NYTimes

MAR 7 1972

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I.T.T. Case: a Familiar Scenario

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Special to The New York Times

WASHINGTON, March 6 — The current case involving the International Telephone and Telegraph Corporation is only the latest in a long series in which there have been charges that improper influence was exerted to achieve out-of-court settlements of antitrust suits.

Settlements without trial in antitrust cases are routine. More than three-quarters of all such suits rbought in recent decades have been settled rather than litigated.

The question that interests students of antitrust enforcement is whether the settlements remedy the situations that caused the suits to be brought. Critics say that too often the settlements do not impose any meaningful penalty on the companies involved.

The last major controversy over the settlement of an antitrust case involved another communications giant, America Telephone and Telegraph Company.

That case, too, centered on an internal company memorandum. A.T &T.'s general counsel, T. Brooke Price, reported on a private conversation he allegedly had with Herbert N. Brownell Jr., then Attorney General, on the porch of an isolated cottage at White Sulphur Srpings, W. Va.

According to Mr. Price, Mr. Brownell gave him "a little friendly tip" about settling the suit that had been brought against the company during the Truman Administration. A.T.&T. should offer to let itself be enjoined from doing some things that it could stop doing "with no real injury to our business," he recalled being told. The company would not have to submit to the remedy the Truman trust-busters had sought, which was divesture of its manufacturing subsidiary, Western Electric, he said.

Although the contents of the memo and other related matters were aired at length before the House Antitrust Subcommittee, headed by Representative Emanuel Celler of Brooklyn, no change was ever made in the settlement that had been worked out before the memo was discovered. The settlement did not touch the status of Western Electric. It mainly involved requirements that A.T.&T. make its patents available to anyone who sought them.

Those who argued then that

Such Accords Are Common but Often Stir Criticism

mandatory patent licensing would not really diminish A.T.&T.'s dominance of the telephone industry could quote today's statistics in support of their case. In 1956, when the decree was signed, 81.9 per cent of the 49.4 million telephones in the country were A.T.&T.'s. Today, with more than twice as many telephones, 100.3 million, A.T.&T.'s percentage is scarcely lower, 80.1 per cent.

Democratic Administrations, too have settled antitrust cases for what critics have charged was really no penalty at all. A suit that in many respects paralleled the A.T. & T. case—except that high-level political intervention was only rumored—involved an attempt by the trust-busters to force General Motors, the dominant auto producer, to get out of the bus business, in which it was one of the only two major producers.

After much talk, the bus case was settled, during the Johnson Administration, with a mere requirement that the company freely license its patents for improved bus design. The settlement did not reverse G.M.'s domination of the bus market.

Those who defend the record of the antitrust enforcers generally argue—as is being done in the I.T.T. case today—that it is better for the Government to make a settlement than to tie up its manpower for months and even years fighting a case in court that it might not win.

The critics come back to statistics, however, to support their argument that the settlements are not really achieving anything. For all the scores of cases that have been filed in the last two decades to block mergers and acquisitions, the industrial assets of the nation are increasingly concentrated in fewer and fewer hands.

In 1950, the 100 largest manufacturing corporations owned by 38.4 per cent of all the assets of manufacturing industries; in 1970, they owned 48.2 per cent. In 1950, the 200 largest owned 48.8 per cent; 20 years later the figure was 60 per cent.

The defenders of antitrust enforcement policy can respond only with a speculative question. How much more accelerated might the trend to concentration have been if there had not been all the antitrust suits, with or without negotiated settlements?

Critics of antitrust enforcement, ranging from Mr. Celler, to his Senate counterpart, Philip A. Hart of Michigan, to a team of young researchers working for Ralph Nader, the consumer advocate, have focused recently on another aspect of the settlement of antitrust cases, in addition to the question of whether the penalties actually achieve anything.

Their concern, increasingly, has been the secrecy with which the settlement negotiations are conducted; the fact that only the Government and the accused company are involved in the negotiations, and the denial to all third parties of any legal right to intervene if the settlement seems inadequate.

Looking back on the antitrust controversies of the Eisenhower years, Attorney General Robert F. Kennedy, early in his term of office, moved to deal with this problem by providing that the details of all antitrust settlements be made public 30 days before they took effect, so that interested "third parties" could make their objections known. Previously, the terms of settlement had been made public only when they were put into effect.

No one in the antitrust field can remember a single case, however, in which a judge has refused to sign an antitrust settlement in which objections had been filed.

The basic problem, as the critics see it, is that there is no procedure whereby critics of an antitrust settlement may obtain their day in court. They may complain, but there is no guarantee that the judge with whom the settlement is filed will even read their complaints. The judge has complete discretion in the matter.

This is not true when antitrust cases are litigated.

In the case involving the El Paso Natural Gas Company, the Justice Department and the company reached a settlement, afte trial, that some third parties thought was inconsistent with the earlier findings of the court and the relief ordered by the court. In that case, therefore, there was a right of appeal, and the Supreme Court several times overturned the settlements to which the Government had agreed.