

McLaren Memo on I.T.T. Merger Revealed

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Although he thought he had only three days to do so, Richard W. McLaren, former Assistant Attorney General in charge of the Antitrust Division, strongly urged then Attorney General John N. Mitchell to seek a temporary restraining order to halt the International Telephone and Telegraph Corporation's acquisition of a major food vending company.

In a memorandum to Mr. Mitchell submitted April 7, 1969, Mr. McLaren—now a Federal judge in Chicago — called a preliminary injunction to stop I.T.T.'s acquisition of the Canteen Corporation "particularly necessary." Despite this argument, the Justice Department did not move for an injunction, and the merger with Canteen took place April 25, 1969.

At one point in the memo, Mr. McLaren wrote, "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."

Made Available to Panel

The memo has been made available by the Justice Department to the Senate Judiciary Committee in connection with the recent hearings on the fitness of Richard G. Kleindienst to be Attorney General. The committee was given the memo with the proviso that it be shown only to Senators and that they not copy it. A copy of the memo has been obtained by The New York Times.

Later, after International Telephone had acquired Canteen, the Government sued to break up the merger. It lost in the trial court. However, when the Justice Department subsequently settled the Canteen case and two others with I.T.T., the huge conglomerate agreed to give up Canteen while keeping other properties.

In the recent hearings Mr. McLaren told the Judiciary Committee that three factors had persuaded him not to seek an injunction to stop the Canteen merger. He identified these fac-

tors as shortness of time, a hardship plea by Canteen's management and "the novelty of our theory — according to some. The phrase "the novelty of our theory" referred to Mr. McLaren's position—not shared by his predecessors—that the Government could act to stop conglomerates from merging with other companies.

Mr. McLaren felt that the Government could so act on the ground that such a merger would result in greater economic concentration in the country, regardless of whether it would cause greater economic concentration in a particular industry.

Import of Memo

The memorandum clearly shows in its seven pages that Mr. McLaren felt that—even when he thought he had only three days—the Government could get a preliminary injunction.

Second, it demonstrates, in a section titled "Legal Precedent for the Case," that Mr. McLaren felt that his theory, though it might be novel, would prevail.

In the second paragraph of the memo, Mr. McLaren wrote: "We can reasonably expect consummation of the merger on or shortly after April 10." He sent the memo to the Attorney General on April 7.

In the section on precedent, Mr. McLaren wrote: "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. . . . We would hope to convince the courts in this case that an injunction should issue and that the court erred in Penick & Ford."

Basis of Concern

Summarizing his concern, Mr. McLaren wrote: "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 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."

Mr. McLaren, in other words, feared that I.T.T. would not only use Canteen to feed its own employes in its many plants, but would also use its great economic power to induce its suppliers to use Canteen's services.

Elsewhere in the memo, Mr. McLaren wrote:

"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. I.T.T. industrial plants are part of the market for companies like Canteen.

"Furthermore, I.T.T. 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 their 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 the healthy industry structure."

Under the heading "conclusion" Mr. McLaren said, "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."

Decline Interviews

Judge McLaren has refused to be interviewed by reporters concerning the I.T.T. antitrust cases. He could not be reached for comment today.

At the Senate hearings he originally testified that shortness of time and Canteen's management problem forced him to abandon the effort to get an injunction. Later, however, he modified this by telling the Senators of a meeting of I.T.T. and Canteen lawyers with Mr. Kleindienst.

The Senate hearings inquired into whether Mr. Kleindienst had become involved in the set-

tlement of the three I.T.T. cases because of the conglomerate's pledge of at least \$200,000 to the Republican party to hold its national convention in San Diego.

Mr. McLaren testified, "After I made the original recommendation to sue in early April . . . I set up a meeting for them with Mr. Kleindienst and me at which the I.T.T. and Canteen lawyers could, in effect, appeal my decision. At this meeting, the I.T.T. lawyers argued that I was wrong on the law, but the Canteen lawyers pleaded that Canteen badly needed the assistance of I.T.T. management."

Writing in the memo about the impact of the Canteen acquisition, Mr. McLaren said information provided by International Telephone showed "that I.T.T. had purchases of a million dollars or more from over a hundred corporations and that the industries from which I.T.T. 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," he added, "that over a third of the American industrial work force is employed by these industries."