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August 7, 1970

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."
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> ITT is one of the leaders in making acquisitions.
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> Mr. Geneen has gotten away with a lot of acquisitions that the Department did not challenge.
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> 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,

Tom

Thomas H. Casey
Director
Corporate Planning

Enclosure