry in these markets. The Supreme Court recognized the illegality of reciprocity resulting from mergers in F.T.C. v. Consolidated Foods Corporation, 380 U.S. 592, 595: "Reciprocity in trading as a result of an acquisition violates § 7 if the probability of a lessening of competition is shown." Since reciprocity is an "irrelevant and alien factor" which imposes entry and growth barriers to small single-product firms, it is "one of the congeries of anticompetitive practice at which the antitrust laws are aimed" (Consolidated Foods, supra, 380 U.S. at 594).

The creation of such power, regardless of whether it is overtly exercised, may have a serious anticompetitive effect. As stated in United States v. Ingersoll-Rand Company, 218 F. Supp. 530, 532, affirmed 320 F.2d 509:

... the mere existence of this purchasing power might make its conscious employment unnecessary; the possession of the power is frequently sufficient, as sophisticated businessmen are quick to see the advantages of securing the goodwill of the possessor.

The extent of the danger from reciprocity and reciprocity effect depends upon the volume of a firm's purchases of goods and services. ITT's total annual purchases from all suppliers are a minimum of $550 million. ITT purchases annually $100,000 or more in goods or services from each of some 750 suppliers, including 99 of the top 200 corporations on the Fortune 500 list. In the case of more than 100 of these suppliers, ITT's purchases are $1 million or more annually. The industries from which it purchases more than a million dollars annually include automotive, foods, steel, aluminum, copper, tires, chemicals, oil, electrical and electronic equipment, home appliances, and lumber. These industries account for about one-third of the total United States expenditures for new plants and equipment, the very plants which offer the major
market for sprinkler systems and pipe hangers. ITT's substantial purchases from the industries erecting these new plants will increase Grinnell's ability to receive the sprinkler and pipe hanger business of these plants. 2/

In addition to foreclosure arising from reciprocity, the requirements for these products of ITT's own industrial and commercial construction will be foreclosed to competitors of Grinnell as a result of this acquisition. This vertical foreclosure will further contribute to the entrenchment of Grinnell as a result of its acquisition by ITT.

The greatest danger from reciprocity effect is in the automatic sprinkler system market. However, since pipe hangers are used in conjunction with sprinkler systems, any entrenchment in that market will also entrench Grinnell's position in pipe hangers. With respect to power piping systems, reciprocity effect may be less, especially in utility power generating plant construction. Nonetheless, this is a concentrated industry in which any entrenchment of a leading firm through its acquisition by a large diversified company creates serious competitive dangers.

2/ Most automatic sprinkler work is done on a job-by-job basis with the general contractor, rather than with the owner of the building under construction. However, Grinnell presently has a number of blanket contracts with major industrial firms whereby Grinnell does all of the sprinkler work for these companies' plants wherever located. The reciprocity power of ITT could result in an increase in the number of such blanket contracts, thereby foreclosing other sprinkler installers from a significant portion of the market.
B. Use of ITT's Insurance Capabilities to Promote Grinnell's Sales

As noted above, ITT has entered into an agreement of merger with the Hartford Fire Insurance Company, one of the nation's leading fire and casualty insurers. The combination of Grinnell and Hartford would enable ITT to utilize its insurance business to promote and increase the sale and installation of automatic sprinkler systems. This ability is another means by which this merger may further entrench Grinnell's already dominant position in this market.

Since all sprinkler systems are basically the same, the customer has little reason, other than price, to prefer one system over another. Indeed, it is common for insurance agents and sprinkler salesmen to work together in contacting prospective customers. At the very least, Hartford agents will be in a unique position to recommend Grinnell sprinkler systems and to give leads to Grinnell salesmen. In addition, purchasers desiring types of fire

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3/ Since the parties to the ITT-Hartford merger have stated that they intend to proceed, we have to assume for present purposes that the merger will be consummated. In any event, the acquisition of Grinnell, totally apart from any insurance relationship, is at least as anticompetitive as the Canteen acquisition.
and casualty insurance which may be relatively unprofitable and therefore hard to obtain may have an incentive to buy Grinnell systems in the hopes of obtaining the desired insurance. (This type of tying effect is similar to the danger presented by the recently abandoned First National City Bank - Chubb merger.) The consequence of all of these forces is that Grinnell, already the dominant firm in the sprinkler market, would be further entrenched in that position.

C. Triggering of Other Mergers

This acquisition could have a serious impact on the structure of the several industries involved. ITT is many times larger than any of the companies with which Grinnell competes. It seems inevitable that this acquisition will tend to trigger other mergers by competitors of Grinnell seeking to protect themselves from the impact of this acquisition or to obtain similar competitive advantages. This is especially true if the Hartford-Grinnell relationship is established. In fact, some of the competitors of Grinnell have already indicated that such a combination could drastically alter their operations and force them to sell out to other insurance companies. This trend had already begun with the INA-Star Sprinkler merger.

Finally, this acquisition will further the current trend of acquisitions of dominant firms in concentrated markets by very large companies. This trend has substantially contributed to the rising level of concentration in the economy. The effect has been to place a steadily increasing percentage of the nation's industrial wealth in the hands of a few giant companies. This trend also increases actual and potential customer supplier relationships among leading firms in concentrated markets, thus diminishing the vigor of competition.
VENUE

We propose to file separate cases against the Grinnell and Hartford acquisitions, but in the same jurisdiction, in the expectation that the cases can be consolidated for trial.

CONCLUSION

For the reasons indicated, I recommend that the attached complaint be approved.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

Approved:

Date: 7/25/69
3. During 1969, 1970 and 1971, Harold S. Geneen, President of ITT, met on numerous occasions with White House staff members, other Administration officials and members of both houses of Congress to discuss various matters, including international monetary policy, the Office of Foreign Direct Investment policy, antitrust policy, balance of payments, revenue sharing and expropriation by foreign governments. During the summer of 1969 Geneen sought a personal meeting with the President to discuss the ITT antitrust cases. His request was denied because the President's advisers thought that such a meeting was inappropriate.

3.1 Harold Geneen testimony, 2 KCH 776-80.

3.2 Memorandum from Hugh Sloan to John Ehrlichman, June 30, 1969 (received from White House).

3.3 Memorandum from Dwight Chapin to Peter Flanigan, July 16, 1969 (received from White House).

Senator Kennedy. I think, if the Senator will yield just on that point, I think you indicated on your list that you called Mr. Flanigan; didn't you?

Mr. Geneen. Yes. We submitted a list this morning, Senator, covering all the people that were covered in that release and the subject matters. I think the preliminary list you had earlier did not.

Senator Kennedy. I think on the list that was provided, it indicated in your release, that in February 1971, you talked with Mr. Flanigan?

Mr. Geneen. That is correct.

Senator Kennedy. That was the last question of the Senator.

Senator Hruska. That was not the last question.

Senator Kennedy. That was the last question of Senator Ervin.

Mr. Geneen. Let me see if I can correct it.

There was a group meeting and there were about 25 people there, not on the subject of antitrust. It was a luncheon. It was on the subject, originally, on the subject of revenue sharing and reorganization of Government and a presentation to a number of business people. It was followed by a lunch, and we sat in the lunch, and in the lunch we were talking generally, speaking about business and Government regulations in general. Now, I included it because it gets in this general area, but I think any discussion per se of antitrust probably with the two or three comments—

Senator Cook. Would the Senator from North Carolina yield?

Senator Kennedy. Yes.

Senator Cook. I think what the Senator has in mind was the testimony of Mr. Rohatyn, a director of the company, who attended two meetings, one in the morning and one in the afternoon at the Attorney General's office relative to his position as chairman of the committee of the New York Stock Exchange, where Mr. Peter Flanigan was in attendance and also the president of the New York Stock Exchange, the president of the American Stock Exchange. It was also in regard to Mr. Ross Perot and the Du Pont brokerage firm.

Senator Ervin. I want to thank the Senator from Kentucky for straightening me out on that. I have not been able to attend all the hearings and I have read some newspaper accounts and I am confused perhaps. I take it, Mr. Geneen, that you are testifying that never, at any time, on any occasion, under any circumstances, did you ever talk to Mr. Flanigan about antitrust laws or about these antitrust suits?

Mr. Geneen. I don't recall any. I remember the luncheon; that is what I was speaking of.

Senator Ervin. That is all.

The Chairman. Hugh?

Senator Scott. No questions; reserved.

Senator Kennedy. I planned to go into some other areas but in your release, page 2 of the March 13 release, it says, "According to the spokesman, Mr. Geneen also registered his views on the Administration's policy"—I imagine that is antitrust policy—"with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan. . . ." That is what I understood Senator Ervin asked you.

(The ITT press release referred to follows:)
ITTT DETAILS MEETINGS WITH GOVERNMENT OFFICIALS

New York, March 13—In response to questions concerning meetings between high ranking government Administration officials and Mr. Harold S. Geneen, chairman and president of International Telephone and Telegraph Corporation, a spokesman for ITT today stated that in the three years since the new policy of the Antitrust Division has been followed, Mr. Geneen has talked to many members of Congress, the Government, the public, the Bar, shareholders and others on what he felt was the serious impact of this policy on the national interest, as well as on all of American industry.

The spokesman said that Mr. Geneen felt that changes in antitrust law should be made in Congress where hearings on all aspects of the national interest could be held before new legislation was enacted.

The spokesman continued, "Mr. Geneen’s right to place his views before any and all members of the government involved in national policy is a constitutional right of all American citizens. It is the duty of any businessman or citizen to express his views when he feels he has a wrong that needs redress."

"Constitutional rights of businessmen," the spokesman said, "are entitled to as much respect and protection as the First Amendment rights are to a free press."

The spokesman said that Mr. Geneen’s range of contacts included former Attorney General John N. Mitchell and Senators Philip A. Hart and Vance Hartke, as well as Chairman Emanuel Celler of the House Committee on the Judiciary and members of that committee, including Representatives Peter A. Rodino and Jack Brooks.

According to the spokesman, Mr. Geneen also registered his views on the Administration’s policy with White House staff members Dr. Arthur Burns, Charles Colson, John Ehrlichman and Peter Flanigan; with Paul W. McCracken, then chairman of the Council of Economic Advisers; with former Commerce Secretary Maurice Stans; with former Treasury Secretary David Kennedy; with Treasury Secretary John B. Connally; with Peter G. Peterson, when he was the White House advisor on international economic policy; and with other members of Congress including Senators Inouye (D-Hawaii), Hart (D-Mich.), Hartke (D-Ind.), McCollan (D-Ark.), Byrd (D-W.Va.), and Percy (R-Tenn.), Representatives Ford (R-Mich.), Rodino (D-N.J.), Brooks (D-Texas), Wilson (R-Calif.), Celler (D-N.Y.), Boggs (D-La.) and former Representative MacGregor (R-Minn.).

ITT said it considers the consent decrees agreed to with the Justice Department to be extremely severe. The company had won two of the antitrust cases in lower courts and therefore felt its views about the merits of its position were shared by others responsible for antitrust interpretation.

Senator Kennedy. Did you discuss antitrust policy with Mr. Flanigan—the ITT case?

Mr. Geneen. This is a pretty broad view Senator. This was a luncheon. At the luncheon we expressed the whole attitude of business and Government. I touched on our attitude but I didn’t touch on attitude and policy—

Senator Kennedy. What did you mean when you talked about, in your release, registering your views on administration policy with Mr. Flanigan? Would you specify?

Mr. Geneen. Well, I think the only thing I registered—there was a fairly sizable luncheon meeting and I expressed the view that the relationship of business to Government was certainly being increased—“improved” is the right word. McCracken was part of that discussion and some 20 other people, I think, and my comments were that I I didn’t think we were going to be able to improve our relations unless we did something about it and my own feeling was that we had to have better relationships between business and Government in these various areas; and that is the general discussion that took place.
Now, that was a discussion that took place under the auspices of Mr. Flanigan who called us all down for this meeting and I don't recall any other details of the meeting, but, substantially, I didn't hesitate to record these general views.

Senator Kennedy. Who else was at that meeting?

Mr. Geneen. I don't know, but I suppose they would have a list of them. They were all outside people. Well, let me say Mr. McCracken was at the meeting.

Senator Kennedy. Who called the meeting?

Mr. Geneen. I was invited to the meeting and I believe the invitation came from Mr. Flanagan.

Senator Kennedy. What was the invitation for? What type of meeting? What did he do, just call you and say, "We are going to talk about the business climate," or talk about the antitrust policy?

Mr. Geneen. No. I got a notice of the meeting from the Washington office.

Senator Kennedy. Which Washington office?

Mr. Geneen. Our Washington office.

Senator Kennedy. Your ITT office?

Mr. Geneen. That is correct and as I recall, the presentation of the economic situation by Mr. McCracken. There were some comments made by Assistant Secretary Packard about the military situation and more about the budget, basically; and I can't remember what other general comments there were but the main thrust of it, as I understood it, was to explain the new program, the revenue sharing and for the reorganization of the Government, as I recall. We each got a pretty thick folder on each of these subjects, and we adjourned and went to lunch. The lunch was much more informal and I think I sat next to McCracken and we got into the general matters of economy—that was the thing to do with Mr. McCracken—and some of the things we could do, let's say, to improve our competitive ability, and, basically, the relationship of business and Government. I discussed my views on that.

Senator Kennedy. Did you talk about antitrust policy?

Mr. Geneen. I don't think I touched on it, except, you might say, in a very restrained way. This was a group of people and I don't think it was an area that we would go into very great detail.

Senator Kennedy. Did you ever have any conversation with Mr. Flanigan other than about antitrust policy?

Mr. Geneen. No; I don't think so. I don't think I can recall ever talking to him about it.

Senator Kennedy. Did you ever have any correspondence or phone conversation with Mr. Flanigan?

Mr. Geneen. No, not to my knowledge.

Senator Kennedy. The reason I ask, Mr. Geneen, is because, you know, in this release you give ITT's detailed list of meetings with Government officials about antitrust law and it indicates that on the press release, and then it mentions Mr. Flanigan's name on this. As I gather from what you are saying here, you just attended a general meeting that was called by Mr. Flanigan or he chaired a meeting that was concerning the general business climate?

Mr. Geneen. That is correct, and I expressed some general views.

Senator Kennedy. Did you say you had an additional list here?
Mr. Geneen. No, I think we put in a more accurate—I wouldn’t say accurate—I checked out some of the dates alongside each of the names I put down the subject matter of what we talked about.

Senator Kennedy. You had in this list the date of February, 1971. Do you have any—do you know when that date was in February, 1971?

Mr. Geneen. I don’t have any better—have you got the final list, Senator, or the earlier one?

Senator Kennedy. Well, there are so many lists and memorandums here that I don’t know which it is.

Mr. Geneen. The one that came in this morning says “Schedule A.”

Senator Kennedy. I haven’t gotten that one this morning.

Mr. Gilbert. No. Excuse me, Senator, in response to the written request from the committee, we did prepare, in response to item 1, we did prepare a revised and corrected list of all those meetings which we have.

Senator Kennedy. Can we have that?

Mr. Gilbert. Certainly.

Senator Cook. We would all like it if we could have it.

Senator Ervin. It has been called to my attention by a member of the staff that none of these lists and exhibits they are referring to are in the record and I would suggest that it be placed in the record so people can understand what the questions are about.

(Letter from ITT dated March 28, 1972 and schedule A follow:)

INTERNATIONAL TELEPHONE & TELEGRAPH CORP.,

Hon. James O. Eastland,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

Dear Senator Eastland: In response to a request by the Committee made during the course of my testimony during the week of March 13, I attach hereto, as Schedule A, a revised list of the visits which I had with government officials about which I was questioned (Tr. 1205-6).

This schedule reflects my best present recollection as to the persons visited, the dates on which these visits were made, and the subject matters discussed. It is intended to be substituted for the list submitted on March 24, 1972 by counsel, Skadden, Arps, Slate, Meagher & Flom, which I did not have an opportunity to personally review prior to submission.

Sincerely,

H. S. Geneen.

SCHEDULE A

Late 1971:
Sec. John Connally—International Monetary Policy, OFDI Policy, Foreign Investment Policy, Expropriation Policy.
Mr. Charles Colson—OFDI Policy.
Mr. James Lynn—OFDI Policy.

Mid 1971:
Mr. Peter Peterson—International Monetary Policy, Foreign Investment Policy, International Trade Policy, OFDI Policy, Expropriation Policy. A second meeting which was a group meeting on International Trade Policy and Economic Planning.
Mr. Charles Colson—OFDI Policy.
Feb. 1971: Mr. Peter Flanigan—Group meeting and lunch on Revenue Sharing and Reorganization of Government.


Early 1971: Chairman Paul McCracken—Antitrust Policy and Balance of Payments Policy.

April 1971:

Mr. Peter Peterson—Antitrust Policy, Balance of Payments Policy, International Trade Policy, Productivity, Expropriation Policy.

Sec. John Connally—Antitrust Policy, Foreign Investment and Balance of Payments Policy.

Aug. 1970:


Mr. John Erlichman—Antitrust Policy and Balance of Payments Policy.

June 1970:


Sen. Philip A. Hart—Conglomerate Policy, Celler Committee Hearings, Bill on Expediting Act Revision, Possible Hearings Senate Sub-Committee on Antitrust.


Early 1970:


Late 1969:


Senator Kennedy. You see, Mr. Geneen, when you mention that you saw Mr. Flanigan at the luncheon, you have different dates down here for this meeting with Mr. Flanigan from what you have for Mr. McCracken, which is why—as I say, I don't want to spend a lot of time on this particular item.

Mr. Geneen. I understand but I was going to explain that, Senator. I made a call to Mr. McCracken at his office. That is the best date I can remember.

Senator Kennedy. How are we expected to know whether these people you indicated on the preliminary list were people who attended general meetings?

Mr. Geneen. Well, I think the supplementary list of group meetings, the group meeting and luncheon and Mr. McCracken as a specific call on purpose.

Senator Kennedy. I would like to come back when I have had a chance to go over the list.

Mr. Geneen. Yes.

Senator Kennedy. In your last appearance here, you provided us with an interim report on the shredding operations.
June 30, 1969

TO: JOHN EHRLICHMAN

FROM: HUGH SLOAN

For your consideration.

Letter from:

Loren M. Berry
L. M. Berry and Company
P. O. Box 6000
Dayton, Ohio 45401

Enclosing letter to Secretary Stans from:

Mr. Harold S. Geneen
Chairman and President
International Telephone and Telegraph Co.
320 Park Avenue
New York, New York 10022

Mr. Geneen wants to talk to President about balance of payments.
July 16, 1969  
Wednesday - 3:15 p.m.

MEMORANDUM FOR MR. PETER FLANIGAN

SUBJECT: Proposed Appointment with the President for Harold Geneen of IT&T

In accordance with the recommendations that you set forth in your memorandum (attached), we have not scheduled an appointment for Harold Geneen of IT&T.

Since you are familiar with all the matters relating to the subject matter, I would like to suggest that you talk to Bryce Harlow and see if it is agreeable with him for you to call Wilson and explain why it would be inappropriate for the President to see Geneen.

DWIGHT L. CHAPIN

DLC: ny

[4758]
July 16, 1969
Wednesday - 3:15 p.m.

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DWIGHT L. CHAPIN

DLC: ny
THE WHITE HOUSE

The ITT Anti-Trust Decision

In the thousands of pages of testimony and analysis regarding the ITT case since 1971, the only major charge that has been publicly made against President Nixon is that in return for a promise of a political contribution from a subsidiary of ITT, the President directed the Justice Department to settle antitrust suits against the corporation.

That charge is totally without foundation:

-- The President originally acted in the case because he wanted to avoid a Supreme Court ruling that would permit antitrust suits to be brought against large American companies simply on the basis of their size. He did not direct the settlement or participate in the settlement negotiations directly or indirectly. The only action taken by the President was a telephoned instruction on April 19, 1971 to drop a pending appeal in one of the ITT cases. He rescinded that instruction two days later.

-- The actual settlement of the ITT case, while avoiding a Supreme Court ruling, caused the corporation to undertake the largest single divestiture in corporate history. The company was forced to divest itself of subsidiaries with some $1 billion in annual sales, and its acquisitions were restricted for a period of 10 years.

-- The President was unaware of any commitment by ITT to make a contribution toward expenses of the Republican National Convention at the time he took action on the antitrust case. In fact, the President's antitrust actions took place entirely in April of 1971 -- several weeks before the ITT pledge was even made.

I. President's Interest in Anti-Trust Policy

Mr. Nixon made it clear during his 1968 campaign for the Presidency that he stood for an antitrust policy which would balance the goals of free competition in the marketplace against the avoidance of unnecessary government interference with free enterprise. One of Mr. Nixon's major antitrust concerns in that campaign was the Government's treatment of conglomerate mergers. Conglomerates had become an important factor in the American economy during the 1960's, and despite
...the Japanese government sees itself as a partner with business in facilitating economic growth. The situation is far different from that in the United States -- where...major efforts of the government are devoted not to growth and stimulation but to restraint and regulation of business and labor...

This view, along with a great deal of other data on foreign trade, was communicated to the President by Mr. Peterson on April 8, 1971 -- only a few days before the President intervened in the ITT matter.

The President and his advisors, (but not Attorney General Mitchell, who had disqualified himself on matters related to ITT) were thus seriously concerned about two aspects of antitrust policy which would eventually bear on the ITT matter: 1) the policy of attacking business per se and whether such policy had any economic justification, and 2) the need to prevent misguided antitrust attacks upon U. S. companies in competition with large foreign industrial entities.

II. Background on the ITT Litigation

The Justice Department in 1969 initiated civil litigation against the International Telephone and Telegraph Co., a major "conglomerate," for alleged violations of the antitrust laws. The allegations involved acquisitions by ITT of the Grinnell Corporation, the Hartford Fire Insurance Company, and the Canteen Corporation. These were only the latest and among the largest of a series of acquisitions made by ITT in the years since 1963, a period in which favorable tax laws, among other things, made acquisitions popular.

Under Assistant Attorney General McLaren, the Antitrust Division of the Justice Department was concerned with the implementation of an antitrust policy which attacked the general merger trend not only because the effect of the corporate growth "may be substantially to lessen competition", conduct clearly proscribed by the antitrust laws, but also because of the economic concentration itself.

Other experts, including many of the President's advisors, did not see the role of antitrust law in such all-encompassing terms. They believed that to use the law of antitrust to achieve political and economic aims beyond prevention of restraint of trade was unsound. If there were dangers such as Mr. McLaren and his colleagues feared from conglomerates, President Nixon and his advisors, along with other experts, preferred solving them through legislation.

Executives of ITT were also concerned about the Justice Department action, and talked with various administration officials to learn their views. The chief executive officer of ITT, Harold Geneen, was sufficiently concerned that he attempted to talk to the President personally about these issues in the summer of 1969. The President's advisors thought that such a meeting was not appropriate, and the meeting was not held.
4. During September 1969 Colonel James Hughes, Military Assistant to the President, spoke with Dita Beard, an ITT lobbyist, about the pending antitrust suit. Hughes reported on the conversation in a memorandum to Ehrlichman dated September 19, 1969.

4.1 Memorandum from Colonel James Hughes to John Ehrlichman, September 19, 1969 (received from White House).
MEMORANDUM FOR JOHN EHRLICHMAN

Carl Wallace asked me to call Deta Beard since I have know her personally for a number of years, in an effort to relieve her pressure on Secretary Laird reference the IT&T mergers. I did this and explained to her that this was out of my element, but since she was an old friend, I would pass on her request to the proper people.

Her pitch was long and involved, but basically boiled down to this: IT&T has not been able to discuss with McClaren the rationale behind the law suit. The Attorney General has disassociated himself from the case because of his law firm's interest in a subsidy of IT&T. The IT&T position is that they have done nothing wrong and in particular have violated no policy of this administration. On the emotional side, Deta cites a heavy financial support given by IT&T to the President's election.

In short, she requested that if the injunction were not granted by Monday, that Justice drop the entire matter.

I repeat, my role was simply a hand holding one and no commitment whatsoever was made. If you have a salving comment I'll pass it on. If not, I'll just ride it out.

COLONEL JAMES D. HUGHES

JDH:sas
5. In August 1970 officials and representatives of ITT held five meetings with Administration officials, including Vice President Spiro Agnew, Secretary of Commerce Maurice Stans, Assistant Attorney General McLaren and White House counsel John Ehrlichman and Charles Colson to discuss antitrust matters in general and the ITT antitrust litigation in particular. In another meeting, Geneen and Attorney General Mitchell met to discuss overall antitrust policy with respect to conglomerates. At these meetings and in subsequent letters and memoranda ITT officials sought to persuade Administration officials that McLaren's antitrust views, as reflected in his conduct of the ITT litigation, were ill-advised and inconsistent with the Administration's antitrust policy.

5.1 Memorandum from Tod Hullin to John Ehrlichman, August 4, 1970 (received from White House).

5.2 Letter from Richard McLaren to Tod Hullin, July 30, 1970, with attached memorandum from Richard McLaren to John Ehrlichman (received from White House).

5.3 Memorandum from Richard McLaren to Tod Hullin, August 3, 1970, with attachments (received from White House).

5.4 Letter from "Ned" (Edward Gerrity?) to Vice President Spiro Agnew, August 7, 1970, with attached memorandum (received from House Foreign and Interstate Commerce Committee).

5.5 Memorandum from John Poole to Files, August 7, 1970 (received from Department of Justice).

5.6 Memorandum from Tod Hullin to Richard McLaren, August 10, 1970 (received from White House).
5.7 Letter from Thomas Casey to Charles Colson, August 7, 1970, with attachment (received from White House).

5.8 Memorandum from Charles Colson to John Ehrlichman, August 10, 1970 (received from White House).

5.9 Memorandum from Tod Hullin to John Mitchell, August 11, 1970 (received from White House).


5.11 Memorandum from Edward Gerrity to John Ryan, August 10, 1970 (received from Michael Mitchell).

MEMORANDUM FOR JOHN EHRlichMAN

SUBJECT: Meeting with Harold Geneen, President, ITT, and E. J. Gerrity and William Merriam of ITT
August 4, 1970 - 11:30 a.m.

BACKGROUND

Mr. Geneen was one of several businessmen to have dinner with the President on board the SEQUOIA on July 17, 1970. Following this dinner, his office called and requested a meeting with you. Chuck Colson has tried to handle this, but Geneen insists on seeing you.

POINTS OF DISCUSSION

A. ITT's antitrust position. Attached at Tab A is a memorandum from Richard McLaren in which he summarizes the three conglomerate merger cases which have been filed against ITT.

B. Foreign direct investments and balance of payments. Chuck Colson has all the information on this subject and will brief you at 11 a.m. prior to your meeting with Geneen.

C. Network programming. You recently indicated that Geneen may bring up the subject of network programming and a recent ruling by the FCC. Attached at Tab B is a background paper on the subject provided by McLaren.
D. ITT's attempted takeover of the ABC network in 1967. A background paper outlining ITT's attempted takeover of ABC is attached at Tab C. This may be useful in determining the origin of Geneen's interest in network programming.

Tod R. Hullin

003945
Mr. Tod R. Hullin  
Administrative Assistant to  
John D. Ehrlichman  
The White House  
1600 Pennsylvania Avenue, N. W.  
Washington, D. C. 20500

Dear Mr. Hullin:

In response to your memorandum of July 21, 1970, I am enclosing herewith a background memorandum for Mr. Ehrlichman to use in preparation for his meeting with Mr. Geneen.

Sincerely yours,

RICHARD W. McLAREN  
Assistant Attorney General  
Antitrust Division
The following is background information for your meeting with Mr. Geneen of ITT, on August 4, 1970.

The Department of Justice has filed three conglomerate merger cases against ITT. These cases may be summarized as follows:

1. United States v. International Telephone & Telegraph Corporation and Canteen Corporation: This suit is pending in the United States District Court, Northern District of Illinois, in Chicago.

   ITT is the nation's 12th largest firm with 1967 revenues of $3.6 billion. It is a rapidly growing company, with much of its recent growth resulting from mergers and acquisitions. ITT purchases in excess of $550 million of goods from various domestic suppliers, with its actual and potential suppliers employing about one-third of the nation's industrial labor force.

   Canteen, with 1968 revenues of $322 million, is one of the few nationwide vending organizations and a leader among companies providing dining services for industrial plants.

   The complaint alleges that competitors of Canteen may be foreclosed from competing for the vending and employee feeding requirements of actual or potential suppliers to ITT, as well as the requirements of industrial organizations owned by ITT and its subsidiaries.

   Trial of this case is set for November 9, 1970.

This suit is pending in the United States District Court for the District of Connecticut, in New Haven.

Hartford is a leading writer of property and liability insurance and ranks 4th among the nation's property and liability insurance companies. In 1963 it had premium receipts of $968 million, net income of $53.3 million, and consolidated assets of $1.89 billion.

ITT also engages in the life insurance business, reaching a nationwide level of $1 billion. It is also a large purchaser of insurance.

The complaint alleges that actual and potential competition between the two firms will be diminished and that the merger will foreclose competitors of Hartford from competing for the insurance purchases of ITT and ITT's customers, increase the power of ITT and Hartford to benefit from reciprocity effect in selling insurance, and trigger other mergers by companies seeking to protect themselves from the impact of this acquisition or to obtain similar competitive advantages.

On October 21, 1969, the Court denied the Government's application for a preliminary injunction in this case, but entered a comprehensive "hold-separate" order. Trial of this case is set for April 19, 1971.

(3) United States v. International Telephone & Telegraph Corporation and Grinnell Corporation: This suit is pending in the United States District Court in the District of Connecticut in New Haven.

Grinnell is the 268th largest industrial corporation in the United States, with 1968 sales of $341 million, net income of $14 million, and assets of $184 million. Grinnell is the largest manufacturer and installer of automatic sprinkler fire protection systems in the United States. It is also a leading manufacturer of plumbing and piping hardware.
The complaint alleges that the merger will entrench Grinnell's already leading position in several concentrated markets, including the manufacture and installation of automatic sprinkler systems.

The complaint also alleges that the power of ITT and Grinnell to employ reciprocity and benefit from reciprocity effect will be substantially increased and the markets for Grinnell's competitors will be correspondingly foreclosed. Thus, the merger will raise barriers to entry, discourage smaller firms from competition in those markets, and trigger other mergers by competitors of Grinnell seeking to protect themselves from the impact of this acquisition.

The acquisition of both Grinnell and Hartford will enable ITT to utilize and benefit from its insurance business in promoting and increasing the sale and installation of Grinnell automatic sprinkler systems.

On October 21, 1969, the Court denied the Government's application for a preliminary injunction in this case, but entered a comprehensive "hold-separate" order. Trial of this case is set for September 15, 1970.

* * *

The anticompetitive effects alleged in these three cases do not represent novel or untested antitrust theory.

The doctrine of potential competition was clearly spelled out by the Supreme Court in United States v. El Paso Natural Gas Co., 376 U.S. 651 (1964); Federal Trade Commission v. Procter & Gamble Co., 386 U.S. 568 (1967); and United States v. Penn-Olin Chemical Co., 378 U.S. 158 (1964). Similarly, the Court held, in Federal Trade Commission v. Consolidated Foods Corporation, 380 U.S. 592 (1965), that reciprocity was an irrelevant and alien factor intruding into the choice of competing products and, at the very least, giving the favored firm a prior claim on the business where its price was no higher than that of a competitor.

The fact that a merger might entrench a leading firm's position was clearly recognized in the Procter &
Gamble case and in General Foods Corp. v. Federal Trade Commission, 386 F.2d 936 (3d Cir. 1967), cert. denied, 391 U.S. 919 (1963). And finally, the illegality of a merger which is likely to trigger other mergers and give impetus to further concentration is set forth in the General Foods case and in Brown Shoe Co. v. United States, 370 U.S. 294 (1962).

Last winter, the attempted takeover of Allis-Chalmers by White Consolidated was enjoined by the Third Circuit on reciprocity grounds, and certiorari was denied. On June 18, 1970, a unanimous Federal Trade Commission ruled that the acquisition of the Fram Corporation by The Bendix Corporation violated Section 7 of the Clayton Act by substantially lessening competition through elimination of the potential competition of Bendix in the filters market. These decisions, based upon the same anticompetitive effects on which our challenges to the three ITT acquisitions are based, lend further support to our cases.

* * *

You should also know that before ITT made these acquisitions, its counsel was advised of our intention to sue. ITT had "out clauses" in its contracts, but chose to proceed with the acquisitions and litigate. Since the cases were filed, I have discussed settlement with representatives of ITT. Briefly, I offered to settle on a basis which would involve ITT's agreement to divest itself of Canteen Corporation, and not to go through with the then pending acquisition of Hartford Fire Insurance Company, but permit ITT to keep Grinnell. (In addition, the Department would desire a consent order against further large acquisitions by ITT and against the practice of reciprocity by ITT.)

The three cases against ITT are extremely important to our program of maintaining a competitive market structure. I have every expectation that we
will ultimately prevail in these cases, thus obviating what probably would be rather inflexible legislation in this area by the Congress.

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

003953
Memorandum for:

TOD R. HULLIN
Administrative Assistant to Mr. Erlichman

Re: Erlichman-Geneen Meeting

In accordance with our telephone conversation last week, we have worked up memoranda concerning (1) the proceedings arising out of ITT's attempted take-over of the ABC network in 1967, and (2) the current status of the network programming proceeding in the FCC.

If there is any further information we can give you, please feel free to call upon us.

I would appreciate a call or a note after the meeting giving me any information that you properly can relative to the antitrust aspects of the discussion.
During the 1950s, independent program producers were a significant force in prime-time network programming of television shows. In 1957, for example, the independent producers accounted for about 80 percent of prime-time shows—40 percent sold to 50-100 advertisers who then purchased air time, and 40 percent sold directly to the networks themselves.

The situation has changed drastically. Today, advertisers purchase time for spot ads in the networks' schedules, and do not purchase shows directly from independent producers. The "independent" producer today must make an arrangement with the network if he is to sell his product at all, and the networks often require the producer to surrender valuable syndication rights and profit shares in his product to get it on the air.

The reasons why advertisers have ceased to purchase programs from independent producers are disputed. Some suggest that the networks arbitrarily
refused to carry such shows and thus compelled advertisers to deal directly with them. Others claim that the advertisers themselves came to feel that spot ads were more effective, and were unwilling to assume the increasing risks and costs of purchasing independently produced shows.

During the 1950s, the Antitrust Division began an investigation of this matter. In 1959, while the Division still had the matter under study, the FCC opened a full inquiry into the subject and, as a result, the Department of Justice inquiry was deferred.

In May 1970, the FCC issued its long-awaited order, with the following major provisions:

1. After September 1971, the television networks may not engage in the business of syndicating programs (selling second-run showings) within the United States, or distributing programs outside the United States of which it is not the sole producer, or reserve the right to share in profits in connection with such domestic or foreign distribution.

2. After September 1970, no network may acquire any financial interest in any commercial use of a television program produced solely or in part by a person other than the network, except a license for network exhibition.
3. After September 1971, no television station in any of the top 50 markets having three or more commercial stations shall broadcast network programs for a total of more than three hours a day between the hours of 7 p.m. and 11 p.m. (exclusive of special news programs, on-the-spot coverage of news events, and political broadcasts by legally qualified candidates).

The stated purposes of these rules are to multiply competitive sources of television programming by strengthening the financial base of the independent producers, and to stimulate a greater variety of programs, by opening up some prime time to non-network programs.

The Antitrust Division, in letters to the FCC while these rules were under consideration, essentially endorsed the new rules.

At the present time, the networks have petitioned the FCC to reconsider the rules, and the matter is now pending before the Commission. Chairman Burch and Commissioner Wells dissented from the adoption of these rules.

The Antitrust Division is currently awaiting the outcome of the FCC proceedings. If the FCC reverses its rule, the Division would seriously consider taking appropriate action. (We also have...
under consideration the complaint of the Motion Picture Association that movie production by CBS and ABC, together with the relationships between the networks and major movie exhibitors, is exposing the movie industry to unfair competition.

Since ITT's proposed acquisition of ABC has been abandoned, we are aware of no direct interest which ITT may have in this subject, unless it is again considering entry into this field.

003953
THE ITT-ABC CASE (1967) - ISSUES INVOLVED

In 1967, ITT negotiated a contract to acquire the ABC television and radio networks. The Department of Justice intervened before the FCC to oppose the proposed merger (which required FCC approval). Extensive hearings were held in which the Department actively participated. In June 1967, the Commission approved the merger by a 4-3 vote. The Department then appealed the FCC's decision to the Court of Appeals for the District of Columbia Circuit. However, while the appeal was pending, ITT abandoned the merger, and the appeal was dismissed as moot.

The Department's reasons for opposing the merger were as follows:

1. Competition. The proposed merger of ITT and ABC would have had a significant adverse effect on competition because (a) it would have foreclosed ITT's entry into broadcasting by other means and thus eliminated it as a potential independent entrant into network broadcasting; (b) it would have eliminated ITT as a substantial independent factor in the field of CATV, pay TV, and related activities; and (c) it would have eliminated ITT as a
source of communications technology independent of the existing networks.

(a) **Potential Entry into Network Broadcasting.** ITT was seriously and actively contemplating and investigating entry into television broadcasting prior to the merger agreement with ABC. There was evidence indicating that, absent the merger, ITT would have entered, and was highly likely to enter, television broadcasting on a sizable and substantial scale. Such activity would have provided a basis for entry into network broadcasting for a firm with ITT's resources.

(b) **Potential Competition via CATV.** ITT was engaged in a full-scale CATV effort in mid-1965. It constructed and controlled six substantial systems. Its officials, and consultants acting in its behalf, investigated a large number of potential CATV acquisitions, and development projects. If these efforts were carried out, and if CATV developed commercially, ITT would become a direct competitor of the existing networks in providing television programming to the public. It appeared that ITT's interest in these fields was terminated largely as a result of the ABC merger agreement.
(c) Other Potential Competition. The efforts which ITT was prepared to bring to bear in the fields of CATV and pay TV are only a part of the potential technological developments which could have had a significant competitive impact upon the structure of television broadcasting. In particular, various technological advances would increase the number of channels of access to the public and facilitate new entry into the network field. There are relatively few firms with the capabilities and resources of ITT in communications technology and in the development, engineering and operation of communications systems and equipment. The proposed merger would have foreclosed entry by ITT into broadcasting through greater reliance on UHF and its expansion in CATV or pay TV; it would thus have removed an important incentive for research and development in those areas.

2. **ABC as an Independent Voice in Regulatory Proceedings.** The Department argued that the proposed merger was also likely to have a detrimental effect on the public interest by eliminating ABC's independent voice in regulatory proceedings and in the consideration of other communications matters. For example, ABC had been a leading factor in making Domestic Satellite proposals in 1965.
3. **Loss of Independence and Integrity in News.** The Department urged that the proposed merger threatened to impair the integrity and independence of ABC's activities in the news, information and public affairs fields. ITT is a large diversified enterprise whose economic interests are closely related to political developments in countries throughout the world. It engages in frequent negotiations and close contacts with high officials of various governments, and relies upon intimate and confidential relations with them. Moreover, in the course of the ABC-ITT proceeding, ITT exhibited its readiness to interfere with the judgment of reporters of independent news media; specific testimony covered attempts of ITT executives to influence the reporting of the ABC-ITT proceeding by newspaper reporters of the leading dailies. Some of this testimony included statements by ITT officials that reporters should be concerned about potential economic consequences in reporting news and making editorial judgments.

For all the foregoing reasons, the Department argued that the proposed merger was likely to result in significant and substantial detriment to the public interest, including loss of competition. There appeared to be no substantial countervailing benefits.
Parties' Justifications. The parties sought to justify the merger on the ground that ABC required substantial new capital (to be provided by ITT) in order to remain competitive with the other networks and to replace its obsolete production facilities. However, the evidence showed that ABC was already a strong and effective competitor, obtaining 31% of primetime revenues and 27% of overall network revenues, and that its alleged need for production facilities was overstated. Moreover, the evidence showed that such money as ABC needed could be obtained through traditional methods of financing.
August 7, 1970

The Honorable
Spiro T. Agnew

Ted:

I deeply appreciate your assistance concerning the attached memo. Our problem is to get to John the facts concerning McLaren's attitude because, as my memo indicates, McLaren seems to be running all by himself.

I think it is rather strange that he is more responsive to Phil Hart and Manny Celler than to the policy of the Administration.

After you read this, I would appreciate your reaction on how we should proceed.

Ned
MEMORANDUM

August 7, 1970

You will recall at our meeting on Tuesday I told you of our efforts to try and settle the three antitrust suits that Mr. McLaren has brought. Before we met, Hal had a very friendly session with John, whom, as you know, he admires greatly and in whom he has the greatest confidence. John made plain to him that the President was not opposed to mergers per se that he believed some mergers were good and that in no case had we been sued because "bigness is bad." Hal discussed this in detail because McLaren has said and in his complaints indicated strongly that bigness is bad. John made plain that was not the case. Hal said on that basis he was certain we could work out something. John said he would talk with McLaren and get back to Hal.

While you and I were at lunch, Hal and Bill Merriam, who runs our local office, met with Chuck Colson and John Ehrlichman, and Hal told them of his meeting with John. Ehrlichman said flatly that the President was not enforcing a bigness-is-bad policy and that the President had instructed the Justice Department along these lines. He supported strongly what John had told Hal. Again, Hal was encouraged. I learned the details of this meeting after our lunch.

Yesterday our outside counsel from Chicago, Ham Chaffetz, who represents us in the Canteen case vs. the Justice Department, had a pre-trial meeting with McLaren and his trial people. They reviewed the case, and Chaffetz said he was ready to settle since Justice really had no case, i.e., they could not show reciprocity, etc., and that all that was alleged was that ITT was getting too big. McLaren, ignoring the evidence, said that ITT must be stopped, that the merger movement must be stopped, etc., in effect saying he was running a campaign based on his own beliefs and he intended to prosecute diligently. It is quite plain that Mr. McLaren's approach to the entire merger movement in the United States is keyed into the present cases involving ITT. Therefore, it is equally plain that he feels that if a judgment is obtained against ITT in any of these cases then the merger movement in the United States will be stopped. His approach obviously becomes an emotional one regardless of fact.

It was plain that McLaren's views were not and are not consistent with those of the Attorney General and the White House. We are being pursued, contrary to what John told Hal, not on law but on theory bordering on the fanatic.
In his conversation with Hal, John agreed that the steam had gone out of the merger movement because of tax reform legislation, the new accounting principles and general developments in the economy. John agreed with Hal that there was no need for a "crusade" to halt the merger movement because of the reasons I have indicated above. It is plain, therefore, that McLaren is operating on a completely different basis from John and the White House. I believe it has reached the point where he is more concerned about his personal views than those of his superior or the President.

My question to you is, should we get this development back to John, so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice.
MEMORANDUM
August 7, 1970

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My question to you is, should we get this development back to John, so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice.
On August 6, 1970, Hammond Chaffetz and William Jentes of the Kirkland Ellis firm called on Mr. McLaren in Washington to discuss possible settlement or disposition of the captioned case. Gerald Connell and I were also present.

Mr. Chaffetz contended that the Government's evidence elicited so far is so weak that the case ought to be dropped. He and Mr. Jentes adverted among other things to what they described as the extremely small number of "reciprocity" incidents revealed in the recent depositions of the Government's proposed witnesses, Fishman, Walsh and Manthy. They mentioned also that of all the possible incidents which have cropped up in Canteen documents in only 10% of these instances has Canteen gotten business. Overall Mr. Jentes said that the incidents of reciprocity which the Government intends to prove are insignificant given the size of this industry.

Mr. Chaffetz also admitted that at one time Canteen had practiced reciprocity as "everyone" had practiced reciprocity because it was understood that it was legal if coercion was not used. He said that this was no longer the case and particularly in view of ITT's management it was unrealistic to expect Canteen to engage in reciprocity.

Mr. Chaffetz also asserted that ITT would only improve Canteen's operations and this would redound to the benefit of the industry as a whole. (Mr. Jentes hastened to add that the management improvements ITT would make were not of a sort which would be available only to large firms.)
Mr. McLaren stated his intention to pursue the case, pointing out that the reciprocity issue was only half the case; there was also a major issue of the trend toward concentration through mergers, a trend in which ITT has been a leader and a prime contributor and one which runs afoul of the concerns voiced in the legislative history of the Celler-Kefauver Act.

Mr. Chaffetz said that although he had not spoken to Mr. Geneen of ITT on the subject he thought that ITT might be willing to consider an injunction of some years duration against further acquisitions as a means of settling the pending antitrust cases. He also stated that if the facts warranted it, ITT would be willing to settle the Canteen case on the entry of an order along the lines of that entered against U.S. Steel. Mr. McLaren indicated that he felt that divestiture was the proper remedy here.

Mr. Chaffetz asked whether this was regarded as a "test case" and Mr. McLaren challenged that characterization, pointing out that this was one of a group of cases where the grounds for Government suit had been clearly described to the proposed defendants before suit was brought.
August 10, 1970

MEMORANDUM

FOR RICHARD MCLAREN

RE: Ehrlichman's meeting with Mr. Geneen, ITT

I asked Mr. Ehrlichman is there was anything specifically discussed in this meeting of which you should be informed.

He indicated that there was nothing of significance that needed to be passed along; however, he did indicate that he had discussed some of the content of this meeting with the Attorney General. Perhaps the Attorney General could give you more specific guidance.

Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman
Mr. Charles Colson  
Special Counsel to the President  
1600 Pennsylvania Avenue, N.W.  
Washington, D. C.

Dear Chuck:

Mr. Geneen has asked me to write to you and express his appreciation for the extremely cooperative response and interest you and Mr. Ehrlichman expressed in regard to ITT's areas of concern during his recent meeting.

He also asked me to forward to you excerpts from the "Stipulated Statement of Facts" recently filed by the Department of Justice in the LTV - Jones & Laughlin case. After you have reviewed these excerpts, I am sure you will realize his concern.

During his meeting with Attorney General Mitchell, Mr. Geneen and the Attorney General both agreed that because of the recent changes in the tax law, the decision of the Accounting Principles Board and the depressed state of the stock market and economy, the merger wave was over and we would not see such happenings again. The Attorney General stated that it was not the intent of the Department of Justice to challenge economic concentration or bigness per se, or big mergers as such. During Mr. Geneen's conversation with Mr. Ehrlichman and you, he was told that the President himself has stated that bigness as a merger consideration is not the policy of his Administration.

In light of this, let me advise you of a meeting yesterday between Canteen's counsel from Chicago, Mr. Ham Chaffetz, who represents Canteen in its case; and Mr. McLaren and his trial people. This meeting was held at the request of Judge Austin who will hear the case. Judge Austin suggested that a possible settlement might be reached. They reviewed the case and Mr. Chaffetz said he was ready to settle
since Justice really had no case; i.e., they could not show reciprocity, etc., and that all that was alleged was that ITT was getting too big.

Mr. McLaren said he thinks he has a reciprocity case, but that is "only half the case and even if we did not have that, we would still be proceeding against ITT anyway" because of ITT's series of acquisitions. Further statements by Mr. McLaren were to the effect that

ITT is continuing to make acquisitions "and has to be stopped."

ITT is one of the leaders in making acquisitions.

Mr. Geneen has gotten away with a lot of acquisitions that the Department did not challenge.

ITT has made all these acquisitions and is now in the top ten companies.

ITT just keeps going on and everyone else goes along with ITT doing the same thing.

If ITT does it, other people will do it too and "ITT has got to be stopped."

Mr. McLaren referred to the "legislative history" of Section 7 as indicating the Congressional intention to stop increasing concentration and the trend of mergers. He indicated clearly that this was the "other half" of his cases against ITT. Mr. Chaffetz pointed out that Section 7 provides that in each individual case the Government must show an adverse effect on competition. However, Mr. McLaren would not focus on this point at all and merely made statements to the effect that "mere power is enough."

It seems plain that Mr. McLaren's views were not and are not consistent with those of the Attorney General and the White House as expressed to us. Apparently, we are going to be prosecuted, contrary to what the Attorney General, Mr. Ehrlichman and you told Mr. Geneen, not on law but on theory. This is an interesting attitude
in view of Judge Timbers' decision refusing to allow the preliminary injunction in the Hartford and Grinnell cases. Pointing out that Section 7 of the Clayton Act "proscribes only those mergers the effect of which 'may be substantially to lessen competition', not those mergers the effect of which may be substantially to increase economic concentration," the Judge then concluded (Opinion, p. 71-72):

"The alleged adverse effects of economic concentration brought about by merger activity, especially merger activity of large diversified corporations such as ITT, arguably may be such that, as a matter of social and economic policy, the standard by which the legality of a merger should be measured under the antitrust laws is the degree to which it may increase economic concentration—not merely the degree to which it may lessen competition. If the standard is to be changed, however, in the opinion of this Court it is fundamental under our system of government that that determination be made by the Congress and not by the courts."

Should you care to go into this matter in any detail, I'd be willing to discuss it---only at lunch.

Personal regards,

[Signature]

Thomas H. Casey
Director
Corporate Planning

Enclosure
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LING-TEXCO-VOUGHT, INC.,
JONES & LAUGHLIN STEEL CORPORATION, and
JONES & LAUGHLIN INDUSTRIES, INC.,

Defendants.

CIVIL ACTION NO. 69-433

STIPULATED STATEMENT OF FACTS

The parties to this action, by their attorneys, stipulate for purposes of this action only, and for no other purpose, as follows:

I. JURISDICTION

1. On April 14, 1969, plaintiff United States of America instituted this action under Section 15 of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 25), commonly known as the Clayton Act, in order to prevent and restrain an alleged violation of Section 7 of that Act, as amended (15 U.S.C. § 18). Section 15 of the Act vests jurisdiction in "the several district courts of the United States . . . to prevent and restrain violations of this Act." Among other things, Section 7 of the Act prohibits any corporation engaged in commerce from acquiring, directly or
which proceeded agreement between the parties on the
terms of the proposed Final Judgment. The consumma-
tion of the proposal does not contravene the divest-
ture requirements of the proposed Final Judgment and
was expressly excepted, in Subparagraph (l) on page 9
of the proposed Final Judgment from the restrictions
otherwise imposed upon defendants by Subsection IV(C)
of the proposed Final Judgment.

16. This action is one of several cases brought
by the Department of Justice predicated in part on its
claim that Section 7 of the Clayton Act prohibits acquisi-
tions by large conglomerate corporations in the course of,
and which tend to proliferate, a merger movement where
concentration of control of manufacturing assets will be
substantially increased and the trend to further concen-
tration will be encouraged. Although a United States
District Court in Illinois and another in the Northern
District of Connecticut rejected this contention in the
course of denying the Government's motions for preliminary
injunctions, it appears that this issue will be fully

1 United States v. Northwest Industries, Inc., Civil
Action No. 69 C1101, filed May 31, 1969, in the United
States District Court for the Northern District of Illinois;
United States v. International Telephone and Telegraph Cor-
poration and Grinnell Corporation, Civil Action No. 13319,
filed August 1, 1969 in the United States District Court
for the District of Connecticut; and United States v.
International Telephone and Telegraph Corporation and the
Northland Fire Insurance Co., Civil Action No. 15530, filed
August 1, 1969, in the United States District Court for the
District of Connecticut.
litigated and finally adjudicated in these cases now being prepared for trial. In Allis-Chalmers Mfg. Co. v. White Consolidated Indus., Inc., 414 F.2d 506, 523 (3d Cir. 1969), cert. denied, 396 U.S. 1069 (1969), this contention was supported by the Justice who wrote the "OPINION OF THE COURT." (Another Justice concurred solely on the reciprocity aspect of the opinion, id. at 526-27, and the third Justice dissented, id. at 527 et seq.)

17. The proposed Final Judgment requires LTV to divest all of its interest in Braniff and Conoco, or, in the alternative, all of its interest in J&L. Accordingly, the proposed Final Judgment contemplates a minimum divestiture of more than $500 million of assets. As stated in plaintiff's press release announcing the proposed Final Judgment -- subject to the Court's approval -- the Attorney General stated that it "calls for the most substantial corporate divestiture of any antitrust decree in recent years." (A copy of that press release is attached hereto as Exhibit 1.) Section IV(E) of the proposed Final Judgment contains numerous prohibitions and safeguards to insure that the companies to be divested will be maintained as viable going business entities pending the completion of the required divestiture.


19. The proposed Final Judgment, if entered, will among other things, reduce the concentration of control of manufacturing assets and should assist in arresting the encouragement of a trend to further concentration as alleged in the complaint. It, therefore, conforms to the claims of the Department of Justice that the Congressional intent in amending Section 7 of the Clayton Act was to prevent undue concentration of economic power through horizontal, vertical or conglomerate acquisition.

20. The proposed Final Judgment provides relief which is consistent with the main theories upon which this action was instituted and, in particular, with the plaintiff's understanding of the Congressional purpose underlying Section 7 of the Clayton Act "to limit future increases in the level of economic concentration resulting from corporate mergers and acquisitions." S. Rep. 1775, 81st Cong., 2d Sess. 3 (1950).

21. In agreeing to a divestiture of the magnitude required by the proposed Final Judgment, LTV recognized that, upon entry thereof, it would forego its opportunity to contest, inter alia, plaintiff's claim that Section 7 of the Clayton Act bars acquisitions by reason of the anti-competitive effects resulting from mergers which constitute part of, and contribute to, a merger movement and which effect substantial increases in economic concentration. LTV nonetheless agreed to such a divestiture in the belief that a consent settlement would benefit the more than 45,000 public stockholders of LTV and JCL because the protracted litigation would divert the energies of the managements of
enforced by civil or criminal contempt proceedings as may be appropriate under the circumstances.

32. In view of the facts recited in Paragraphs 27 through 31 above, the plaintiff believes that the defendants' agreement to the anti-reciprocity provisions of Sections VII and VIII of the proposed Final Judgment provides substantial protection against the anticompetitive effects which would otherwise result from the acquisition and is therefore in the public interest.

C. Ban on Acquisitions

33. Section V of the proposed Final Judgment prohibits LTV and J&L (if not divested or disposed of) for a period of ten years from the date of entry of the Judgment (or until LTV disposes of all its interest in J&L) from acquiring any firm having assets in excess of $100 million without the prior approval of the plaintiff, or failing such approval, of the Court.

34. The plaintiff represents that this restriction on future acquisitions by defendants LTV and J&L addresses itself to a principal objective of the Complaint herein, namely, the merger movement among large firms and the accelerating trend toward economic concentration in the American economy and, under all the circumstances, is in the public interest.
MEMORANDUM FOR JOHN EHRlichMAN

I have no idea how reliable the reporting is in this letter. Casey is, of course, not a lawyer and may not really understand what is going on in the negotiations. I suspect, however, that he wouldn't have written this without approval of ITT's counsel.

If, indeed, the facts here are correct then we may be riding one horse and McLaren another.

How do you think we should best proceed? My own thought would be that you might want to discuss this again with the Attorney General to be sure that he has made known to Mr. McLaren our policy towards the bigness issue.

Charles W. Colson
August 11, 1973

EYES ONLY

MEMORANDUM FOR

THE ATTORNEY GENERAL

John Ehrlichman has asked me to forward the attached material and request that you call him once you’ve had a chance to review it.

003788

Tod R. Hullin
Administrative Assistant to
John D. Ehrlichman

Attachment

August 10 memo from Chuck Colson to Ehrlichman
enclosing August 7 letter from Thomas Casey
of ITT enclosing excerpts from "Stipulated Statement of Facts" filed by Justice in LTV-Jones & Laughlin case.
RICHARD G. KLEINDIENST—RESUMED

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SECOND CONGRESS
SECOND SESSION
ON
NOMINATION OF RICHARD G. KLEINDIENST, OF ARIZONA,
TO BE ATTORNEY GENERAL

PART 2
MARCH 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 26, and 29, 1972

Printed for the use of the Committee on the Judiciary

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For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price $3.25
Attorney General in charge of the Antitrust Division. I was not informed of the progress of the litigation or negotiations between the Department and ITT.

The second point has to do with my contacts with representatives of ITT.

At no time have I talked to any representative of ITT or any of its subsidiaries concerning the litigation or the settlement negotiations.

Based on the records of my office as Attorney General and on my own recollection, I have had contact with three representatives of ITT. I present them in chronological order.

First contact was with Mr. Harold Geneen, president of ITT. The first time I met Mr. Geneen was the evening of May 27, 1979 at a dinner in the White House attended by 45 business leaders. The contact with Mr. Geneen that evening was purely social, and I had no substantive discussions of any kind.

My second contact with Mr. Geneen was on August 4, 1970, in my office. My office calendar shows that this meeting could not have lasted more than 35 minutes. It might have been shorter. The meeting was held at Mr. Geneen's request to discuss the overall antitrust policy of the Department with respect to conglomerates. I assented to the meeting on the express condition that the pending ITT litigation would not be discussed. Mr. Geneen agreed to this condition. The pending ITT litigation was not discussed at this meeting.

At the meeting Mr. Geneen contended that the Department's antitrust policy with respect to conglomerates was to bring suits solely on the bigness theory. I told him this was not the Department's policy and advised him that our policy was to bring litigation only where there was a showing of anticompetitive practices.

I never discussed the content of my conversation with Mr. Geneen with any member of the Department, nor did I communicate with any of them about it.

Next, Mr. Felix Rohatyn. I met Mr. Rohatyn on four occasions, two of them on April 29, 1971, one on September 3, 1971 and one on November 29, 1971.

None of these had anything to do with ITT, and the Department's litigation against ITT was never mentioned or discussed.

My participation in these meetings was as a member of an ad hoc government committee formed in 1970 to deal with the financial problems that various brokerage houses were having at that time. Mr. Rohatyn, a partner of the New York firm of Lazard Freres, participated as chairman of the surveillance committee of the New York Stock Exchange. Among other things, that ad hoc committee worked on the SIFEC legislation during the summer of 1970.

I would like particularly to call the committee's attention to the two meetings of April 29, 1971, because there have been other references to that date during these hearings.

These meetings were held to discuss the participation of Mr. Ross Perot in the du Pont brokerage firm, which was having financial trouble, and the obligations of the New York Stock Exchange with respect thereto.

According to my office records, the first meeting that day commenced at 9:30 a.m. Present in addition to myself were Mr. Perot, and Mr. Mort Meyerson, an associate of Mr. Perot. Mr. Peter Flanigan joined the meeting at 9:46 and Mr. Rohatyn at 10:30. Mr. Rohatyn
state my opinion that he is preeminently qualified for the position which the President has nominated him. I base my opinion not only on his professional qualifications, which are of the highest order, but on his character, his integrity and his dedication to his office and to the public interest.

Mr. Chairman, that terminates my prepared statement and I am available to the committee.

The Chairman. Mr. Mitchell, in the incident in the Governor’s mansion in Kentucky, was that the first time you had ever met Mrs. Beard?

Mr. Mitchell. Yes, sir; it was.

The Chairman. What they are asking us to believe is that a total stranger—did she introduce herself to you or how did you meet?

Mr. Mitchell. I am not quite certain, Mr. Chairman. The mansion, the lower floor of it, had, I would say, somewhere between 40 and 50 people in it. My wife and I were in a reception room off the main hall, and I believe Governor Nunn was there, and Mrs. Beard was in the room. And I don’t recall whether anybody introduced me to her or not, but the first contact I had with her was at that time when she approached and opened up on the subject matter of the ITT litigation.

The Chairman. It is the case of a total stranger meeting the Attorney General of the United States for the first time and discussing a thing of this magnitude with him, is that correct?

Mr. Mitchell. Well, that was the circumstance. It was the first time, to my knowledge, that I had ever met the lady, and I don’t think it was a question of discussing it. It was a question of her bringing it up and my trying to terminate the conversation.

The Chairman. Yes. Was she drinking?

Mr. Mitchell. Well, I would believe that most everybody there was but I don’t want to characterize her particular condition.

The Chairman. Did Mr. Kleindienst ever discuss this matter with you?

Mr. Mitchell. Mr. Kleindienst has never discussed with me the ITT litigation or the negotiations relating thereto or anything relating to the San Diego convention and ITT or Sheraton Hotels or the Republican Party or anything else.

The Chairman. And you have discussed the arrangements for the convention with no one?

Mr. Mitchell. I have not discussed the arrangements for the convention insofar as they pertain to the Sheraton Hotel Corp. or ITT with anybody until after the stories were long since in the newspapers.

The Chairman. Senator Ervin?

Senator Ervin. What did the officials of ITT who visited you talk to you about?

Mr. Mitchell. Senator, there was, if you are talking about the visit of Mr. Gence in August of 1970, as I testified to, and as I understand, he was making his thoughts known throughout the Government and in Congress concerning his opposition to what he thought was the antitrust policies of the Department. It was his contention, as I vividly recall, that the Antitrust Division of the Department was bringing lawsuits based on the concept of bigness as distinguished from the anticompetitive factors required by the statute.

Senator Ervin. Was there any specific reference to the lawsuit against the ITT or any of its subsidiaries?
Mr. MITCHELL. No, sir. The condition of the meeting was to the effect that that matter would not be discussed, and it was not discussed.

Senator ERVIN. And what was the conversation, what did the other members, I mean the other officers, of ITT, I believe you said there were two others that you have talked to.

Mr. MITCHELL. The other two that I had talked to, one was Mr. Rohatyn whose participation in the question of the stock exchange and the problems of the brokerage firms on the street, and the other one was Mrs. Beard. Those are the other two that I had reference to.

Senator ERVIN. Now did either—well, you have told us what Mrs. Beard attempted to talk about, what did the other officials do, did they say anything about the ITT or anything about either one of the antitrust suits against it or its subordinates?

Mr. MITCHELL. No, neither Mr. Geneen or Mr. Rohatyn discussed at all the ITT litigation or negotiations. Of course, the conversation I had with Mr. Geneen was back in the summer of 1970, and it was just then pending litigation. As I understand it, there were no negotiations going on at that time, and Mr. Rohatyn's conversations with me related entirely to the financial problems of the brokerage houses in New York City. He, of course, as I stated, was in the capacity as chairman of the Surveillance Committee of the New York Stock Exchange which was very heavily involved in that subject matter.

Senator ERVIN. Now, I understand from your testimony that you totally disqualified yourself from participation in any matter relating to the antitrust suits against either the ITT or any of its subsidiaries and that you did not communicate to any of your subordinates in the Department of Justice anything about the conversation you had with either of these three officials?

Mr. MITCHELL. That is absolutely correct, Senator. I did not communicate with anybody in the Department about either of the conversations that I had with Mr. Geneen or Mr. Rohatyn. There was no reason to do so in the latter part and I didn't in the former.

Senator ERVIN. Thank you.

The CHAIRMAN. Senator Hruska.

Senator HRUSKA. Mr. Chairman, I will defer for the time being to my colleague, Senator Fong.

Senator FONG. Attorney General Mitchell, when you met with Mr. Geneen, one meeting was at the White House and the other meeting at your office, is that correct?

Mr. MITCHELL. That is correct, sir.

Senator FONG. At the second meeting, the only question that came up was as to what was your policy relative to antitrust cases?

Mr. MITCHELL. That is correct. Senator.

Senator FONG. Nothing was discussed involving the ITT matter?

Mr. MITCHELL. Nothing whatsoever, the meeting was held under the condition that the subject matter would not be discussed.

Senator FONG. Then when you met with Mr. Rohatyn on four occasions all of those meetings were at the office?

Mr. MITCHELL. They were all at my office, yes, sir.

Senator FONG. And all during the four meetings only the stock exchange problems were discussed?

Mr. MITCHELL. Yes, sir; more particularly during that period of time the financial interest of Mr. Ross Perot in the Du Pont firm...
want to talk about it. First he said he reported himself from it. The second thing he said was that it was not a time or place to talk about things like that or to talk about this or anything else. The third thing that I recall him saying was that he didn’t want to hear anymore about it. He didn’t like the approach that she was making or the pressures that had been brought or something of this nature. And he was right vehement in his last expressions.

Would you tell us what these other pressures were to which Governor Nunn said you referred?

Mr. Mitchell. Senator, I don’t feel that there were any other pressures. I think what he might have had in mind was the last encounter that we had at the table where I said that I would appreciate if she would stop pressing me on the subject matter, which she had been doing on the two prior occasions. That was at the time when you might say, that I lost my sweet disposition and told her in no uncertain terms that I didn’t want to have her approach me any further.

Senator Hart. I then asked him:

Did he say anything with respect to what kind of pressures had been brought?

Governor Nunn. No, sir.

Senator Hart. Just that pressures had been brought?

Governor Nunn. That is all that he—he said something about the pressures being brought.

Well, specifically, except for the conversation then being engaged in with Mrs. Beard, had any pressures been brought on you with respect to the ITT settlement?

Mr. Mitchell. No, sir. As I stated earlier, I had disqualified myself from the case, had no conversations about the subject matter.

Senator Hart. When you say that you had a visit from Mr. Geneen, but you made clear that it would not, the ITT litigation would not, be a proper subject for the discussion, you tell us that Mr. Geneen discussed the Department’s antitrust policy with respect to conglomerates. That was at a time when the Department had filed suit against ITT?

Mr. Mitchell. To the best of my knowledge they had because it was in August of 1970.

Senator Hart. You regarded Mr. Geneen as speaking for whom, the American business community and not ITT?

Mr. Mitchell. I think Mr. Geneen was speaking for both, both ITT and the American business community, because I had read in the newspaper of many statements that he had made on the subject matter. As a matter of fact, I think I recall that he and Mr. McLaren had a debate some place on the subject matter and had made his positions quite widely known through the press as to his opposition on the antitrust policy of our division.

Senator Hart. Do your records, if you know, show any meeting you may have had with the Lieutenant Governor of California in the spring of 1971, April or May?

Mr. Mitchell. Yes, sir; I have the records, I have office records which are kept in three forms. No. 1 is the appointment book which is made up in advance. No. 2 is a log that is kept of all visitors during the course of the day and, No. 3, is a separate card index that relates to visits at my office. I have here the records pertaining to—this is the card index, pertaining to—Lieutenant Governor Keinecke and a Mr. Gillenwaters, and these records show that both of these gentlemen visited me twice, once on the 26th of April in 1971, and the other on the 17th of September in 1971. I know there have been discussions in the
Mr. Mitchell. Well, I think that was the sole speech where the sole subject matter was antitrust. I have made other speeches, I am sure, about the functions and operations of the Department, in which the antitrust policies were mentioned.

Senator Kennedy. What was the thrust of that speech?

Mr. Mitchell. The speech in the Georgia Bar?

Senator Kennedy. Yes.

Mr. Mitchell. Well, it dealt primarily with the now established policies of the Department where we were extending some of the prior doctrines to the point where if bigness, and I want to make this very clear, if the product had anticompetitive factors, that our policy would apply to it. That is the thrust of that speech.

Senator Kennedy. And Mr. McLaren was a vigorous spokesman and a believer in that viewpoint, was he not?

Mr. Mitchell. Very much so. As a matter of fact, Mr. McLaren and I had quite a number of discussions on the subject matter in question with the formulations of that policy particularly to make sure that we had the appropriate statutory authority under the Kefauver-Celler Act, etc., as to proceed in this direction.

Senator Kennedy. I imagine Mr. McLaren was under a good deal of—well, I suppose, he was pursuing what might have been considered a controversial antitrust policy in this respect, was he not?

Mr. Mitchell. Senator, I would say that almost any antitrust policy gets to be controversial unless it is some predatory practice that nobody subscribes to.

Senator Kennedy. He was, as I understand, sort of an innovator and creator and a true believer in at least this approach on antitrust, was he not?

Mr. Mitchell. Well, Mr. McLaren, Judge McLaren, as you know, was probably one of the leading antitrust lawyers in this country and had great ability and great expertise and he was particularly interested in seeing that any anticompetitive practice which stifled the competitive aspect of our economy was pursued to the point where it would be eliminated. That was the general approach.

Senator Kennedy. And you supported that approach?

Mr. Mitchell. Yes, I most assuredly do.

Senator Kennedy. Mr. Kleindienst had mentioned, during the course of his appearance here, that he believed very strongly in that approach. I think he volunteered that when any occasion presented itself, he indicated his full and complete support for what Mr. McLaren was attempting to do in the Antitrust Division. I think he even volunteered that he believed you did the same as well at the time you were called upon to speak for the Justice Department.

Mr. Mitchell. Well, I would believe, Senator, that Mr. Kleindienst would carry out the policy of the department that had been laid down by the Attorney General and the Assistant Attorney General in charge of the Antitrust Division.

Senator Kennedy. Now, when Mr. Geneen came down to visit you, you had an awareness that the ITT cases were, in effect, in operation or being pursued or were at least in the forefront of the Antitrust Division?

Mr. Mitchell. I had an awareness that the cases had been filed. The status of them I did not know.
Senator Kennedy. And when Mr. Geneen came down and was speaking to you about antitrust policy, what sort of argument was it, do you remember, that he was making to you?

Mr. Mitchell. As I testified, Senator, it is in my prepared statement, the basis of his argument was that the Antitrust Division was bringing these cases on the basis solely of bigness, and that the statutes didn't authorize it, that there wasn't anything wrong with bigness from the economic point of view, and, as I testified in my prepared statement, I told him that that was not the basis upon which the Antitrust Division was proceeding. There had to be anticompetitive factors before the Department's policies applied.

Senator Kennedy. Was Mr. Geneen persuaded at all by your arguments?

Mr. Mitchell. I would doubt it very much.

Senator Kennedy. Did you take any, make any notes on the basis of this meeting?

Mr. Mitchell. No, sir; none whatsoever.

Senator Kennedy. Because it was just a general policy discussion?

Mr. Mitchell. Just a general policy discussion.

Senator Kennedy. If you accepted Mr. Geneen's arguments, what do you feel would have been the impact on the ITT cases?

Mr. Mitchell. I don't know, Senator. I don't know enough about the ITT cases to make that judgment.

Senator Kennedy. Well, certainly he wasn't making these arguments completely out of the blue, was he?

Mr. Mitchell. Senator, I think he was making them as, almost as, an evangelist with respect to the subject matter.

Senator Kennedy. Didn't the subject matter affect his own situation?

Mr. Mitchell. Of course it did. On the other hand, it may have affected further acquisitions by ITT. In other words, both sides of the coin.

Senator Kennedy. What do you mean, both sides of the coin? You mean the side of the coin that has many—

Mr. Mitchell. The side of the coin that he was not under restraint and compulsion so far as I know from going ahead with any additional acquisitions at that time.

Senator Kennedy. What is the other side of the coin?

Mr. Mitchell. That is it, the other side of the coin was that he was involved in the litigation at that time.

Senator Kennedy. He was involved in litigation. If there had been a change by the Justice Department of its antitrust policies to accept Mr. Geneen's viewpoint, how do you think that would have affected the antitrust division of your Department?

Mr. Mitchell. Senator, as I just got through testifying in response to your question, I haven't any idea because I don't know the nature or the merits of those particular cases that were filed.

Senator Kennedy. Well, so you are suggesting—

Mr. Mitchell. What I am really saying is that the statutes apply to anticompetitive practices, reciprocity or whatever it may be. They may very well have been involved to the point in the litigation that was then pending in the Department where his argument wouldn't have had any effect upon it.

Senator Kennedy. Well, do you really believe that to be so?
Edward Gerrity memorandum

J. F. Ryan

J. E. Gerrity

TO

DATE August 10, 1970

SUBJECT Urgent

Urgent

John:

As a follow-up to what we did Friday with Colson et al in re antitrust, it is important that Bob Schmidt, Dita Beard, Horner-Goodrich, and whomever else should be aware, that we acquaint key people with what happened last Tuesday, followed by the Chaffetz meeting on Thursday, plus our actions on Friday. The purpose is not to have these people act but to have them informed so that they may be ready to act--if needed.

I discussed this with Bill Merriam and Tom Casey and Ed Wallace is aboard here. (Keith is en route to Rio with Hendrix for a two-week visit.) Dita, for example, should brief Rog, Bob et al. Schmidt and the rest, Ray and Bert, will know what to do and Jack and Bernie should be aware and keep their ears open in re what is happening to "Mac," the key to the whole thing.

Bill McPike should be intimately aware and I ask that you and Tom Casey review this closely with him and confirm to me or Ed Wallace that this has been done. I will give you every available input from this end. And, Tom, don't forget Kevin. I'll call Jack today.

One last key reminder: when Hal saw John, he commented on the Savannah speech of June 6, 1969 to this effect: We do not say that bigness is bad; we said that if you merge within the top 200 you may have antitrust problems. Some mergers are good. It is interesting and important that we note that Mac is more responsive to Hart and Celler than to John and the President. It is also important to remember that Chaffetz went to Mac at the suggestion of Judge Austin to see if an agreement could be worked out. Our job is to keep reporting what is happening.

cc: Beard, Casey, Schmidt, Goodrich, Horner, Wallace, Perkins
SEC TRANSFER OF ITT DOCUMENTS TO THE DEPARTMENT OF JUSTICE

HEARINGS BEFORE THE SPECIAL SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES NINETY-THIRD CONGRESS FIRST SESSION

LEGISLATIVE OVERSIGHT RELATING TO ADEQUACY OF APPLICATION, ADMINISTRATION, AND EXECUTION OF THE FEDERAL SECURITIES LAWS BY THE SECURITIES AND EXCHANGE COMMISSION

MAY 21, 24; JUNE 6, 11, 27, AND 28, 1973

Serial No 93-

Printed for the use of the Committee on Interstate and Foreign Commerce

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1973
It was plain that McLaren's views were not and are not consistent with those of the Attorney General and the White House. We are being pursued, contrary to what John told Hal, not on law but on theory bordering on the fanatic.

In his conversation with Hal, John agreed that the strain had gone out of the merger movement because of tax reform legislation, the new accounting principles and general developments in the economy. John agreed with Hal that there was no need for a "crusade" to halt the merger movement because of the reasons I have indicated above. It is plain, therefore, that McLaren is operating on a completely different basis from John and the White House. I believe it has reached the point where he is more concerned about his personal views than those of his superior or the President.

My question to you is, should we set this development back to John, so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice.

---

ITT WASHINGTON OFFICE,

Personal and confidential
To: Mr. W. R. MERRIAM
From: JOHN F. RYAN
Subject: Pricing

Bill: Here are just a few items that I wanted to be sure I don't miss when I bring you up to date verbally:

1. ANTITRUST

You know of my call on Stan on the 19th (you have a copy of my note covering the visit which I sent to Ned), and HG's call to me of the 20th. I attempted to explain to Hal that Stan's comments shouldn't necessarily be construed to be a recommendation—it was more in the vein of Stan thinking out loud, suggesting some tangibles starting point. Hal's posture is, as you well know, that we have done nothing wrong: that we will do nothing wrong, and that Justice (McLaren) is unfairly harassing us. As we discussed this morning, the first trial dates are rapidly approaching. Obviously, somebody is going to have to get the ball rolling, either on their side or ours, if there is to be a settlement.

I assume that following our telephone this morning you looked at Ned's memo describing his visit with Agnew. If Kleinheister follows through, this may be the break for which we have been looking. An obvious question here is: How will McLaren react—or another way to put it, how good a Republican is McLaren?

2. OMB

You will recall that the intelligence cleaned from Colson has led us to believe that there would be some relief forthcoming during 1978, then Billy's memo taking exception to this intelligence and last Stan's remarks which indicated relief would probably not be experienced until next year. Billy happened to be here when Ned came during last week. Billy joined Ned, Bob Schmidt, Bill and me for a drink at the Carlton and we further discussed the subject with an agreement that we would all think about it and see what we could come up with. It was first suggested that we get back to Colson and ask if perhaps we had misunderstood. When I talked to Hamilton (at Ned's request) last Wednesday, Jayman suggested we ask Colson if relief was coming during 1978, was there to be relief of a specific nature, i.e., case by case, or was it in general. During our telephone call here it was decided that our strategy would be not to go back to Colson: the reason being that if it does not come, we can go back to Chuck and say: "My golly, Chuck, you led us to believe that we were going to receive relief, we planned accordingly, if it didn't come, and now we're in a terrible bind—you're got to help us." Meanwhile Ned called this morning and said that we should develop an action program on OFDL incorporating some calls we should set up for Perry and Hamilton. When we've got it together, we will send it to New York, and then our people will gather together with Billy to discuss it. If memory serves me, Ned said he would be seeing Hamilton on Wednesday in Chicago. I think he said it was a dinner for Pat O'Malley. Ned also mentioned that we should include some calls of an unofficial nature at Treasury. We'll have to talk some more about this subject. Note: Please see Billy's memo of August 20.
3. ROGEE'S PARTY

The tentative date on this is September 13. Ned has called me a couple of times on this, as has Rose in followup. You know the reason for this party, but the guest list also will include a number of other cabinet people such as the Blounts, Wilsons, Dominickis, Aznews, Harlows, Fordis, and Flanigans. Ned asked that we put together a troop sheet for Mr. & Mrs. Genem which will include not only brief brief notes of the men but also their wives for June: facts about Morton's farm; a fairly complete bio on Mitchell and his recent accomplishments in other areas such as crime, drugs, etc; some detail on the new Post Office plan; and then general information as to the type of clothes to wear, planned activities, etc. I asked Jack Horner to put this together but Dita will have to get the information concerning the farm, etc. Rose called me Friday, saying that Gery Hood wanted to confirm the date of 9/13. I told her that she had better hedge a little in that the date was not "cast in concrete." According to Dita, not everyone has as yet been asked, and, while it was the tentative date, this could change.

4. "DITA AND DOLLARS"

I was asked by Ned to get some feel for you from Dita as to what is required. I have a little note on this which I will give to you.

5. BUDGET

I have gone over the budget with Bob—it's ready for review. There are a few items we should kick around. I took Bob over to U. S. Steel and looked at their security setup. Bob Miles has a representative from the company who installs these systems coming in on Wednesday for a survey. Based on USS's expenditure, it would appear that we could do both floors in a comparable manner for something under $8,000. This is the old electrical ribbon idea which is a good answer for our glass entrance panel.

6. FOREIGN BANK ACCOUNT BILL

Joyce has been following this and due to the recent inclusion of the provision that would require declaring money brought in as well as out, this can be potentially very "troublesome." Bob Schmidt and I discussed this on Friday. Joyce should have the print within the next day or so. It was not available today—we understand that there are some loopholes, but they may or may not help our cause.

7. FEC COMETS

Joe Ceva and John Gardner were here on Thursday and Friday. Pittman also called me on Thursday. Our two competitors are Page and Pittco-Ford. Pittman is concerned Waldschmidt of Page is in desperate straits and trying to bring pressure in high DOD levels to challenge our figures as being unrealistically low. We learned today that all three proposals have been returned for further clarification. Bob Miles has his friend watching this one very closely. According to FEC, based on the numbers, we are the apparent winner, but they fear we may be knocked out of the box. So far, our intelligence would have us believe that we are still number one. I have asked Bob Miles to continue to watch this one very closely.

Bill, on another FEC matter, you will recall I passed on what Chasen was quoted as having said concerning JPL's loss of JPL job—please ask me to refresh your memory on this one.

There are a number of other items I will discuss with you, some more important than others. Without regard to their priority, they are as follows:

1. Levitt—Waste Disposal Project with FWPCA
2. ITT Woodward's lay-offs
3. Occupational Safety Legislation—George Orth, Ray O'Brien 8/1
4. Expediting Act
5. Ed Mitchell, Patton, Blow... called me on 8/17—will be furnishing us with a position paper
6. Who's Who—Floyd Owens called, and I tried to call him without success—don't know what this is about
7. Nord Schiebner/Airport Transport Terminal—visit with me on 8/19
8. Class Action Bill—please see Joyce memo of 8/21 and Bob Deasy's of same date
There are a few other items of minor importance. I'll pass them on to you.
Welcome Back!!

JOHN.

INTERNATIONAL TELEPHONE AND TELEGRAPH CORP.

Hon. Peter G. Peterson,
Assistant to the President for International Economic Affairs, Old Executive Building, Washington, D.C.

Dear Pete: Your time and discussion last week were very much appreciated.
Your program would appear to be the first broad constructive approach to the mounting problems of our balance of payments, trade, and overall international position, many factors of which will have direct effect on our economy at home.
I understand that this assignment is new, but let me say it has been urgently needed for a long time.
You have asked if I could suggest some names to work as Committee men on a fairly intensive basis through a three-month period in the four areas of:
(1) Industrial Technology;
(2) Raw Materials and Clean Energy Source;
(3) Business—Government Relations; and
(4) Productivity.
I have attached a list of names for this purpose with some very brief notations.
In addition, if I may, I would like to offer to serve on any of your Committees. It will do my best on time realizing other commitments. The Business-Government Relations and Productivity is where in my opinion the real battle has to be won if we are to be successful in reversing current trends.

On the subject of our conversation last week, I am attaching a brief note which you may find useful as a summation of one aspect of the problem we discussed.
Thank you again for your interest and courtesy.

Sincerely,

(Original signed by H.S. Geneen.)

SUGGESTED NAMES

2. John McCone, Business and shipping. Former head atomic energy Government service.
2. Richard Gerstenberg, Financial head General Motors.
I know all of these are competent and hard working. The first four are more senior in age and background. The latter three are active in their careers but good.

MEMORANDUM ON ANTI-TRUST POLICY AND ITS RELATION TO THE ECONOMIC POLICY OF THE UNITED STATES

The most significant comment on the Antitrust policy as related to the economic policy of the United States, which is the responsibility of the executive branch of the government, is that there has been little past correlation between the two policies although high interdependence is necessary for successful economic progress.
A specific example in this respect is to be found in the Economic Report of the President, dated February, 1950. What follows are excerpts from the broader text. Page 55—Mergers, even between competitors, are not per se violations of the law, however, and they may even favor healthy competition. The result marketability of a firm may encourage others to become entrepreneurs and establish new enterprises. Mergers may also be an efficient way of replacing incompetent management. They may lead to greater economies of scale in production and marketing. And they may make it easier to transfer resources to the industries or
6. On September 15, 1970 the trial in ITT-Grinnell began. In memoranda dated September 17, 1970 from Ehrlichman to Attorney General Mitchell and October 1, 1970 from Colson to Ehrlichman, the ITT litigation was discussed. Ehrlichman and Colson stated their concern that McLaren's conduct of the ITT cases constituted an attack on "bigness per se" contrary to the Administration's expressed antitrust policy.


6.2 Memorandum from John Ehrlichman to John Mitchell, September 17, 1970 (received from White House).

6.3 Memorandum from Charles Colson to John Ehrlichman, October 1, 1970, with attachment (received from White House).
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<td>Federal Building</td>
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<td>214 Pearl Street</td>
<td>New Haven, Conn.</td>
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<td>Hartford, Conn. 06103</td>
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<td>Bruce W. Manternach (For: A-T-O, Inc.)</td>
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<td>793 Main Street</td>
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<td>Hartford, Conn. 06103</td>
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<td>Gerald Norton - Admitted</td>
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<td>Henry P. Sailer</td>
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<td>Covington &amp; Burling</td>
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<td>888 Sixteenth St. E.W.</td>
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<td>Washington, D.C. 20006</td>
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<td>David R. Schlechter, Gen. Counsel</td>
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<td>GRINNELL CORP.</td>
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<td>260 West Exchange St.</td>
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<td>Providence, RI</td>
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<td>Denis C. Ince (For: Grinnell Corp.)</td>
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<td>8 Willard Place - Int'l</td>
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<td>Michael T. Hiltz</td>
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<td>460 Pinet Street</td>
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<td>STATISTICAL RECORD</td>
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<td>J.S. 5 mailed</td>
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<td>J.S. 6 mailed</td>
<td>Marshal</td>
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<tr>
<td>Basis of Action: Antitrust</td>
<td>Docket fee</td>
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<td>Action to enjoin defendants from violating agreements</td>
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<td>Section 7 of the Clayton Antitrust Act.</td>
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<td>Lawsuit proceeded as Deposition.</td>
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<td>15 U.S.C. 9 18</td>
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## U.S.A. vs. IT&T AND GRINNELL

**D.C. 110 Rev. Civil Docket Continuation**

<table>
<thead>
<tr>
<th>DATE</th>
<th>PROCEEDINGS</th>
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<tbody>
<tr>
<td>9/14</td>
<td>Order entered granting Writ of Subpoena for those persons who live outside this District and at a greater distance than 100 miles from the place of hearing in this action. Timbers, J. vs 9/15/70. Said subpoenas will be served by the Marshall in the District wherein the witness resides. Copies mailed counsel of record.</td>
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<tr>
<td>9/16</td>
<td>Deposition of Chester L. Atocan, filed.</td>
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<tr>
<td>9/15</td>
<td>Court Trial Continues. Upon motion of Joseph Weimer; Harold Bresler and Richard Clinton are admitted to this Court for all purposes of this case. Upon motion of Henry Sailer, Robert Saylor and Scott Robson are admitted to this Court for all purposes of this case. Opening statement by plaintiff. 10:13 - 10:20. No statement by defendant at this time. Court Exhibit 71 marked for identification. Counsel for plaintiff and defendant asked to submit exhibits to the Court and present exhibits marked as full exhibits. Nos. 1 thru 333. Counsel for defendant objected to plaintiff's exhibits as to authenticity only of certain exhibits. Defendant's exhibits A and B filed. Defendant states objection to plaintiff's exhibits 150 thru 157. Court finds objection of defendant to exhibits 150 thru 157 unavailing. Court to reemphasize that Plaintiff's Exhibit 77 withdrawn. Court adjourned in this case at 12:40 P.M. until 9/16/70 at 10:00 A.M. Tibbers, J. M-9/16/70</td>
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<tr>
<td>9/16</td>
<td>Court Trial continues. Deposition of Lawrence McMahan taken on Jan. 22, 1970, filed. Deposition of H.B. Hinds taken on Sept. 21, 1970, filed. At the request of Defendant's counsel, court permits Bruce Hedges to sit at counsel table. Court orders that witness to be sequestered. Plaintiff's witnesses Frank J. Fee and John K. Coleman sworn and testified. Plaintiff's Exhibits 384 and 393 filed. Defendant's Exhibit C filed. Court adjourned at 5:05 P.M. until 10:00 A.M. 9/17/70. Tibbers, J. M-9/17/70</td>
</tr>
<tr>
<td>9/17</td>
<td>Court Trial Continues. Court opens at 10:30 A.M. Plaintiff's witnesses John B. Marshall, Jr., Michael Calder and George Lauer sworn and testified. Court adjourned at 11:19 A.M. until 10:00 A.M. 9/19/70. Tibbers, J. M-9/19/70</td>
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<tr>
<td>9/18</td>
<td>Court Trial Continues. 2 Plaintiff's witnesses (J.C. MacDonald and Claude Childs) sworn and testified. Defendant's motion to strike portions of the testimony of witness Gardner heard. Decision reserved. Court adjourned at 12:11 P.M. until 10:00 A.M. 9/19/70. Tibbers, J. M-9/19/70</td>
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<tr>
<td>9/19</td>
<td>Marshall's non-use return filed, - Civil Subpoena - William Jose 18 (containing in one envelope), filed. Cunningham, R. Trial. 9/22</td>
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<tr>
<td>9/22</td>
<td>Court Trial Continues. 3 Plaintiff's witnesses sworn and testified. Court grants Defendant permission to reargue and complete Deposition of witness Stevens. Plaintiff's Exhibits A and B and 25 marked for identification. Then admitted as full exhibits. Court adjourned at 4:10 P.M. until 10:00 A.M. tomorrow. Tibbers, J. M-9/22/70</td>
</tr>
<tr>
<td>9/23</td>
<td>Court Trial Continues. Court rules on Defendant's motion to strike portions of the testimony of Witness Gardon. Plaintiff's Witness L. H. Hinds renews the stand for further testimony. Defen-</td>
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</tbody>
</table>
MEMORANDUM FOR THE ATTORNEY GENERAL

Re: The United States vs. ITT

I was disappointed to learn that the ITT case had gone to trial with apparently no further effort on the part of Mr. McClaren to settle this case with ITT on the basis of our understanding that "largeness" was not really an issue in the case.

ITT has passed word to us that the gravamen of the case remains "largeness" which is contrary to the understanding that I believe you and I had during the time that we each talked to Mr. Gineen.

I think we are in a rather awkward position with ITT in view of the assurances that both you and I must have given Gineen on this subject.

I'll be out of touch for about two weeks, but I would appreciate your reexamining our position in the case in view of these conversations. Gineen is, of course, entitled to assume the Administration meant what it said to him.

John D. Ehrlichman

JDE:JDE:kom

bcc: Colson
     Cole

CONFIDENTIAL
EYES ONLY
MEMORANDUM

THE WHITE HOUSE
WASHINGTON

October 1, 1970

EYES ONLY

MEMORANDUM FOR JOHN EHRLICHMAN

I am enclosing a copy of the speech which Mr. McLaren gave on September 17th. He does not, as you will see, defend the proposition that under the existing anti-trust laws a case can be brought on the grounds of bigness per se. What he does argue is that bigness is not good, and that the thrust of the anti-trust laws should be directed to economic concentration and bigness. He points out that while legislation might be needed, Justice can and is doing things, short of obtaining new legislation (note the last paragraph in particular).

In sum, I think that we still have a problem here, which is a serious one and which is manifesting itself in Mr. McLaren's conduct of the ITT case.

Charles W. Colson

EYES ONLY
BIGNESS, EFFICIENCY AND ANTITRUST

REMARKS

OF

RICHARD W. Mcclaren
Assistant Attorney General
Antitrust Division

Before The

COUNCIL ON ANTITRUST AND TRADE REGULATION

50th Anniversary Convention
The Federal Bar Association

Washington, D.C.

September 17, 1970
BIGNESS, EFFICIENCY AND ANTITRUST

Too often I think that we of the antitrust bar forget that the debate over corporate size, including the concepts of economies of scale and industrial concentration, and their relationships to antitrust violation, is no modern phenomenon. It has challenged lawyers and economists almost since the passage of the Sherman Act. Much evidence has been gathered on the subject over the years. My thesis today -- based on this evidence -- is that bigness as such is not bad, but you don't have to be a big, multi-plant firm to be good. There is still a place in our economy and in our society for the efficient, single-plant firm.

In July 1911, a Senate resolution directed the Committee on Interstate Commerce to consider "what changes are necessary or desirable in the laws of the United States relating to the creation and control of corporations engaged in interstate commerce." 1/ The hearings which followed make

1/ Report of the Senate Committee on Interstate Commerce pursuant to S. Res. 98. 62nd Cong., 1913, p. 1
interesting reading. One witness indicated that such corporations should be licensed by a federal commission and the license revoked in case of improper behavior. He believed corporate concentration had many favorable aspects, but "in order to protect the people against imposition on the part of the managers of those aggregations of wealth there should be government control." 2/ Those who regard some recent antitrust policies as radical might ponder the fact that this federal licensing system was suggested by Judge Elbert Gary of United States Steel.

Another witness at the 1911 hearings spelled out some of the favorable aspects of corporate size which Judge Gary undoubtedly had in mind. George Perkins, who had been associated with the Morgan interests, argued that large size promoted industrial efficiency. 3/ "There is no better comparison," he said, "than the difference between a large and a small college. You get, as a rule, the best football

2/ Id. at p. 843.
3/ Id. at pp. 1104, 1108, 1120.
and the best baseball team at a large college . . . . Because you have a larger number of men to select from. You can maintain your efficiency in a large corporation better because you have a large number of men to select from." 4/ Mr. Perkins also spoke of the ability of large firms "to appropriate a great deal of money for experimental work" and to compete successfully in world markets. 5/ 003991

It fell to a wealthy Boston lawyer named Brandeis to present the contrasting view. He met the efficiency argument head-on. Many large enterprises are formed, he said, not to derive efficiencies but because the businessman "may make a great deal more money if he increases the volume of his business tenfold, even if the unit profit is in the process reduced one-half." 6/

As for the formation of the trusts, the "potent causes" were not a desire for greater efficiency but to avoid "very annoying competition," "the desire of promoters and bankers for huge commissions," and the capitalization of failure by buying out a vigorous competitor

4/ Id. at p. 1108.
5/ Id. at p. 1124.
6/ Id. at p. 1147.
at a premium price. 7/

Brandeis was also sensitive to problems of modern management. "When . . . you increase your business to a very great extent, and the multitude of problems increase with its growth, you will find, in the first place, that the man at the head has a diminishing knowledge of the facts and, in the second place, a diminishing opportunity of exercising a careful judgment upon them." 8/ The successful trusts owed their success, he argued, not to efficient management but to market power. 9/ And he observed that during the period in which the Steel Trust had existed "we have been losing our relative position in the great markets of the world." 10/ 00399.

Another shortcoming of industrial concentration was its tendency to discourage invention. As Brandeis put it: "Men have not made inventions in business, men have not made economies in business,

7/ Id. at p. 1171.
8/ Id. at p. 1147.
9/ Id. at p. 1148.
10/ Id. at pp. 1150-51.
to any great extent because they wanted to. They have made them because they had to, and the proposition that 'necessity is the mother of invention' is just as true today in the time of the trusts...as it was hundreds of years before." 11/

Finally, Brandeis spoke of the political and social consequences of industrial concentration. "[Y]ou can not preserve political liberty," he observed, "unless some degree of industrial liberty accompanies it," 12/ and he cautioned the committee to "consider the effect [of concentration] upon the development of the American democracy." 13/

II. 003996

I have described Brandeis' arguments against economic concentration at some length, for a number of reasons.

First, it is striking how the Brandeis view of economic concentration pervades modern antitrust legislation, adjudication and enforcement. The point need not be belabored to those who think of the Celler-Kefauver Act of 1950, the Brown Shoe

11/ Id. at p. 1208.
12/ Id. at p. 1155.
13/ Id. at p. 1166.
decision of 1962, 14/ and the conglomerate merger cases filed by the Antitrust Division last year. Moreover, the reasons why modern antitrust is resistant to further economic concentration are very largely the same ones which aroused Brandeis' concern at the turn of the century. If one thinks of the political aspects of concentration which Mr. Justice Douglas addressed in dissent in Columbia Steel, 15/ which Senator Kefauver advanced during the debate on the Celler-Kefauver Act, 16/ and which Mr. Justice Black set forth in Northern Pacific, 17/ one recalls Brandeis' warning about the effect of concentration "upon the development of the American democracy." In short, the Brandeis view is very largely the modern view.

A second reason is that the claims which Brandeis had to meet have not yet been laid to rest. I would like to say a word about two of the claims: that if we want efficiency and innovation, we must be willing to

16/ 96 Cong. Rec. 16452.
accept economic concentration.

III.

There has been a nagging fear harbored by many observers that antitrust, by seeking to promote competitive markets, runs counter to the goal of promoting efficiency. Early supporters of the concept of antitrust, such as Brandeis, had relatively little statistical evidence with which to rebut this view. 18/ But in the last two decades, a large number of studies have given us considerable evidence about the relationship between concentration and efficiency, between bigness and economies of scale.

No one study claims to be conclusive, and pitfalls seem evident in almost every attempt to define and measure accurately economies of scale; but even granting these caveats, it is now fair to suggest that those who see an incompatibility between efficiency and low concentration are in error. 19/

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18/ See Freund, "On Law and Justice," Harvard University Press, 1968, p. 129: "What he [Brandeis] asked of economists was a study of optimum size in various lines of enterprise. Perhaps we shall live, as he did not, to witness their report." The foregoing was written in 1956.

19/ For example, see the impressive testimony gathered in Hearings on Economic Concentration, Senate Subcommittee on Antitrust and Monopoly, 1964-1969, especially parts 3 and 4. For a careful survey of the evidence, see F.M. Scherer, Industrial Market Structure and Economic Performance, Rand McNally, 1970, chap. 4.
Two of the cardinal studies were made by Professors Joe Bain and Thomas Saving. Professor Bain examined a sample of 20 important industries and found that, at most, plant economies of scale were important in four of them. Industries with "unimportant" plant scale economies included petroleum, cigarettes, soap, liquor, canned goods, tires, and flour. Industries with only "moderately important" plant scale economies, where optimum size plants were 4 to 6% of total market capacity, included farm machinery, rayon, and steel. 20/
Professor Saving's study included a sample of 132 manufacturing industries; he found in over 70% of these industries that a minimum size efficient plant would produce less than 1% of industry output. 21/
Consistent with these studies is the important finding that the four largest firms in highly concentrated industries are seldom made up of one large efficient plant; they are generally multiple plant firms, on the average operating 5 times as many plants as those firms not in the top four. From these findings,


Professor Ralph Nelson concluded that concentration reflects the operation of many plants, not simply of large efficient plants. 22/ This is not to gainsay the importance of economies of scale in American industry, but to indicate that the economies are often reached at relatively small plant sizes. To be sure, there is some evidence that the optimum size plant is increasing in absolute size due to changes in technology. 23/ But this increase in optimum size must be viewed in the context of growing markets. Where markets are growing, an increase in the absolute size of optimum size plants will not necessarily mean that an efficient plant will account for a larger percentage of the total market.

In addition, technological change can cut both ways. It is not always a force for increasing the size of efficient plants. Many important technological developments have been forces for deconcentration in that they enable smaller plants to be as efficient, or more efficient, than larger plants. Illustrations


of this phenomenon are numerous: the opportunity to purchase small power sources, the greater flexibility of trucks and new highways for shipping products in small quantities, the ability to subcontract research endeavors, and the availability of computer services and communication devices previously unavailable to small firms. 24/

IV. 

Closely linked with the notion that efficiency dictates high concentration is the belief that high concentration, with the security and market power it affords, is a prerequisite for research and innovation. For example, David Lilienthal wrote in 1952 that, because of the large financial expenditure and risk which "significant research" entails, "[b]igness and research activity are largely synonymous whether in business or in government." 25/

24/ See Dr. John Blair's findings, in Hearings on Economic Concentration, supra n. 19, Part 4, pp. 1536-1556.

One can easily see how this view could be widely held. A common conception of research today is the team of white-coated, highly trained scientists working in laboratories with expensive, elaborate equipment and everyone striving methodically for a specific breakthrough. And, to be sure, there are such scientists and such laboratories. But they do not represent the typical research endeavor, nor do they produce the bulk of our nation's technological advances. In fact, there are numerous examples, some spectacular, indicating that the "19th Century" view of invention and innovation is still most germane.

Nicholas Christophilos was installing elevators in Greece and teaching himself nuclear physics when he developed the principle of strong focusing for cyclotrons. The Atomic Energy Commission was informed of this by his letter, which they neglected; they had to rediscover the principle - a year later. Actually the first cyclotron itself, built by Ernest Lawrence, contained sealing wax, common window glass, and wire. The self-winding watch was not invented by the large Swiss watch makers; indeed they first rejected the idea when presented to them.
by the English watchmaker John Harwood. And the experiments leading to Kodachrome were often performed in a kitchen sink. One of our nation's most prominent inventors, Land of Polaroid, has been characterized as essentially an "amateur scientist" in the finest sense of that term; he left college before graduation to undertake independent research, and he certainly does not fit in the mold of the narrowly specialized scientist who, with or without a team, stalks a definite research goal. Yet Land's cameras have delighted both amateur photographers and the Department of Defense. 26/ 00:00:01

The breakthrough of the oxygen process in steelmaking did not come from the laboratories of our giant steel firms but rather from a Swiss chemistry professor and the pioneering innovation of a small Austrian firm that was about 1/3 the size of a single plant of United States Steel. In this country, Big Steel was lethargic in its response to this breakthrough; the oxygen process was first used, with great success, by McLouth Steel -- which at the time had less than 1% of our country's steel capacity. 27/

The bulk of the available evidence runs counter to the hypothesis that high concentration, huge size, and substantial market power are prerequisites for research and innovation. Indeed, some of the most careful studies find that, if anything, market power and the security of bigness, with the concomitant vested interest in the status quo, may have a stultifying effect. And I submit that this should not be surprising. One of the authors of the classic study on the sources of invention has observed: 28/


Because invention demands men with fanatic faith in their ideas, men willing to ignore the experts who say it cannot be done, men unafraid to butt heads with established authority, the corporate laboratory may not always provide the ideal milieu for inventive achievement.

V.

I have tried to indicate the extent to which the old arguments about economic concentration are echoed in today's debates, and how the modern antitrust view largely reflects and vindicates the doubts which Brandeis voiced years ago. But if the arguments about concentration persist, so does the problem, and I would like to describe briefly the current perspective of the Antitrust Division.

Our merger program is by now pretty well known -- some might say notorious. The giant merger wave which was under way early in 1969 seems to have abated, in response not only to the several cases we have filed but to stock and money market conditions as well. We are seeking legislation to perfect our enforcement power, such as the proposed
amendments of the Expediting Act now before the Congress. We are continuing our enforcement efforts and expect that our view of the scope of the Celler-Kefauver Act will be sustained by the courts. If we are wrong and if the merger wave revives, we will have to consider seriously the need for new legislation.

Mergers may, of course, be a force for deconcentration and increased competition. I have in mind "foothold" mergers, which we welcome and encourage. If merger activity does increase, I hope it may consist of more mergers of the foothold variety.

In one aspect, economic concentration is a process, stimulated by mergers, pricing and sales policies, patent restrictions and the like. It is also a condition, and we are often asked what can be done about concentrated industries.

The difficulties in this area are considerable. Oligopoly may have taken hold in an industry many years ago, and the facts as to how a firm or group of firms attained market power are often obscure. Proof of a violation in this area is difficult at best; suits are likely to be protracted affairs; and courts may be reluctant to grant dissolution.

-15-
because of the possible disruption which may result.

However, I think antitrust and other policies are by no means helpless to combat the problem. By preventing mergers among important and viable competitors in markets that are concentrated or where concentration is threatened, we hope to prevent further concentration and permit the gradual erosion of existing concentration as a result of new entry and new technology. We also hope to encourage pro-competitive new entry, either de novo or by foothold acquisitions, by preventing the largest firms in the nation from taking over leading firms in concentrated industries. In addition, we hope that our traditional commitment to a policy of free trade may enable imports to compensate, at least in part, for imperfect competition in domestic markets.

VI.

The romance with bigness and power is a recurrent theme in American history. In 1938, Charles Beard, in an article which he called "The Antitrust Racket," 29/ concluded that "ours is...

29/ 96 New Republic 182, 184 (1938).
a great continental, technological society, and the
trust-busters, however honest and honorable, are
just whistling in the wind." I have some notion
how Thurman Arnold must have reacted to Beard's
verdict. I suspect he would have referred to a
passage from E. M. Forster's novel, Howards End,
where Uncle Ernst, having moved to England from
Germany, said to his German nephew: 30/

It is the vice of a vulgar mind to be
thrilled by bigness, to think that a thousand
square miles are a thousand times more
wonderful than one square mile, and that
a million square miles are almost the same
as heaven. That is not imagination. . . .
[It] kills it. . . .

We have staked a great deal on this proposition,
and our efforts will be closely watched by other
economies which face choices similar to our own.
For myself, I believe we are on the right track, and
I hope that we can carry forward our past successes
in the years ahead.

30/ Forster, "Howards End," p. 36 (1921), quoted
In Freund, "On Law and Justice," Harvard University