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Letters to the Editor

I.T.T. and the Case Against Giantism

To the Editor:

Each time high officials of government and corporate institutions exercise their power in violation of the public trust, a general outcry calls for stricter enforcement of the antitrust laws to arrest the trend toward greater concentration of economic power. A long line of examples illustrate this point, the I.T.T. controversy being only the latest.

Your March 25 editorial correctly scored the political power that derives from highly concentrated economic strength. But the case to be made against giantism in business does not proceed from this potential for political corruption but from the market abuses that offend us every day.

The problem is not with market conduct but with market structure. When four firms follow the industry leader in making pricing decisions, the result is just as "fixed" as if a monopoly had acted. When giant corporations manufacture shoddy, ineffective or unsafe products, legislated standards will not substitute for competitive incentives. Once a corporation has gained dominance in an industry, its size alone can erect effective barriers to prospective competitors' entry into the market. Pollution is not a failure of technology but of accountability.

There is an excellent case to be made against the potential for abuse inherent in the market structure of oligopolistic industries that would extend the Sherman Act to all combinations in restraint of competition. The Federal Trade Commission plans to challenge the legality of oligopolistic concentration in its suit against the breakfast food industry. Since Judge McLaren decided against presenting his case to the Supreme Court, will some learned economist or lawyer present it in a public forum?

DAVID R. CASE
Amherst, Mass., March 26, 1972

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To the Editor:

The I.T.T. case raises fundamental questions about the use of negotiated settlements in suits brought on behalf of the Government.

The Justice Department, while denying any political motivation, has defended its action on the ground that settlements are a traditional and time-honored means of concluding litigation between private parties and, more importantly, that the department stood a good chance of losing its novel action in the Supreme Court. The settlement, in which I.T.T. agreed to divest itself of some of its smaller companies, was therefore deemed to be in the Government's best interest since it achieved more divestiture than was likely to be ordered by the Court.

But are suits brought by the executive on behalf of the people no different from those between citizens?

From the defendant's viewpoint the difference is obvious. Whether the defendant is a company charged with a civil antitrust violation or an individual charged with conspiracy, the quite distinct position of being opposed by the United States of America, with its unlimited funds, manpower and resources, is all too clear. The risk of going to trial against such an opponent is fearsome; the pressure to settle or "cop a plea," even when the defendant is innocent, overwhelming.

From the plaintiff's viewpoint, the two cases are also quite distinguishable. The private citizen who brings suit wants to win—that is his motivation. But when the executive brings suit it is solely to enforce the laws passed by Congress.

A prosecutor has no interest in winning, but simply to see justice done. If his case is weak he should withdraw. To negotiate a settlement with a helpless and probably innocent defendant would be pitiless. On the other hand, if the prosecutor's case is strong, to accept a plea to a lesser offense merely to save time or money would be to ignore society's paramount concern that serious criminal conduct not be ignored.

Applying these principles to the I.T.T. case, the Justice Department's mandate was simply to enforce the antitrust laws as passed by Congress. If, as the department claims, it was unlikely that the Supreme Court would uphold its position, it had no business in pressuring I.T.T. to settle. To do so, and then claim such a settlement in the public interest, would be to mistake the economic theories of the present members of the Justice Department for enacted statute and elevate the rule of men above law.

JEFFREY G. STARK
New York, March 30, 1972