

Investigations in Operation:

HOUSE SUBCOMMITTEE ON MONOPOLY POWER

ON May 11, 1950, the Subcommittee on the Study of Monopoly Power of the House Judiciary Committee completed its fourteen-day investigation of the steel industry. Chairman Celler, thoroughly familiar with the general problems raised by monopoly power, had concluded that careful studies of specific industries would most easily indicate the source and methods of monopolistic practices. Steel followed newsprint as the second target of these investigations. The Subcommittee generally was endeavoring to discover whether new legislation was necessary to help maintain free and competitive enterprise. Specifically the primary question was whether the gigantic United States Steel Corporation, together with Bethlehem Steel Corporation and Republic Steel Corporation, were responsible for a noncompetitive environment in the industry. The control by United States Steel Corporation of one-third of the nation's ingot capacity made it a natural focal point of the investigation; its mode of operation would be an important factor in determining the need for additional anti-trust legislation. If United States Steel Corporation could successfully justify its position, the status of Bethlehem Steel Corporation (one-sixth of the total ingot capacity) and Republic Steel Corporation (almost one-tenth of the ingot capacity) would be secure. Otherwise the trade practices of the entire industry would be open to suspicion.

A study of the hearings¹ indicates that the Subcommittee exerted every effort "to obtain first hand all relevant material bearing on the problem of monopoly power in the steel industry."² The thousand pages of testimony and over eight hundred pages of exhibits thoroughly document all phases of the industry's activities. For this reason the investigation deserves commendation. It sought and obtained facts, not justifications for prejudices.

Information was culled from all sources. "The long list of witnesses include[d] Government officials, independent fabricators, economists, legislators, and the leaders of the industry,"³ and most of them substantiated their testimony with charts and studies of all types. Prominent references were also made to the monumental Ford-Bacon-Davis report, the independent analysis of the United States Steel Corporation's size and efficiency which was prepared at the Corporation's request and expense. While this massive study⁴ was not

¹ 14 Hearings before the Subcommittee on Study of Monopoly Power of the House Committee on the Judiciary, 81st Cong. 2d Sess. (1950) (cited hereafter as *Hearings on Monopoly Power*).

² *Ibid.*, at VI.

³ *Ibid.*

⁴ The entire report is contained in about two hundred large volumes.

directly introduced as evidence, sufficient excerpts were taken from it to make an invaluable contribution to the public knowledge of the Corporation's methods and weaknesses.

The more than four hundred exhibits include statistics on ore and steel shipments; government complaints and memoranda of questionable industry practices; lists of prominent leaders in the industry and their financial and fiduciary inter-relationships; tables on profits, sales and investments; and an extensive array of minutes of meetings and correspondence between American steel companies and European companies concerning world quotas, prices and exclusive marketing agreements.

The Subcommittee merits further commendation for the complete fairness with which it conducted the hearings and admitted exhibits. Chairman Celler set the tone of the proceedings when he stated his determination to insure "a fair and objective hearing." However, the real measure of the Subcommittee's efforts came from its chief witness, United States Steel Corporation's president, Benjamin Fairless, who said: "I want to go on record that so far as I personally am concerned, this has been the best conducted hearing so far as permitting us to make our presentation and so far as fair treatment that I have ever witnessed."⁵ The conduct of the Subcommittee was illustrative of Mr. Fairless's comment.

The steel industry was never in doubt as to the objectives of the investigation. At the outset, Chairman Celler stated:

We are concerned with monopoly power. . . . The economic problem facing this country is the domination over industry by a few concerns. . . . The first five steel companies control roughly two-thirds of the capacity for steel ingots. . . . The issue is then, and steel appears to be a good example, whether this amount of control is compatible with the preservation of free and competitive enterprise.⁶

The treatment of witnesses also indicates the fairness of the investigation. The Subcommittee followed the letter and the spirit of the Legislative Reorganization Act.⁷ Every witness was permitted to present written statements provided they were submitted at least forty-eight hours before appearance. Corrections of testimony previously given were always allowed, and when objections to testimony were made, they were printed and witnesses were given an opportunity to reply. When conflicting testimony was given all concerned were permitted and even encouraged to make rebuttals. An outstanding example of this is seen in the testimony of Mr. Frank Smith. He stated that Republic Steel Corporation would only deal with southern producers through an exclusive contract that did not obligate the company to purchase any fixed tonnage of ore, but nevertheless prevented the producers from selling to anyone else without Republic's permission. To save the time of busy executives, and

⁵ 14 Hearings on Monopoly Power 673.

⁶ *Ibid.*, at 67.

⁷ 60 Stat. 812 (1946).

to provide Republic with every opportunity for rebuttal, Chairman Celler scheduled Mr. Smith's testimony immediately before that of C. M. White, Republic's President, so that Mr. White would have every advantage of Mr. Smith's charges before making his own statement. Mr. Smith also replied to Republic's answer.⁸

The steel industry also benefited by the widespread use of prepared statements and the unrestricted permission to introduce exhibits. Ample opportunity was provided for them to present their story, and the record was certainly not weighted against them. Of the fifty-five witnesses who testified, twenty-five were officials of the steel industry, thirteen were in government service, four were economics professors, four were engineers and the remaining nine included a congressman, a banker and several businessmen.

Lack of harassment of witnesses and the recognition of the right of anyone to ask questions or cross-examine was another favorable mark of the Subcommittee's conduct. Although the great majority of the questioning was carried on by Chairman Celler and the Subcommittee's Chief Counsel, Edward H. Levi,⁹ the individual members also participated actively in the cross-examination of witnesses. If representatives of the steel industry seldom cross-examined it was perhaps due to the great use of prepared statements and the practice of making rebuttals when the testimony became clearly contradictory. At no time, however, was anyone denied the right to question a witness, to introduce an exhibit or to make a statement.

The Subcommittee's investigatory technique is also deserving of worthy consideration. In exploring the problems of anti-trust enforcement, it succeeded in conducting "an open forum for the expression of the views of experts on monopoly problems."¹⁰ The validity of the observation that the success or failure of an investigation is largely dependent on the ability and caliber of staff and committee membership is demonstrated by the investigatory methods employed by the Chief Counsel. Throughout the hearings a conscious and successful effort was made to confine evidence and testimony to the facts. In addition, Mr. Levi's practice of continually summing up important testimony in simple language and then asking witnesses if the summary was correct in view of their statements prevented distortion and misrepresentation of what was said, thus protecting the witnesses. In addition it should save valuable time when the Subcommittee and the public evaluate the hearings.

A look at the investigation as a whole indicates that it will serve many useful purposes. Perhaps the most important is that of emphasizing the responsibilities of the steel industry to the community. Considered as an open forum, the hearings must have demonstrated to both the government and the steel executives a basic disagreement on the meaning and application of such terms as com-

⁸ 14 Hearings on Monopoly Power 298.

⁹ Mr. Levi is now Dean of the University of Chicago Law School.

¹⁰ 14 Hearings on Monopoly Power V.

petition, monopoly and bigness. However, through the open forum approach, the position of each was clarified. As Mr. Fairless stated, the industry was given a chance to tell its story (and an impressive one it was). Chairman Celler and his fellow congressmen will undoubtedly have a greater appreciation of what a complex and mammoth undertaking the production of steel entails. The steel industry was also schooled in some new views. While the Subcommittee does not speak for the entire Congress, it undoubtedly reflects the attitudes of some of its leaders. With Congress capable of going as far as nationalization if it wishes, the steel executives must have understood the warnings against maintaining a rigid price structure, exchanging information on bids, making exclusive marketing agreements, or failing to distribute a fair share of corporate earnings. The investigation can thus serve as a sounding board for both sides, where each is apprised of the other's position and where both may reform their opinions in the light of the disclosed facts.

Another effect will be the education of the Subcommittee itself. While several members demonstrated a familiarity with the general problem of monopoly, they will require much more detailed knowledge should they decide to prepare legislation divesting the large companies of some of their subsidiaries or to attack some of the industry's accepted trade customs. The hearings did not provide a ready answer. Yet within the testimony given lies the basis for many conclusions about competition within the industry and the role of its giant threesome.

The fact that such a record exists demonstrates that congressional investigations can discover useful facts and do it in a manner eminently fair to all parties. Certainly, the subject matter under investigation facilitated the impartiality of the hearings. The Subcommittee was endeavoring, in an atmosphere that was not charged with emotion, to gather information about a vast and highly technical industry. However, the real success of these hearings seems due to the conscious effort of the Subcommittee to get the facts, regardless of what they might indicate, and to do it as fairly as possible. It is this determination which underscores every stage of the investigation and makes of it a model for future inquiries. Where fairness exists, competence seems to follow. As a result, the liberties of citizens are protected while the interests of the community are served. At a time when congressional investigations are the object of so much adverse criticism, it is reassuring to feel that with time and careful study, an investigation such as the one conducted by the Subcommittee on the Study of Monopoly Power, can make an important contribution to the economic welfare of the nation.