pulsory Licensing," the Antitrust Bulletin, fall 1967, be included in the record of these hearings in the appropriate place, for its relevance to the proposals I have made.

I thank you for honoring me with the opportunity to make these remarks to you and for your kind attention in my presentation of them to you.

Senator NELSON. The article on the "Case for Compulsory Licensing" will be printed in the record at this point.

(The material referred to follows:)

[From the Antitrust Bulletin, fall 1967]

THE ETHICAL DRUG INDUSTRY: THE CASE FOR COMPULSORY PATENT LICENSING

(By Leonard G. Schifrin*)

Introduction

On December 7, 1959, the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, then popularly known as the Kefauver Committee, shifted the focus of its investigation of administered prices in the American economy to the ethical drug industry.[1] In the Spring of 1967, the monopoly subcommittee of the Senate Select Committee on Small Business began hearings on ethical drug prices, particularly on the often large price differential between finished products sold under company-assigned brand or trade-names and finished products of the same generic designation sold under the chemical or generic name,[2] an issue originally raised by the Kefauver Committee. In the seven-and-a-half years between the first and the most recent Senate hearings, at least nine other series of hearings dealing with this industry have been conducted, and at least three additional committee reports or studies have been submitted to Congress. Some legislation has resulted from this extensive examination, but the only action of real substance, the Drug Amendments of 1962, deals mainly with questions of drug safety and perhaps owes its passage as much to the Thalidomide tragedies in Germany and other European countries as to the economic and medical issues raised in these many hearings.

Despite the lack of legislative accomplishments, the time and attention spent in scrutinizing this important industry have, for the most part, been productive The industry grew to maturity without drawing attention to its practices and performance, perhaps because of its close relation to the medical industry which traditionally does not publicize its economic activities or perhaps because of its continuing high profitability. The investigations, however, have revealed flaws in its operation, specifically its wasteful use of resources in promotion and research, the dubious contribution of some of its output, and the uneconomic relationship between the costs and prices of its products. In the years in which the industry has been so frequently studied, public concern regarding the health services and products available to consumer-patients has grown: Medicare has become part of our Social Security law; support for the construction of health facilities has multiplied significantly. These activities are, of course, only part of our growing concern for ever more numerous facets of the quality of human life. To the extent

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[1] It is symbolic of the character of the ethical drug industry that the term "ethical drug" itself has become obsolete. Drugs, technically, are the active ingredients which go into dosage-form products or pharmaceutical preparations, rather than the products or preparations themselves. Now, however, the large majority of all preparations are prefabricated, i.e., already in dosage form when sold to pharmacies and doctors. Hence, the modern ethical drug industry includes firms primarily engaged in the fabrication, finishing, or sale of drug products or preparations in finished dosage forms such as pills, capsules, tablets, etc. Although the industry would be more accurately described as the ethical-drug-products or preparations industry, common usage still retains its now-dated designation.

[2] All ethical drugs have generic, i.e., common or chemical, names. In order to distinguish their items from rival products with the same generic designation, some firms (mainly large, prominent ones) employ trade-name or brand-name designations as well. A trade name is an original, trademarked, name assigned by a firm to its own item, such as Lederle's use of the trade name Achromycin and Pfizer's use of the trade name Tetracyn for the tetracycline capsules each produces. Brand names, which combine the product generic name and the name of the producer or seller, are used less often than trade names. Examples of brand names are "Cortisone: McKesson and Robbins" and "Armour Thyroid."