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Department of Justice

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STATEMENT

OF

CHARLES F. RULE
ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

BEFORE THE

SUBCOMMITTEE ON MONOPOLIES AND COMMERCIAL LAW
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

THE ANTITRUST DIVISION'S
FISCAL YEAR 1989 AUTHORIZATION

ON

MARCH 3, 1988

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ACQUISITIONS

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear this morning in support of the Justice Department's budget request for the Antitrust Division for fiscal year 1989 of 549 positions, 571 workyears, and \$47,021,000. This request reflects a program increase of 25 workyears, and \$1,087,000; and a net increase in uncontrollable expenses of \$997,000. The major uncontrollable items are increases of \$532,000 for annualization of the January 3, 1988, pay increase and \$145,000 for employee benefit-related increases.

Vigorous prosecution of horizontal antitrust violations, such as price fixing, bid rigging and market allocations among competitors, has been and will continue to be the Antitrust Division's primary enforcement activity. This is a vitally important program with which we have had considerable success. During fiscal 1987, the Division filed 92 criminal cases involving 119 corporations and 116 individuals--the latter a record in the Division's history. During the same period, fines were assessed in the amount of \$17.9 million and sentences of 18,488 jail days (or approximately 50.6 years) were imposed, of which 1,994 days (or approximately 5.5 years) were actually served by antitrust violators. In addition, the Division recovered nearly \$1.1 million damages suffered by the United States as a result of antitrust violations.

During the first five months of fiscal year 1988, the Division filed 38 criminal cases involving 45 corporations and 40 individuals, a pace that exceeds the number of criminal cases initiated during the previous three years. This pace would approximate the number of criminal cases filed during fiscal years 1982 through 1984, which averaged 97.3 such cases per year. Unlike those years (but like last year), however, cases filed in any one industry are unlikely to account for as much as 25% of the total cases filed. Thus far, fines in the amount of \$12.6 million and jail terms of 1,784 days have been assessed during fiscal year 1988. This amount does not include a plea agreement announced on March 1, 1988, under which a company agreed to pay \$4 million in fines in connection with bid-rigging on construction projects on the Gulf Coast, on the Delaware River, on the Cayahoga River, and at the San Diego Naval Station.

I would like to mention that we have been trying in various ways to create a greater public awareness of the nature and threat of antitrust violations. By creating such awareness among consumers and business people, we believe that we will improve the reporting of concealed criminal antitrust violations to the Department. Recently, at the suggestion of consumer advocate Ralph Nader, the Division has published and distributed a consumer information pamphlet designed to educate the public and to encourage the reporting of anticompetitive conduct. It is entitled "Antitrust Enforcement and the Consumer."

Review of mergers and acquisitions to ensure that consumers are not threatened with harm through the exercise of market power continues to be another priority of the Division. During fiscal year 1987, the Division filed six cases challenging mergers and acquisitions that threatened economic harm. Of those, four have been resolved through consent decrees filed with the courts; the remaining two cases were dismissed when the parties withdrew from the transactions. During fiscal year 1987, the Division also announced its intention to challenge two other merger transactions, and those have not gone forward. During the first five months of fiscal year 1988, the Division filed suit challenging two mergers, and announced its intention to challenge two others if the parties proceeded with the transactions as planned. The names and descriptions of each of these matters, as well as the criminal cases to which I referred earlier, have been provided to the Subcommittee.

Review of Hart-Scott-Rodino premerger notification filings continues to require a substantial portion of the Division's resources. For example, filings for October and November of fiscal year 1988 total 739 as compared to 586 filed during the similar period of fiscal year 1986. The premerger filings for October and November of fiscal year 1987 do not provide a meaningful comparison because the total then exceeded 1,300 filings, stimulated largely by impending tax law changes. Despite the heavy volume of H-S-R filings, the Division

nevertheless continued to review every filing within the statutory time limits and investigated those that raised competitive concerns.

During these times of "belt-tightening" which is necessary to reduce federal spending and the federal deficit, the Division has done its part. While the Antitrust Division's staffing has declined in the recent past, the Division has carried out its mission effectively. In fact, even as the number of Division attorneys has gone down, our productivity, as measured by cases and investigations, has increased. The entire staff of the Division is to be congratulated for its professional and tireless devotion to the mission of maintaining competition and prosecuting economic crime.

In the face of this excellent record, the Division now seeks a modest program increase of 25 workyears. This increase in staffing will enable the Division further to increase its prosecution of per se illegal horizontal agreements and to begin to contribute to the Department-wide effort to curb organized crime. In the past year, the Antitrust Division has begun to work with the Organized Crime Strike Forces and the FBI, developing a program to use the antitrust laws to combat the infiltration of legitimate business by organized crime. The additional resources requested by the Division are necessary to establish antitrust as a credible weapon in this war. The increase will also enhance our ability to track down and prosecute antitrust crimes in a wider number of industries.

As I have said in the past, I will not hesitate to seek additional resources if more are deemed necessary to ensure that consumers are not threatened with significant economic harm from activities that violate the antitrust laws. At this time, I am confident that our budget request is consistent with that pledge, is prudent, and is in keeping with our necessary and proper contribution to the critical government-wide effort to reduce federal spending.

Mr. Chairman, that concludes my prepared remarks. On behalf of the Department, I appreciate your and the Subcommittee's continued support for our antitrust enforcement efforts. I would now be happy to respond to any questions that you or other members of the Subcommittee may have.