

IRS Cites ITT Filing Post 4/13/74 Omissions

By Thomas B. Ross
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The International Telephone and Telegraph Corp. "misstated or omitted" key facts in obtaining a 1969 tax ruling that enabled it to carry out the biggest corporate merger in history, according to a still-secret report by the Internal Revenue Service.

The 110-page report also accuses ITT of inserting "window dressing" clauses in its application to make it appear it was complying with IRS requirements.

The IRS announced last month it had revoked the 1969 ruling that allowed ITT to acquire the Hartford Fire Insurance Co., but refused to disclose the basis of its decision.

However, the Chicago Sun-Times has obtained a copy of the report, which outlines the decision and the results of a new investigation in minute detail. The controversial case is also under study by Watergate Prosecutor Leon Jaworski to determine the possible involvement of President

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Nixon and former high administration officials.

The IRS report concludes that ITT, prior to the merger, failed to make a no-strings-attached sale of its own stock in Hartford as required to win tax-free status.

The IRS originally ruled that Hartford shareholders, whose approval of the merger was required, could exchange their stock for ITT stock without paying an immediate capital gains tax. ITT had requested the tax exemption as a way of winning shareholder support for its takeover.

To obtain the IRS ruling, ITT had to show that it was making an "outright sale" of its Hartford stock to Mediobanca, a bank in Milan. But the new IRS report contends that Mediobanca was only a middleman and not a real buyer.

"We believe," the report declares, "the subsequently developed evidence establishes that the ITT-Mediobanca transaction was not consummated in accordance with the representations made to the (Internal Revenue) Service in ITT's ruling application.

"Rather, ITT was aware that Mediobanca did not want to assume any risk and intended to sell the stock transferred to it. ITT then styled the transaction to taw on the appearance of a sale that would satisfy us, when in reality, Mediobanca was an agent, broker, or best efforts underwriter for the sale of the shares on behalf of ITT and did not acquire any interest in the shares."

ITT filed suit in U.S. District Court in Wilmington Tuesday to have the new IRS decision overturned. It denounced the revocation of the original tax-free ruling as "contrary to law, arbitrary, capricious."

ITT stock has fallen to its lowest level in 10 years since the new IRS investigation was

started. The corporation may be liable for up to \$50 million in back taxes as a result of last month's decision.

As part of the suit, ITT officials contend that the hard conclusions of the IRS report are not supported by the much more tentative analysis in the body of the report.

They argue that the IRS based its finding largely on the first draft of a contract between ITT and the Italian bank, neglecting six other drafts that were prepared before the final document was signed.

There also were intimations that ITT might allege that pressures—possibly of a political and illegal nature—were put on the New York office of IRS to reopen the case.

The ITT-Hartford case has had political overtones almost from the start. Mr. Nixon acknowledged in a statement in January that he placed a phone call to then Attorney General Richard G. Kleindienst in April, 1971, and ordered him to drop an antitrust suit against ITT.

Mr. Nixon denied that his intervention had anything to do with a \$400,000 pledge by ITT to help pay for the Republican convention in San Diego, Calif., in 1972. He insisted he was merely trying to enforce his long-standing policy of preventing the government from "attacking bigness per se."

He acknowledged he had "expressed irritation" with Richard W. McClaren, then assistant attorney general for the antitrust division, for his aggressive efforts against ITT's growing acquisitions.

Shortly thereafter, McClaren, now U.S. District Court judge in Chicago, arranged an out-of-court settlement under which ITT was allowed to keep Hartford but was required to give up several other major companies.