WXPost NOV 18 1973

Hill May End U.S. Secrecy In Antitrust

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Many major corporations are the targets of Justice Department antitrust suits involving huge financial stakes. At the same time, these corporations—or their officers and directors—are the sources of substantial election-campaign contributions to the presidential candidates who choose attorneys general.

This situation creates an obvious potential for abuse or contamination, apparent or real, of the processes for disposing of the litigation, especially when those processes are conducted in secrecy.

Next year, however, Congress probably will enact legislation to remove much

News Analysis

of that secrecy. The bill already has been overwhelmingly approved—93 to 0—by the Senate.

Concern about the integrity of the antitrust settlement process was heightened recently when the Finance Committee to Re-elect the President disclosed the early contributors to Mr. Nixon.

Many of the contributors were firms or organizations currently being sued in antitrust complaints of varying degrees of importance, and they represent a vast array of economic power. Among them were:

General Motors and Ford; General Electric and Westinghouse; Firestone and Goodyear; International Business Machines; Texaco; Bethlehem Steel; pharmaceutical houses including Bristol-Myers and Pfizer, and the Associated Milk Producers.

In addition to being merely illustrative, the foregoing list is an understatement in that it excludes cases settled or otherwise concluded since Mr. Nixon took office, and cases brought by the Federal Trade Commission, which shares antitrust responsibilities with Justice.

"By definition," Judge J. Skelly Wright of the Circuit Court of Appeals for the District of Columbia told a Senate hearing last April, "antitrust violators wield great influence and economic power. They often bring great pressure to bear on government . . ."

Wright's point is documented by the campaign waged by International Telephone and Telegraph in 1970 and 1971 for a settlement that would preserve its merger with the $2 billion Hartford Fire Insurance Co.

ITT pledged up to $400,000 for the Republican National Convention. It wielded influence with several Cabinet members and White House aides. And President Nixon has disclosed that he made a phone call to deter then Deputy Attorney General Richard G. Kleindienst from appealing a key portion of the ITT case to the Supreme Court. Kleindienst said he threatened to resign and appealed anyway. But in the end, ITT got what it wanted: a settlement that preserved the Hartford merger.

Even so, it's risky to try to build a bridge from such an episode to a generalized theory about cause-effect relationships.

Two top executives of an ITT subsidiary, Alva T. Bonda and Howard Metzenbaum, of Airport Parking Corp. of America in Cleveland, gave large sums to Democratic candidates. Was that "ITT money"?

Arthur K. Watson of IBM gave $300,000 to Mr. Nixon, who had made Watson ambassador to France. Was the ambassadorship a factor?

John A. Mulcahy, president of a nonpharmaceutical subsidiary of Pfizer, gave almost $600,000. Did this reflect the flattery he may have felt on having been President Nixon's host in Ireland and Vice President Agnew's host in Palm Beach?

Usually, all that is certain, or knowable, is that a large contribution, even if made with altruistic intent, has never been shown to have impeded access by a contributor to the recipient.

Any corporation accused of an antitrust violation has rightful access to officials of the Justice Department's Antitrust Division. That is routine. But if their representatives fail to sell their arguments to the division chief, they may want access to his bosses. A campaign contribution, or the prospect of one, may assure such access, as the ITT case demonstrated.

Often, what the corporation seeks is a favorable consent decree. Such a decree is worked out in secret negotiations, not made public until it is filed in a federal court.

The Senate-passed bill, sponsored by John V. Tunney (D-Calif.) and Edward J. Gurney (R-Fla.), is designed to ventilate the consent decree process, which now disposes of more than 80 per cent of all antitrust cases.

The bill would pierce the secrecy with a requirement that the Justice Department file and publish a "public impact" statement along with a proposed consent decree.

The impact statement would explain the nature and purpose of the proposed settlement, the alternatives actually considered in deciding on the particular relief, and the procedures available to modify the tentative decree.

The time now provided for public consideration of a proposed decree is 30 days; that would be doubled. And public comments in writing would be invited, with the department required to respond to them.

The decree, the public impact statement and the comments and replies would have to be published in the Federal Register. Summaries of the decree and the public impact statement would have to be published in newspapers.

Within 10 days of the filing of the decree, the defendant would be required to list with the U.S. District Court its lobbying contacts with any officer or employee of the government concerning the proposed settlement, although an exception is provided for communications made by a defendant's lawyers with the department.

Finally, the court in approving the decree must find that it is in the public interest. Another provision would increase fines for criminal violations from $50,000 per count to $100,000 for a person and $500,000 for a corporation.

Had the bill been law when the ITT case was decided, the settlement might well have been different, and "public suspicion about both the economic and legal equity of that settlement would be less widespread," Tunney told the House Antitrust Subcommittee Sept. 20.

The . . subcommittee has completed hearings on the bill, which is now awaiting mark-up. Judging by reactions to it and to testimony by Chairman Peter W. Rodino Jr. (D-N.J.), who also heads the full Judiciary Committee, the bill likely will be strengthened before it reaches the House floor.

The legislation aside, other methods have been suggested by antitrust specialists to dilute the clout of large organizations.

One is to take antitrust out of the Justice Department and the FTC, into an agency insulated as much as possible from political influences. But less drastic proposals also are advanced.

One is to vest authority to issue civil investigative demands exclusively in the assistant attorney general for antitrust, rather than jointly in him and the Attorney General as provided in a 1963 law. Because of that shared authority, Attorney General John N. Mitchell was able a few years ago to prevent Assistant Attorney General Richard W. McLaren from issuing the investigative demands for records on the proposed trans-Alaska pipeline.

Another protective device is to free the antitrust chief to file cases and call grand juries on his own, without being compelled to get approval from the Attorney General. The heads of the department's tax and civil divisions already have such authority.

Finally, the pressures on the Antitrust Division to make unfortunate settlements would be lessened if it had an adequate budget. Chairman Philip A. Hart (D-Mich.) of the Senate Antitrust Subcommittee says the sum the division gets currently, $12.5 million, is pitiful alongside the resources of most of the giant corporations it is supposed to keep in line.