

January 22, 2002



The Honorable Ernest F. Hollings  
Chairman, Committee on Commerce, Science, and Transportation  
United States Senate  
Room SD-508  
Washington, DC 20510-6125

Dear Mr. Chairman:

Media Access Project wishes to express its appreciation for your prompt response to the Administration's ill-fated effort to restrict the Federal Trade Commission's antitrust authority, especially as it affects media, telecommunications, intellectual property and other mergers which will determine the future of democracy in the digital era.

MAP urges you to pursue this matter aggressively. In particular, MAP asks that you remain skeptical about claims that there is a problem in need of repair. MAP's experience is that the FTC and the Department of Justice have been quite effective in allocating responsibility for particular mergers. Those claiming otherwise typically are trade associations and lawyers who represent companies seeking merger approval; their purported desire to expedite the review process may more accurately be described as an interest in obtaining approval of mergers, not improvement in antitrust enforcement.

You understand as well as any member of Congress the important role that independent regulatory commissions have always played in maintaining public confidence in the integrity of the regulatory process when controversial or politically sensitive issues must be addressed. While the Department of Justice's Antitrust Division has generally attempted to deflect political interference, there are disquieting indications that its newly installed management may not respect this tradition of independence. That is why the FTC is inherently better equipped to handle most such cases. Any arbitrary division of authority between the Department of Justice and the FTC will inevitably deprive the public of such independent review in many instances. It is especially alarming in this regard that the secret plan devised by Messrs. James and Muris would have denied the benefits of bipartisanship to the most politically volatile of all mergers, those involving increasing concentration of control of the mass media and the technologies those companies use to influence the marketplace of ideas.

Finally, MAP asks that you exercise your oversight authority to explore whether the private antitrust bar exercised inappropriate influence in the development of this scheme. MAP stresses that it lacks any evidence of questionable conduct. However, reporters covering this matter have implied privately and in print that some attorneys in private practice at the least had advance knowledge of plans to divide antitrust jurisdiction. Insofar as Chairman Muris intentionally kept his fellow FTC Commissioners in the dark about these negotiations, the involvement of the defense bar would be a matter of considerable significance. The public deserves to know if this were the case, and Chairman Muris and Assistant Attorney General James deserve exoneration if such implications turn out not to be true.

Sincerely,

Andrew Jay Schwartzman  
President and CEO