

TESTIMONY BEFORE JOINT MEETING OF HOUSE
JUDICIARY & COMMERCE COMMITTEES
STATE OF MINNESOTA

I AM WILLIAM C. NORRIS, CHAIRMAN EMERITUS OF CONTROL DATA CORPORATION AND A FOUNDING MEMBER OF MINNESOTA WELLSRING AND STAKEHOLDERS OF AMERICA. ALL OF THESE ORGANIZATIONS HAVE POSITIONS ON HOSTILE TAKEOVERS. HOWEVER, I AM HERE TODAY AS AN INDIVIDUAL TO SPEAK PLAINLY ON WHAT I SEE AS THE NEEDS OF THE COMMUNITY AND THE COUNTRY, UNFETTERED BY THE VIEWS OF ANY ORGANIZATION OR NEEDS OF A SPECIFIC COMPANY, AS WAS THE CASE WHEN I WAS THE CHAIRMAN OF CONTROL DATA.

FOR MORE THAN A DECADE, I HAVE BEEN AN OUTSPOKEN AND, UNTIL QUITE RECENTLY, LONELY CRITIC OF HOSTILE TAKEOVERS. UNFORTUNATELY, MY REPEATED WARNINGS DO NOT SEEM TO HAVE HAD MUCH EFFECT, AS IS EVIDENT FROM THE ACCELERATED PACE OF TAKEOVER ACTIVITY DURING THE PAST SEVERAL YEARS AND NEED FOR THIS HEARING TODAY.

TODAY, I SHALL COMMENT ON THIS THREAT FIRST FROM A NATIONAL PERSPECTIVE, THEN FROM A COMMUNITY PERSPECTIVE. LOOKING AT THE THREAT FROM A NATIONAL PERSPECTIVE, THE COMPETITIVENESS OF THE UNITED STATES IN WORLD MARKETS IS BEING BADLY ERODED. A SIGNIFICANT CAUSAL FACTOR IS TAKEOVER MANIA.

BECAUSE OF OUR GRAVELY WEAKENING COMPETITIVE POSITION AND ITS ADVERSE IMPACT ON AMERICAN JOBS, OUR STANDARD OF LIVING IS DECLINING AND ULTIMATELY OUR NATIONAL SECURITY THREATENED.

70% OF THE U.S. DOMESTIC MARKET IS OPEN TO FOREIGN COMPETITION. IN OTHER WORDS, THE U.S. IS IN A GLOBAL CONTEST, THE COMPETITION IS FIERCE, AND WE ARE LOSING ON MANY FRONTS.

OUR ONCE DOMINANT POSITION IN TECHNOLOGY HAS BEEN DETERIORATING FOR MANY YEARS AS OTHER COUNTRIES, ESPECIALLY JAPAN, HAVE ACCELERATED THEIR DEVELOPMENT AND APPLICATION OF ADVANCED TECHNOLOGY. CLEARLY, THE GREATEST PROGRESS IN ADVANCING AND EXPLOITING TECHNOLOGY HAS BEEN MADE BY JAPAN IN TARGETED INDUSTRIES WHERE THE JAPANESE GOVERNMENT HAS PROMOTED COOPERATION AMONG INDUSTRY MEMBERS AT THE BASE TECHNOLOGY LEVEL AS A KEY INGREDIENT FOR SUCCESS.

MICROELECTRONICS, COMPUTERS, ELECTRONIC INSTRUMENTS, LASERS, OPTICAL COMMUNICATIONS, ROBOTICS, BIOTECHNOLOGY, TELECOMMUNICATIONS AND AEROSPACE ARE CURRENT TARGETS. IF THESE INDUSTRIES GO THE WAY OF AUTOMOBILES, STEEL, SHIPBUILDING AND CONSUMER ELECTRONICS, THE ECONOMIC CONSEQUENCES, PARTICULARLY IN EMPLOYMENT WILL BE DISASTROUS.

OVERALL, WE ARE FACING AN UPHILL STRUGGLE TO AVOID FURTHER MARKET LOSSES BEFORE WE WILL BE ABLE TO REGAIN OUR FORMER STRONG POSITION. ALTHOUGH IT IS OBVIOUS THAT BUSINESS AS USUAL ISN'T AN ADEQUATE RESPONSE, WE HAVE BEEN FAR TOO SLOW IN RESPONDING WITH NEEDED CHANGES AND GREATER EFFORTS.

CLEARLY, THERE IS A NEED FOR EXPANSION OF INDUSTRIAL INNOVATION ON AN UNPRECEDENTED SCALE TO MEET THIS SERIOUS CHALLENGE. LET US RECALL THAT INDUSTRIAL INNOVATION IS THE PROCESS OF CREATING AND UTILIZING TECHNOLOGY TO MAKE IMPROVEMENTS IN EXISTING PRODUCTS, SERVICES, AND PROCESSES OR CREATING NEW ONES AND GETTING THEM INTO THE MARKETPLACE. THE INNOVATION CYCLE STARTS WITH RESEARCH WHICH IS FOLLOWED BY PRODUCT DEVELOPMENT, PRODUCTION AND MARKETING.

IN SPITE OF THE URGENT NEED FOR MORE INDUSTRIAL INNOVATION, HOSTILE TAKEOVERS AND THE THREAT OF HOSTILE TAKEOVERS ONLY IMPEDE SUCH EFFORTS. THEY CAUSE DISSIPATION OF THE MOST IMPORTANT PART OF THE INNOVATION RESOURCES IN TARGET COMPANIES -- SKILLED PERSONNEL.

EXPERIENCE SHOWS THAT A HIGH PERCENTAGE OF SENIOR EXECUTIVES LEAVE AFTER A TAKEOVER. FOR EXAMPLE, A SURVEY MADE IN 1984 BY LAMALLIE ASSOCIATES, AN EXECUTIVE SEARCH COMPANY, CONCLUDED THAT APPROXIMATELY FIFTY PERCENT OF SENIOR MANAGERS LEAVE WITHIN A YEAR AFTER THEIR COMPANIES ARE TAKEN OVER, AND 75% WILL PROBABLY LEAVE WITHIN THREE YEARS. A SIMILAR SURVEY IN 1981 INDICATED THAT ONLY 20% LEFT DURING THE FIRST YEAR.

INCREASED TURNOVER IS NOT CONFINED TO MEMBERS OF SENIOR MANAGEMENT, BUT OCCURS AT ALL LEVELS OF MANAGEMENT AND IN OTHER AREAS. THIS IS CAUSED BY THE EXCESSIVE TRAUMA THAT IS INFLICTED, STARTING WITH FEAR OF JOB LOSS AND/OR CAREER PATH BEING IN JEOPARDY. EVEN IN VOLUNTARY MERGERS, THERE WILL BE SOME UNAVOIDABLE EMPLOYEE INJURY; HOWEVER, IT CAN BE MINIMIZED THROUGH CAREFUL PLANNING.

THE INITIAL PHASE OF A HOSTILE TAKEOVER IS UNNECESSARILY NERVE-WRACKING BECAUSE OF LACK OF INFORMATION OR CREDIBILITY OF ASSURANCES ABOUT THE AGGRESSOR'S PLANS. THERE ARE ALWAYS COMPANY COMMITMENTS TO EMPLOYEES, BOTH IMPLIED AND STATED, RELATING TO JOB RESPONSIBILITIES AND CAREER PATHS. EMPLOYEES EXPECT THEM TO BE FULFILLED, YET THEY UNDERSTAND THAT DUE TO COMPETITION, ADVERSE ECONOMIC CONDITIONS AND OTHER FACTORS NOT UNDER THE COMPLETE CONTROL OF MANAGEMENT, SOME MAY NOT BE FULLY MET. HOWEVER, WHEN THE MANAGEMENT OF ANOTHER COMPANY ENGAGES IN

AN UNNECESSARY AND UNILATERAL TAKEOVER, IT CAUSES ABROGATION OF MANY COMMITMENTS IN THE TARGET COMPANY THAT INFLICT COLD-BLOODED AND UNJUST HUMAN INJURY -- COLD BLOODED, BECAUSE THE AGGRESSOR COMPANY KNOWS THAT IT HAS A CONFLICTING ARRAY OF COMMITMENTS TO ITS EMPLOYEES; AND UNJUST, BECAUSE IT COULD HAVE BEEN AVOIDED EITHER BY ACHIEVING THE TAKEOVER OBJECTIVES IN ANOTHER WAY OR BY RECOGNIZING THAT THE OBJECTIVE OF "I WANT IT AND THEREFORE I SHALL HAVE IT" IS NOT NECESSARILY A LEGITIMATE ONE.

FOR MANY EMPLOYEES, FEAR OF JOB LOSS IS REPLACED BY FORCED DEPARTURE DUE TO CHANGED PLANS, OVERLAP IN POSITIONS BETWEEN THE TARGET AND ACQUIRING COMPANY, OR BECAUSE OF THE ELIMINATION OF JOBS TO ACHIEVE SAVINGS TO HELP PAY FOR THE COST OF THE ACQUISITION.

FOR THOSE EMPLOYEES WHO HAVE THE OPTION OF CONTINUING EMPLOYMENT, THERE IS A WIDESPREAD FEELING OF DISGUST AND RESENTMENT OVER BEING VICTIMIZED. A DIVISIVE US VS. THEM ATTITUDE OFTEN DEVELOPS AS WELL. AS A CONSEQUENCE, THOSE EMPLOYEES WHO CAN FIND OTHER ACCEPTABLE EMPLOYMENT OPPORTUNITIES LEAVE. MANY OF THOSE WHO STAY ARE DISILLUSIONED AND HAVE LESS OF A COMMITMENT AND LOYALTY TO THEIR COMPANIES.

IN SHARP CONTRAST TO THE DISRUPTION IN HUMAN RESOURCES CAUSED BY HOSTILE TAKEOVER MANIA IN THIS COUNTRY, IS JAPAN, WHERE SUCH ACTIVITY IS EXTREMELY RARE, AND THERE IS A FOCUS ON LIFETIME EMPLOYMENT, WHICH CONTRIBUTES TO AN ENVIRONMENT OF COOPERATION AND HARMONY IN INDUSTRY. THE ADVERSE IMPLICATIONS OF THIS DIFFERENCE WITH RESPECT TO U.S. COMPETITIVENESS IS OBVIOUS.

ANOTHER DETRACTOR FROM OUR ABILITY TO COMPETE IS THE DECREASED AVAILABILITY OF FUNDS FOR R&D. TO DATE, THERE HAS BEEN LITTLE MATERIAL AVAILABLE ON THE HARMFUL EFFECTS OF HOSTILE TAKEOVERS ON R&D; HOWEVER, IT IS OBVIOUS WHERE TAKEOVERS ENTAIL SUBSTANTIAL DEBT INCREASES, INCREASED INTEREST COSTS WILL UNDERCUT INVESTMENT IN R&D AS WELL AS OTHER PARTS OF THE INNOVATION CYCLE.

AN EVEN MORE COMPETITIVE DETRACTOR IS FEAR EMANATING FROM THE THREAT OF A HOSTILE TAKEOVER FACING MOST COMPANIES. THIS IS A MAJOR REASON FOR CORPORATE MANagements' HARMFUL TENDENCY TO FAVOR SHORT-TERM INNOVATION STRATEGIES AT THE EXPENSE OF THE LONGER TERM IN ORDER TO MAINTAIN QUARTER-TO-QUARTER EARNINGS GROWTH THAT IS NEEDED TO MAXIMIZE COMPANY STOCK PRICES.

PETER DRUCKER, ONE OF THE WORLD'S MOST RESPECTED MANAGEMENT CONSULTANTS, HAS NOTED THAT (QUOTE) "FEAR OF THE UNFRIENDLY TAKEOVER IS PARTICULARLY PERVASIVE IN STRONG, PROSPEROUS MEDIUM-SIZED COMPANIES WITH EXCELLENT LONG-RANGE GROWTH PROSPECTS. THESE, OF COURSE, ARE THE VERY BUSINESSES THAT MOST NEED LONG-TERM STRATEGIES AND HEAVY INVESTMENT IN THE FUTURE." UNQUOTE.

THE IMPACTS OF HOSTILE TAKEOVERS ARE NOT LIMITED TO OUR INTERNATIONAL COMPETITIVE POSTURE. THE COMMUNITIES AND STATES IN WHICH THESE COMPANIES ARE LOCATED INEVITABLY EXPERIENCE DIRECT ECONOMIC LOSSES. JOBS ARE LOST, TAX REVENUES ARE LOST, UNEMPLOYMENT COSTS RISE AND, WHEN UNEMPLOYMENT COMPENSATION RUNS OUT, WELFARE COST INCREASES BEGIN.

AND IT DOES NOT STOP THERE. LIKE A PEBBLE DROPPED IN A POND, THE RIPPLES EXTEND. WHEN JOBS ARE LOST OR TRANSFERRED, THE MERCHANTS, PROFESSIONALS AND BUSINESSES DEPENDENT UPON EMPLOYEE SPENDING EXPERIENCE THE LOSS AS WELL. REAL ESTATE VALUES FALL; CONSTRUCTION DROPS OFF. THERE OCCURS, IN ESSENCE, A "REVERSE ECONOMIC MULTIPLIER EFFECT."

CHARITIES AND CIVIC ORGANIZATIONS ALSO SUFFER. FIRST THERE ARE LOST CONTRIBUTIONS. IN MINNESOTA, A SIGNIFICANT NUMBER OF COMPANIES ARE MEMBERS OF "5 PERCENT CLUB" -- THAT IS THEY ARE COMMITTED TO ANNUAL CHARITABLE CONTRIBUTIONS EQUAL TO 5 PERCENT OF THEIR PROFIT BEFORE TAXES. CURRENT SHAREHOLDERS APPLAUD THESE COMMITMENTS. ARE RAIDERS LIKELY TO BE SO GENEROUS? I DOUBT IT. FOR EXAMPLE, I UNDERSTAND THAT THE FORMER MANAGEMENT OF THE CONTINENTAL GROUP WENT SO FAR AS TO PREPAY VARIOUS OF THAT COMPANY'S FUTURE PLEDGE COMMITMENTS PRIOR TO ITS SALE, SO SURE WERE THEY THAT THE NEW OWNERS WOULD RENEGE ON PROMISES THAT VARIOUS STAMFORD, CONNECTICUT CHARITIES HAD ACTED ON IN ANTICIPATION OF RECEIVING. EVEN AN UNSUCCESSFUL BID CAN CUT THE FLOW OF FUNDS. I SUGGEST YOU TALK TO ALMOST ANYONE IN PITTSBURGH ABOUT PHILANTHROPIC LOSS TO THAT COMMUNITY ARISING OUT OF THE RAID ON AND SUBSEQUENT TRANSFER OF GULF. THE NUMBERS, I ASSURE YOU, ARE WELL INTO THE MILLIONS. YOU ARE FACED WITH THE POTENTIAL OF THE SAME SITUATION TODAY.

BUT, AGAIN, IT'S NOT JUST FINANCIAL SUPPORT. THE LOCAL PRESENCE OF AN INDEPENDENT FIRM INVOLVES IRREPLACEABLE INTANGIBLES FOR A COMMUNITY AND A STATE. CHARITIES, THE ARTS, EDUCATIONAL, CIVIC AND GOVERNMENTAL ORGANIZATIONS -- ALL SO CRITICAL TO THE "QUALITY OF LIFE" OF A COMMUNITY -- ALSO DEPEND ON THE PERSONAL TIME CONTRIBUTIONS AND LEADERSHIP PROVIDED BY EMPLOYEES OF LOCAL FIRMS. WHETHER IT BE BARTLESVILLE, OKLAHOMA, HOUSTON, TEXAS, OR STAMFORD, CONNECTICUT, THE LEADERS AND CITIZENS OF ANY COMMUNITY HOSTING A FIRM THAT IS SUBJECT TO A HOSTILE RAID ARE TRAUMATIZED. AND IT'S NOT THE SIMPLE CHANGE IN OWNERSHIP THAT CONCERNS THEM; RATHER, IT IS WHAT EXPERIENCE HAS SHOWN FOLLOWS IN THE WAKE OF THAT CHANGE. MINNESOTA IS NO EXCEPTION.

CONCLUSION

FOR TOO LONG, THE DEBATE OVER HOSTILE TAKEOVERS HAS FOCUSED ON TRADITIONAL NOTIONS ABOUT THE "RIGHTS" OF SHAREHOLDERS, BIDDERS, AND THE EFFICIENT OPERATION OF MARKETS -- AS THOUGH ALL THAT WAS INVOLVED WAS THE ROUTINE SALE OF A CHATTEL OR PIECE OF LAND. BUT TODAY'S CORPORATION IS MUCH MORE THAN THAT; THE CONSTITUENCIES IT SERVES AND IS RESPONSIBLE TO (AND WHO CAN THUS BE HELPED OR HARMED WHEN IT CHANGES HANDS) REACH INTO THE ENTIRE FABRIC OF OUR SOCIETY. AND THAT FABRIC IS BEING TORN.

TODAY'S HOSTILE TAKEOVER ENVIRONMENT EXAGGERATES AN ALREADY TOO GREAT FOCUS ON SHORT-TERM PERFORMANCE; IT REWARDS THE SIMPLE REARRANGING OF ASSETS; IT SHIFTS ATTENTION FROM THE DEVELOPMENT AND PRODUCTION OF PRODUCTS, THE CREATION AND RETENTION OF JOBS, AND THE INCREASING CHALLENGE FROM INTERNATIONAL COMPETITORS -- CONCERNS WHICH SHOULD BE THE TOP PRIORITY OF OUR NATION AND OUR MANAGERS. ABOVE ALL, IT RESULTS IN NEEDLESS HUMAN AND COMMUNITY DESTRUCTION, AND THREATENS -- IO ALLOWED TO CONTINUE UNCHECKED -- TO SERIOUSLY DAMAGE OUR SOCIETY.

TODAY YOU HAVE BOTH A THREAT AND AN OPPORTUNITY. THE THREAT IS OBVIOUS. ONE OF OUR MOST IMPORTANT COMMUNITY INSTITUTIONS -- A LEADER IN MUCH OF WHAT MAKES MINNESOTA THE GREAT COMMUNITY IT IS -- APPARENTLY IS THE SUBJECT OF A HOSTILE TAKEOVER ATTEMPT FROM A RAIDER WHO WOULD PROBABLY HAVE TO DISMANTLE THE TARGET TO PAY FOR THE ACQUISITION, AND WHO APPEARS TO STAND FOR VERY DIFFERENT BUSINESS AND COMMUNITY PRINCIPLES. THE OPPORTUNITY IS EQUALLY CLEAR. YOU HAVE THE ABUSES SHARPLY IN FOCUS. YOU HAVE THE HISTORY AND THE EXPERIENCE OF BEING A LEADER IN THE REGULATION AND CORRECTION OF THESE ABUSES. AND YOU HAVE A RINGING MANDATE FROM THE U.S. SUPREME COURT IN THE CTS DECISION TO ADDRESS THESE ABUSES UNDER YOUR POWER TO REGULATE THE GOVERNANCE OF DOMESTIC CORPORATIONS.

I URGE YOU TO SERIOUSLY CONSIDER AND THEN ENACT INTO LAW THE PROPOSALS PUT FORTH BY DAYTON HUDSON. THEY ARE AN IMPORTANT STEP IN THE PROTECTION AND CONTINUED DEVELOPMENT OF OUR COMMUNITY AND INDEED OUR NATION.