Letters to the Editor

Comments on the I.T.T. Case

To the Editor:

Many of the statements that have been made regarding the I.T.T. consent judgment show how few Americans understand the entire situation. Consent judgments are not "sellouts."

Used in antitrust cases since 1906 (*United States v. Otis Elevator Co.*) and a favorite tool of Thurman Arnold (in 1941, of the antitrust cases terminated, 91.3 per cent were resolved by consent decrees), the consent judgment saves time, manpower and money for both Government and defendant. As the Antitrust Division of the Department of Justice has only limited manpower and funds, it usually seeks negotiated settlements to conserve its resources. In the I.T.T. situation the costs would probably have been in excess of $1 million per case, and the possibility of governmental victory was doubtful.

From the antitrust student's point of view, the out-of-court I.T.T. settlement was a disappointment because it precluded an opportunity for the court to determine the parameters of the Clayton Act and its 1950 Celler-Kefauver amendment. H. Graham Morison, who helped to draft the amendment, has emphasized that the statute was framed to encompass horizontal, vertical and conglomerate mergers, but, to this day, no judicial test of the conglomerate aspect has been made and an adjudicated I.T.T. case in all likelihood would have clarified many legal issues.

Despite the lack of a court test the I.T.T. settlement must be viewed as a major victory for the Government. Even though court success was by no means certain the Government obtained the divestiture of several major components of the corporation.

To insinuate that Sheraton's $400,000 guarantee to help obtain the Republican Convention for San Diego led to the Government's "selling out" is to ignore the normal negotiations prior to a consent judgment, the content of the settlement, and the important and overlooked fact that many other businesses and hotels were involved in the payment. The San Diego Chamber of Commerce realized that to land the Republican Convention would put their city on the hotel convention business map. Sheraton was only doing its part for San Diego; it was not a "bag man" delivering a parent company's payoff.

THEODORE P. KOVALEFF
Jamaica, N. Y., March 4, 1972

●

To the Editor:

If there is any doubt about the attitude of former Assistant Attorney General Richard McLaren toward vigorous enforcement of the antitrust laws against I.T.T., there certainly was none in the mind of I.T.T.'s top lawyer Howard J. Aibel.

In a luncheon address during a meeting at the New York Hilton under the sponsorship of the Conference Board, as reported on the front page of the March 3 New York Law Journal, Mr. Aibel named Mr. McLaren as one of the "enforcement officials [who] sought to secure radical changes in the law through the litigation process...." It, therefore, appears far-fetched that Mr. McLaren would have had anything to do with the consent decree which eventually let I.T.T. off the antitrust hook even though he testified of his "concurrence" in the plan before the Senate.

If the Justice Department's chief enforcement official in the Antitrust Division was committed to litigating the antitrust laws, someone beside Mr. McLaren must have proposed the approach of a consent decree. Consequently, the only questions that remain concern the identity of the authority higher than McLaren who proposed the alternative to litigation and whether the promise of money prompted the change in attitude toward I.T.T.

The answers to these questions should provide Americans with some needed insight on how and why their Government works the way it does. [Editorial March 7.]

ROBERT P. SELYA
New York, March 6, 1972

●

To the Editor:

Even if one disregards for the moment the question of the $400,000 and Mr. Kleindienst in the I.T.T. case, one cannot help but be struck by the gist of the negotiations between I.T.T. and the Justice Department (news article March 3). For the aim of the Government's case was to prevent I.T.T. from becoming so large as to exercise an inordinate amount of unilateral power in the marketplace of a "free" economy. Yet, Mr. McLaren, the antitrust chief, was swayed from his view that I.T.T. should dispose of Hartford Fire Insurance because he was convinced by I.T.T. that the result of such a severance might be "a general slide in the stock market, and . . . the conglomerate's lack of liquidity would handicap its foreign operations and damage the United States position in its balance of international payments."

Thus the Justice Department relented in its case to stop I.T.T. from exercising too much economic power because I.T.T. was already exercising too much economic power. I.T.T., by admitting its inordinate power, effectively protected that power from governmental intervention.

All a conglomerate, (or monopoly for that matter) has to do is to get large enough, fast enough, and the Justice Department will be left biting the dust.

JEFFREY KITTAY
New York, March 4, 1972