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Antitrust and the Entertainment Industry

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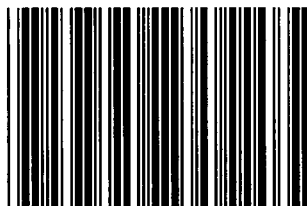
May-1979

Speech on Antitrust & the Entertainment Industry in Los Angeles, CA

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BAUCUS

SPEECH BY SENATOR MAX BAUCUS
ON ANTITRUST AND THE ENTERTAINMENT INDUSTRY
LOS ANGELES, CALIFORNIA
MAY 24, 1979

I AM VERY DELIGHTED TO BE HERE THIS AFTERNOON, AND VERY MUCH APPRECIATE THE INVITATION FROM DAVE MIXNER AND PETER SCOTT TO COME HERE TO LOS ANGELES AND SHARE WITH YOU MY PERSPECTIVE ON ANTITRUST LAWS AND THE ENTERTAINMENT INDUSTRY.

BY WAY OF INTRODUCTION, I HAPPEN TO HAVE A GREAT DEAL IN COMMON WITH GOVERNOR JERRY BROWN, SENATOR JOHN WARNER OF VIRGINIA, AND SENATOR GEORGE McGOVERN OF SOUTH DAKOTA. ALL FOUR OF US HAVE RELIED ON ENTERTAINERS FOR POLITICAL SUPPORT. GEORGE McGOVERN HAD WARREN BEATTY AND SHIRLEY McLAINE, JOHN WARNER HAS ELIZABETH TAYLOR, JERRY BROWN HAS LINDA RONSTADT, AND I HAVE BOB FITZGERALD.

YOU'RE PROBABLY WONDERING WHETHER OR NOT YOU SHOULD KNOW BOB FITZGERALD. THE REAL QUESTION WE SHOULD BE ASKING OURSELVES IS WHY THOSE OF YOU WHO WORK IN THE FILM INDUSTRY HAVE NEVER HEARD OF BOB FITZGERALD.

THAT QUESTION IS CENTRAL TO THE BASIC CONCERNS I WOULD LIKE TO DISCUSS WITH YOU THIS AFTERNOON.

BOB FITZGERALD WAS THE MANAGER OF MY SENATE CAMPAIGN AND BEFORE THAT A MEMBER OF A POPULAR MUSIC GROUP IN MONTANA CALLED "THE PEOPLE TREE." FITZ, AS HE IS KNOWN TO MANY OF US, IS NOW ATTEMPTING TO BREAK INTO THE FILM-MAKING BUSINESS. HE AND SOME OF HIS FRIENDS BACK IN MONTANA HAVE WRITTEN WHAT I CONSIDER TO BE A VERY GOOD MOVIE SCRIPT ABOUT A LAWYER WHO LEAVES MINNEAPOLIS TO BECOME A RANCHER IN MONTANA. IT IS A BITTERSWEET COMEDY. . . . BASICALLY, A MODERN DAY VERSION OF DON QUIXOTE. THE MOVIE WOULD BE FILMED IN MONTANA.

FITZ ALSO IS VERY ANXIOUS TO UNDERTAKE THE DEVELOPMENT OF A TELEVISION SERIAL ON THE EVOLUTION OF BUTTE, MONTANA, THE GENEALOGY OF ONE OF AMERICA'S MOST COLORFUL-MINING TOWNS.

I'M INTERESTED IN THESE PROJECTS, NOT JUST BECAUSE FITZ IS A FRIEND, BUT ALSO BECAUSE IT'S HIS KIND OF-ENTREPRENEURIAL SPIRIT THAT HAS BEEN THE HALLMARK OF THIS COUNTRY'S GREATNESS.

BUT AS YOU CAN IMAGINE, FITZ AND HIS FRIENDS HAVE HAD A VERY DIFFICULT TIME SELLING THEIR IDEA TO FINANCIAL BACKERS. THEY'RE NOT HAVING THE SUCCESS OF A WARREN BEATTY. IT'S NOT BECAUSE FITZ ISN'T TALENTED, OR BECAUSE HE ISN'T CREATIVE, OR DOESN'T WORK HARD.

IN MY JUDGMENT, A SMALL INDEPENDENT FILM MAKER IS FACING INCREASINGLY GREATER OBSTACLES BREAKING INTO A FIELD WHICH IS DOMINATED BY FINANCIAL GIANTS. THAT CONCERNS ME, NOT ONLY BECAUSE I WISH FOR FITZ TO SUCCEED, BUT BECAUSE I BELIEVE IT IS CRITICAL TO ENCOURAGE THE SURVIVAL OF SMALL INDEPENDENT BUSINESSES. IT'S THIS DILEMMA THAT IS AT THE HEART OF CONGRESSIONAL CONCERN WITH THE EXCESSIVE GROWTH OF OUR NATION'S MAJOR CORPORATIONS.

AS PROFESSOR GALBRAITH SAID RECENTLY:

"IN THE UNITED STATES, A COUPLE OF HUNDRED LARGE INDUSTRIAL CORPORATIONS NOW PROVIDE AROUND 60%, NOT MUCH LESS THAN TWO-THIRDS, OF ALL MANUFACTURING EMPLOYMENT. SIMILARLY, THE HANDFUL OF BIG AIRLINES, THE TWO TELEPHONE COMPANIES AND THE THREE BROADCASTING NETWORKS ARE DOMINANT IN THEIR RESPECTIVE INDUSTRIES AND MARKETS. AROUND 50 OF THE LARGEST BANKS PROVIDE ABOUT HALF OF ALL THE BANKING SERVICES IN THE UNITED STATES. THE INSURANCE BUSINESS IS YET MORE CONCENTRATED. EVEN RETAILING IS DOMINATED BY A RELATIVELY SMALL NUMBER OF LARGE CHAINS. THE OVERALL RESULT IS THAT A COUPLE OF THOUSAND BIG CORPORATIONS NOW PROVIDE MORE THAN HALF OF ALL PRODUCTION OF GOODS AND SERVICES."

IT IS BECOMING CLEARER TO MANY OF US IN CONGRESS THAT THE LEVEL OF ECONOMIC CONCENTRATION IN THIS COUNTRY IS TOO HIGH, AND IN TOO MANY SECTORS IS GETTING HIGHER.

FORTUNE'S TOP 100 FIRMS, INCLUDING RCA, GULF AND WESTERN AND CBS, NOW CONTROL ABOUT THE SAME SHARE OF MANUFACTURING ASSETS, AS DID THE TOP 200 COMPANIES THIRTY YEARS AGO.

THE TOP 200 FIRMS TODAY -- THAT ADDS ABC AND TIME, INC. -- NOW HAVE THE SAME PERCENTAGE OF MANUFACTURING ASSETS AS THE TOP 1000 FIRMS IN 1941. THE TOP 500 COMPANIES, THAT INCLUDES WARNER COMMUNICATIONS, MCA, TWENTIETH CENTURY FOX, COLUMBIA PICTURES AND THE NEW YORK TIMES, CONTROL CLOSE TO 85% OF ALL MANUFACTURING AND MINING ASSETS IN THIS COUNTRY, COMPARED TO 65% JUST 25 YEARS AGO. THESE 500 COMPANIES NOW CONTROL ALMOST 60% OF OUR GROSS NATIONAL PRODUCT, 30% OF TOTAL BUSINESS RECEIPTS, AND ABOUT 70% OF MANUFACTURING REVENUES.

THE REAL CONCERN HERE, OF COURSE, IS NOT ABSTRACT NUMBERS AND PERCENTAGES, BUT THE TREND TOWARD GREATER AND GREATER ECONOMIC CONCENTRATION. FEWER AND FEWER PEOPLE NOW MAKE DECISIONS THAT DIRECTLY AFFECT ALL OF US, INCLUDING WHAT WE WATCH ON TELEVISION, WHAT MOVIES WE SEE, THE RECORDS WE LISTEN TO, AND THE BOOKS WE READ.

IN THE PUBLISHING INDUSTRY ALONE, THERE HAVE BEEN OVER 300 MERGERS AND TAKEOVERS SINCE 1960. TEN PAPERBACK PUBLISHERS NOW CONTROL 90% OF PAPERBACK SALES. THESE INCLUDE NOT JUST PUBLISHERS LIKE DOUBLEDAY, BUT HUGE CONGLOMERATES LIKE RCA, GULF AND WESTERN, CBS, AND MCA. THE IMPLICATIONS ON THE FIRST AMENDMENT ARE SIGNIFICANT AND AN IMPACT OF ECONOMIC CONCENTRATION THAT WE ALL OUGHT TO CONSIDER.

THE RECORD INDUSTRY IS A SIMILAR STORY. THE SMALL ENTREPRENEURIAL COMPANIES WITH ONLY A FEW PERFORMERS HAVE NOT BEEN ABLE TO SURVIVE. SIX MAJOR COMPANIES -- CBS, CAPITAL, MCA, POLYGRAM, RCA, AND WARNER COMMUNICATIONS -- NOW CONTROL MORE THAN 85% OF THE DOMESTIC MARKET.

THERE IS GROWING CONCERN, BOTH IN THE NATION AND IN CONGRESS, THAT THE CARDS ARE BEING STACKED AGAINST THE BOB FITZGERALDS OF THIS NATION. THERE IS GROWING EVIDENCE PEOPLE ARE AS CONCERNED ABOUT BIGNESS IN BUSINESS AS THEY ARE ABOUT BIGNESS IN GOVERNMENT. YOU IN CORPORATE AMERICA HAVE AS BIG AN OBLIGATION TO BRING THE GROWTH OF CORPORATIONS UNDER CONTROL AS THOSE OF US IN GOVERNMENT HAVE AN OBLIGATION TO BRING THE SIZE OF FEDERAL AND STATE BUREAUCRACIES UNDER CONTROL.

BIGNESS IN BUSINESS AND GOVERNMENT MAY BE THE MAJOR ISSUE THAT WE IN THE POLITICAL AND CORPORATE WORLDS FACE TODAY. THOSE OF US IN POLITICS AND THOSE OF YOU IN THE BUSINESS WORLD NEED TO ADDRESS THESE CONCERNS JOINTLY, AND SO I'M GRATEFUL TODAY TO HAVE THE OPPORTUNITY TO SHARE WITH YOU WHERE I BELIEVE THE CONGRESS IS AT THE OUTSET OF THIS SESSION.

JUST TWO DAYS AGO THE DEMOCRATIC PARTY CAUCUS VOTED 153 TO 82 TO REJECT THE PRESIDENT'S DECONTROL PLAN. AS YOU KNOW, PRESIDENT CARTER WANTS TO REMOVE PRICE CONTROLS FROM CRUDE OIL PRODUCED IN THE UNITED STATES. THE DEMOCRATS' REJECTION OF THAT PLAN WAS MORE THAN A MAJOR BLOW TO PRESIDENT CARTER. IT IS A SIGNIFICANT STATEMENT BY HOUSE DEMOCRATS OF THEIR MISTRUST AND THEIR CONSTITUENTS' MISTRUST OF THE NATION'S LARGEST OIL COMPANIES.

ON THE SENATE SIDE, TODAY TWELVE SENATORS ARE INTRODUCING LEGISLATION THAT WOULD BAR ANY OF THE SIXTEEN MAJOR AMERICAN OIL COMPANIES FROM ACQUIRING ANY OTHER COMPANY WHOSE ASSETS EXCEEDED \$100 MILLION. THIS LEGISLATION IS AN EXPRESSION OF THE FRUSTRATION THAT MEMBERS OF CONGRESS FEEL ABOUT THE CURRENT GASOLINE SHORTAGES AND THE OVERALL ENERGY CRISIS.

THESE SENTIMENTS ARE CLEARLY NOT RESTRICTED TO MEMBERS OF CONGRESS. PEOPLE ARE ANGRY. THEY THINK THE OIL COMPANIES HAVE CONTRIVED THIS SHORTAGE AND THEY WANT SOMEONE TO DO SOMETHING ABOUT IT.

THIS RESENTMENT EXTENDS FAR BEYOND THE OIL CONGLOMERATES. AMERICA'S CITIZENS FEEL THAT OTHER CONGLOMERATES ARE NOT REALLY INTERESTED IN SERVING THE GREATER PUBLIC INTEREST.

WHILE THE LEGISLATION INTRODUCED IN WASHINGTON TODAY ADDRESSES POTENTIAL MERGERS BY OUR NATION'S OIL COMPANIES, SIX U.S. SENATORS HAVE INTRODUCED MUCH BROADER LEGISLATION THAT WOULD LIMIT CERTAIN CONGLOMERATE MERGERS REGARDLESS OF THE INDUSTRY IN WHICH THEY OCCURRED. THIS LEGISLATION, S. 600, KNOWN AS THE SMALL AND INDEPENDENT BUSINESS PROTECTION ACT, HAS SUPPORT FROM A DIVERSE GROUP OF LEGISLATORS -- FROM DEMOCRATIC SENATOR HOWARD METZENBAUM OF OHIO TO REPUBLICAN SENATOR LARRY PRESSLER OF SOUTH DAKOTA.

S. 600 WOULD PREVENT MERGERS BETWEEN COMPANIES OTHERWISE NOT PROHIBITED FROM MERGING OR ACQUIRING CONTROL OF ONE ANOTHER BY EXISTING ANTITRUST LAWS. THE SOLE CRITERION USED IN S. 600 IS THE SIZE OF THE COMPANY'S ASSETS OR SALES. THE RELEVANT SECTIONS OF THE BILL PROVIDE THAT IF BOTH PARTIES TO THE TRANSACTION HAVE ASSETS OR SALES EXCEEDING \$2 BILLION, THEY ARE CATEGORICALLY DENIED THE OPPORTUNITY TO MERGE OR OTHERWISE GAIN CONTROL OF EACH OTHER. IF ASSETS OR SALES OF BOTH PARTIES EXCEED \$350 MILLION, THEY ALSO ARE DENIED THE MERGER ROUTE, SUBJECT TO ANY ONE OF THREE AFFIRMATIVE DEFENSES. FINALLY, IF ONE OF THE COMPANIES HAS ASSETS OR SALES EQUALING \$350 MILLION AND THE OTHER'S SALES DURING THE CALENDAR YEAR IMMEDIATELY PRECEDING THE MERGER REPRESENTS AT LEAST 20% OF A "SIGNIFICANT MARKET" -- DEFINED AS A LINE OF COMMERCE WITH SALES OF \$100 MILLION -- THEY, TOO, WOULD BE PROHIBITED FROM MERGING, AGAIN, SUBJECT TO AFFIRMATIVE DEFENSES.

AFTER EIGHT DAYS OF HEARINGS IN THIS CONGRESS ALONE, BY BOTH THE FULL SENATE JUDICIARY COMMITTEE AND ITS ANTITRUST SUBCOMMITTEE, I HAVE BECOME CONVINCED THAT THE CONCEPT OF LIMITING ECONOMIC CONCENTRATION AMONG THE LARGE CORPORATIONS IS A GOOD ONE.

THE PLIGHT OF SMALL BUSINESS, THE PRIMARY FORM OF BUSINESS IN MONTANA, IS ESPECIALLY IMPORTANT TO ME. BUT EQUALLY RELEVANT TO THOSE OF US THAT REPRESENT DEMOGRAPHICALLY SMALLER STATES AND RURAL AREAS IS THE ISSUE OF WHETHER LARGE CORPORATIONS WILL BE SENSITIVE ENOUGH TO THE FINANCIAL, SOCIAL AND POLITICAL NEEDS OF THE LOCAL COMMUNITIES WHERE THEIR SUBSIDIARIES ARE LOCATED. IT IS FEARED THAT ACQUISITION OF A SMALLER CORPORATION BY A GIANT CONGLOMERATE MAY TRANSLATE INTO A LOSS IN INDEPENDENCE AND A LOSS OF SENSITIVITY TO LOCAL NEEDS AND ISSUES.

IN MUCH THE SAME WAY THAT BIG GOVERNMENT IS PERCEIVED AS BEING INSENSITIVE TO THE NEEDS OF MONTANA OR THE NEEDS OF INDIVIDUAL CITIZENS, IT IS ALSO PERCEIVED THAT LARGE CONGLOMERATES WILL BE SIMILARLY INSENSITIVE TO LOCALITIES AND INDIVIDUALS.

I DON'T WANT TO LEAVE YOU WITH THE IMPRESSION THAT THE SOLE CONCERN OF THE SENATE JUDICIARY COMMITTEE IS WITH CONSTRAINING AMERICA'S CORPORATIONS.

QUITE THE CONTRARY. MANY OF US SHARE A DEDICATION TO A BALANCED APPROACH TO SOLVING THE PROBLEMS I HAVE BEEN DISCUSSING.

THE APPLICATION OF THIS BALANCED APPROACH TO THE CONGLOMERATE MERGER ISSUE IS PERHAPS BEST SUMMARIZED BY TEDDY ROOSEVELT, WHO OBSERVED THAT:

"WE DEMAND THAT BIG BUSINESS GIVE PEOPLE A SQUARE DEAL; IN RETURN WE MUST INSIST THAT WHEN ANYONE ENGAGED IN BIG BUSINESS HONESTLY ENDEAVORS TO DO RIGHT, HE SHALL HIMSELF BE GIVEN A SQUARE DEAL."

PART OF THIS "SQUARE DEAL" IS THE REALIZATION THAT THERE ARE ARGUMENTS TO BE MADE IN FAVOR OF CONGLOMERATE MERGERS. THESE INCLUDE THE FACT THAT CONGLOMERATE MERGERS CAN POTENTIALLY PROMOTE EFFICIENCY, THAT THEY FACILITATE THE RAISING AND MOVING OF CAPITAL, THEY PROVIDE SHAREHOLDERS AN OPPORTUNITY TO SELL THEIR STOCK IN THE ACQUIRED COMPANY AT A PRICE REFLECTIVE OF THE COMPANY'S TRUE VALUE, AND THAT CONGLOMERATE MERGERS EVENTUALLY ENABLE AMERICAN COMPANIES TO EFFECTIVELY DEAL IN THE INTERNATIONAL MARKETPLACE WITH FOREIGN COMPETITORS. IT IS TO AMERICA'S ADVANTAGE TO PROMOTE CORPORATE EFFICIENCY TO THE EXTENT THAT SUCH EFFICIENCY IS TRANSLATED INTO INCREASED QUALITY AND SAVINGS ON GOODS AND SERVICES.

CERTAINLY THERE ARE SITUATIONS IN WHICH TWO FIRMS MAY BE ABLE TO OPERATE MORE EFFICIENTLY AND PROFITABLY TOGETHER THAN APART. THEY MAY BE IN COMPLEMENTARY BUSINESSES. THE ACT OF CENTRALIZING OPERATIONS AS A RESULT OF MERGER MAY YIELD ANTICIPATED AND UNANTICIPATED EFFICIENCIES. IMPROVED MANAGERIAL TECHNIQUES AND THE UTILIZATION OF NEWLY AVAILABLE PERSONNEL AND SKILLS ALSO COULD RESULT IN INCREASED EFFICIENCIES.

THESE ARE PART OF THE AFFIRMATIVE DEFENSES THAT S. 600 CURRENTLY ATTEMPTS TO PROVIDE TO CORPORATIONS THAT DESIRE TO MERGE. SOME OF US ARE NOT YET CONVINCED THAT THESE DEFENSES HAVE BEEN ADEQUATELY THOUGHT OUT OR PROPERLY DRAFTED. BUT SEVERAL OF US INVOLVED IN THE DEVELOPMENT OF THIS LEGISLATION ARE VERY SENSITIVE TO THE NEED FOR INSURING THAT THE POSITIVE RESULTS OF A CONGLOMERATE MERGER ARE ADEQUATELY RECOGNIZED, AND THAT THE MERGER WILL BE PERMITTED WHEN THESE ADVANTAGES OUTWEIGH THE POTENTIAL DISADVANTAGES.

IN ADDITION, WE NEED TO INSURE THAT THIS LEGISLATION DOES NOT PUT AMERICAN CORPORATIONS AT A COMPETITIVE DISADVANTAGE WITH RESPECT TO FOREIGN CORPORATIONS. THESE ISSUES NEED TO BE ADDRESSED BEFORE THE BILL PROGRESSES.

I DON'T WANT TO SUGGEST THAT I THINK THAT THE BILL WILL BE PASSED QUICKLY. HOWEVER, THE ANTITRUST SUBCOMMITTEE IS LIKELY TO BEGIN CONSIDERATION OF THE LANGUAGE FOR THE CONGLOMERATE MERGER BILL SOMETIME THIS SUMMER. THIS LEGISLATION IS NOT MERELY A CONVERSATION PIECE, BUT A CONCEPT THAT HAS CONSIDERABLE SUPPORT IN THE SENATE AND IS LIKELY TO BE ADDRESSED IN SOME FORM IN THE NEAR FUTURE.

S. 600 REPRESENTS ONLY ONE OF THE ANTITRUST BILLS THAT THE SENATE JUDICIARY COMMITTEE WILL BE CONSIDERING DURING THE 96TH CONGRESS. I WILL BE GLAD TO DISCUSS THE ILLINOIS BRICK BILL, THE ANTITRUST PROCEDURES IMPROVEMENT ACT, OR THE COMPETITION IMPROVEMENT ACT WITH YOU IF YOU ARE INTERESTED.

BUT I WOULD LIKE TO CLOSE WITH THE THOUGHT THAT WE ALL MUST ADDRESS THE PROBLEM OF GROWTH IN OUR SOCIETY. I HOPE THAT THOSE OF YOU WHO REPRESENT THE LARGE CORPORATIONS WILL REACH THE SAME CONCLUSION THAT I HAVE REACHED, AS ONE WHO IS IN CLOSE TOUCH WITH LARGE GOVERNMENT. THAT IS, THAT THE PEOPLE OF THIS COUNTRY ARE EXPECTING US TO TAKE RESPONSIBLE ACTION TO BRING BIG BUSINESS AND BIG GOVERNMENT UNDER CONTROL. IT IS A NEW OBLIGATION WHICH WE ALL SHARE AND ONE THAT I THINK WILL INURE TO THE BENEFIT OF BOTH CORPORATE AMERICA AND THE BOB FITZGERALDS OF THIS COUNTRY.

THANK YOU VERY MUCH.