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Anti-Trust Law Repeal Unnecessary

Trade Commission, Under Broader Interpretation of Its Powers, Can Help Industries Stamp out Competitive Excesses

BY ABRAM F. MYERS*

A CHARGE frequently hurled at the anti-trust laws is that they make competition a fetish; that competition has been exalted over all considerations of economy and efficiency. These flights are, for the most part, purely rhetorical. The competition that the anti-trust laws would preserve is not the jungle competition that the critics of those laws imagine. The anti-trust laws recognize that not all competition is good, and that unrestrained competition is bad. They have been as often invoked for excesses of competition as for the suppression of competition.

The test of the legality of a corporate combination is not the amount of inter-company competition that is suppressed, but whether the competition it affords is fair or oppressive. And the Federal Trade Commission Act has for its main purpose the prevention of unfair methods of competition in interstate trade and commerce

Sees Wider Field of Usefulness for Commission

It is on the proper interpretation of the words "unfair methods of competition" that the ultimate reconciliation of the proper needs and aspirations of business with the law depends. The commission has, and was intended to have, a wider field of usefulness than the mere prosecution of individuals and concerns for the use of unfair competition. Also it is clear that the language of the statute is not to be limited to common law definitions. It is the formula whereunder the commission may and does cooperate with industry, through the trade practice conference procedure, in writing codes of ethics that are bringing about that degree of proper and desirable stabilization compatible with American institutions and ideals. In this way the commission is making good the prediction of the late Senator Cummins in a speech in the Senate on Sept. 7, 1914:

I predict that in the days to come the Federal Trade Commission and its enforcement of the section with regard to unfair competition will be found an anchor for honest business. I believe it will introduce a stability in business that hitherto has been unknown. I believe it will restore confidence among those who are conducting their affairs honestly and uprightly. I believe it will be found to be the most efficient protection to the people of the United States that Congress has ever given the people by way of a regulation of commerce, and that it will rank in future years with the anti-trust law; and I was about to say that it would be found still more efficient in the creation of a code of business ethics and the establishment of the proper sentiments with regard to business morals.

How Commission Enforces Ethical Codes

A trade practice conference is authorized by the commission on the application of a substantial part of an industry, usually made through their trade association. The industry is thereby enabled to write its own code of ethical and economic practice, subject to approval or rejection by the commission in the public interest.

Resolutions aimed at practices illegal per se are placed

*Federal Trade Commissioner. From address before American Institute of Steel Construction at Biloxi, Miss., Nov. 15.

in Group I, and the commission undertakes to enforce compliance therewith by proceeding against all violators, whether they have subscribed thereto or not, under Section 5 of the Trade Commission Act. Resolutions placed in Group II are aimed at practices that have not heretofore been held unlawful by the commission or the courts. The secret violation of such a resolution by one who has openly subscribed thereto, and has led his competitors to believe that he will observe it, will result in a proceeding by the commission on the ground that such secret violation is in and of itself an unfair method of competition.

Thus these codes for the strengthening and uplifting of American industry are made enforceable in every particular save one. The commission has not yet undertaken to enforce resolutions of the character included in Group II against a recalcitrant minority who will not subscribe thereto.

The absence of means for the enforcement of Group II resolutions against non-subscribers has proved a serious stumbling block to the efforts of many industries at self-regulation. Thus the manufacturers of knit underwear at a recent conference declined to adopt resolutions fixing standards for the wool content of "part wool" garments because they could not be assured of protection against the competition of the low-content manufacturers. Thus a grave question is presented as to whether codes of ethics for American business are to be written by a progressive majority, or by a reactionary minority. For it often happens that a recalcitrant 15 or even 10 per cent of an industry, seeking and obtaining a competitive advantage by persisting in practices which the majority have proscribed eventually brings all down to its level, and in this way praiseworthy efforts to elevate the standards of an entire industry may be defeated. In this fashion the minority effectively imposes its will upon the majority.

Commission Cannot Originate Code

The remedy for this, if any there be, lies in the gradual expansion of the commission's powers under existing law, rather than in new legislation. It is doubtful if the building up of a new code of business practice will lend itself to Congressional definition. Certainly any attempt by Congress to decree by law that the minority in an industry shall conform to the wishes of the majority in respect to practices never heretofore regarded as unlawful would meet with determined opposition and would give rise to grave questions of constitutional right. In any such proposal provision would have to be made for an umpire to guard the minority against oppression and the public against extortion.

The courts at a time when the Federal Trade Commission was regarded as a none-too-constructive agency gave to the words "unfair methods of competition" a somewhat narrow interpretation. They held that the words did not apply to practices not characterized by fraud, deceit, bad faith or oppression, or which did not tend to restraint of trade or monopoly. But this definition was given in cases

spots 25 and 26, section D—now upon their own wheels—cut into the yard to be taken to the finishing shed. The switching engine handles this job. Engines upon spots 23 and 24 are advanced to the vacated places and those upon spots 21 and 22 are moved forward correspondingly. This move leaves spots 21 and 22 uncovered, and upon them is immediately assembled the running gear of the engines occupying spots 16 and 20 of section C.

Engines upon spots 16 and 20 are now lifted by the cranes and deposited upon their wheels on spots 21 and 22; those upon spots 15 and 19 are advanced to 16 and 20, respectively, and all other engines in section C are moved forward correspondingly to leave spots 13 and 17 uncovered for the reception of engines from the preceding sections or from the unwheeling pits, as previously noted.

Engines Unwheeled Before Entering

Two unwheeling pits are located immediately to the right of section A, at the entering end of the shop. To them two engines are delivered each day from the track leading from the sand-blast house. A gang of men starts at once upon the work of preparing them to be lifted from their wheels, so that, by the time the moves within the several sections have been made, these two engines are ready to be deposited in the finally vacated positions, which may be in any one of the three sections, according to the nature of the repairs to be made upon the incoming locomotive.

The two engines hauled away from positions 25 and 26, section D, are coaled and watered in the yard, after which the switching engine takes them to the finishing shed, Fig. 2, for minor adjustments preparatory to road service. Here they are fired, and for the first time move under their own power. As in the locomotive shop, they advance progressively from one position to another, and in the final position they are spray painted.

An outstanding advantage claimed for the progressive assembly method as applied to locomotive repair is that each part of the work is performed in a definite place. The several parts repair departments of the shop may be located adjacent to the positions where the parts are to be applied to the engine, and thus much long-distance trucking is avoided. Operations requiring steam, air, gas or water can be performed close to the source of supply and the promiscuous distribution of these commodities by long lines of hose, with attendant difficulties when such lines of hose are inadvertently cut, is forestalled.

Portable tools and their accessories are always at hand when needed; never at the other end of a shop a quarter of a mile long. Last, but by no means least, each job is handled by gangs of men who are trained to that job, who are not widely separated, and who have all the appliances necessary to their respective trades ready to their hands.

All newly overhauled engines are given a running test of about two hours' duration over what is called a "slip" track in the yard. The track is about half a mile in length and has a pronounced hump about midway of its length. The rails of the track are well greased, and this condition is maintained by allowing grease to drip from two small tanks secured temporarily to the pilot of the engine under test.

An engine starting from either end of this track is faced with a considerable grade, up which it climbs quite slowly, though the machinery may be running at a rate of 50 or more miles an hour. Passing over the hump, the engine is reversed and the locomotive slides slowly down the descending grade, often with its wheels running at equal speed in reverse direction.

This manner of testing allows the inspectors to ride upon exposed parts, or even to walk beside a locomotive which is running at normal road speed, yet advancing so slowly that they may observe clearly the action of the machinery under the equivalent of actual road conditions.

Visual Record in Superintendent's Office

To enable the general superintendent of shops to keep in close touch with the work in progress, the board shown in Fig. 3 is affixed to the wall of his office, in a position where it may readily be observed from his desk. Round tags, each bearing the number of an engine in the shops or yards, are hung upon convenient hooks on the board, to show where each engine may be found.

Rapid progression of the work involves the shifting of these tags from one position to another every day, as the engine itself moves through the shops. As all the moving is done at night, it becomes an easy matter for the official having the work in direct charge to change the tags each morning to correspond with the actual moves already made. The superintendent is thus prepared at a glance to answer any question that may come in from the various divisions of the road as to the progress of work upon any given engine, and the date upon which that engine may be delivered to service.

Beautifying a Factory Entrance in Illinois

THE entrance to the plant of the Whiting Corporation, Harvey, Ill., was recently awarded the second prize in a contest conducted by the "Illinois Journal of Commerce" to determine the most attractive factory dooryard in the State. The competition was carried on in an effort to arouse interest in better factory surroundings



in which the commission had attempted to apply the law to practices of which it did not approve, without regard to legal precedent and contrary to the customs and usages of trade. The courts put an end to the notion that the commission could evolve out of its inner consciousness a business code with the binding effect of law, and by way of emphasis went further than was necessary to achieve their purpose.

Code Should Be Sponsored by Clear Majority of Industry

What of a code of fair trade practices for each industry, written by the overwhelming majority thereof, with the Federal Trade Commission as arbiter? The language of the statute is not like a crystal, fixed and unchangeable; it is applicable and has been applied to many practices not specifically in the minds of the lawmakers when the act was passed. The question is simply one as to the extent to which the customs and needs of the preponderant part of an industry may be taken into account by the commission and the courts in deciding what are, and what are not, unfair methods of competition. No case involving a practice formally condemned by a clear majority of the industry involved has been presented to the courts together with the fact of such condemnation.

Approached from this angle the element of coercion is greatly minimized and the grave constitutional questions largely disappear. It is not a case of galvanizing the will of the majority into law. The needs and customs of the majority are merely taken into account in applying the law now on the statute books. The plan contemplates an administrative and (if sought in individual cases) a judicial weighing of the relative merits and advantages of the proposals of all interests concerned. It further contemplates the rejection of any and all measures that would work undue hardship on any member or branch of the industry in question, or on the public. And it is founded on the conception that the minority has no greater right to impose its will on the majority and on the public, by standing in the way of important reforms in the public interest, than the majority has to impose its will on the minority by insistence on measures that would unduly prejudice the rights of such minority.

Outlawing Practices Admittedly Unlawful

On the question whether the experiment is worth making let us consider the possibilities of the procedure as indicated by more than 40 successful trade practice conferences already held. In the beginning the conferences were largely confined to outlawing practices admittedly unlawful. It is not to be inferred, however, that these conferences had no constructive value. They had the effect greatly to elevate the standard of ethics in the industries involved; to protect honest manufacturers and dealers against the unfair competition of their unscrupulous rivals; and to restore and increase public confidence in such industries. Certainly no one can question the benefit to all concerned from the wholesale elimination of such pernicious practices as short weights and measures, false advertising and misbranding.

Believing that the establishing of standards of quality in commodities was the greatest single reform that could be accomplished for the protection of the public, the commission widened the scope of its conferences to include content and quality definitions of furs, "Castile" soap, engraving and embossing, gold-filled watch cases, rayon, furniture, woven furniture, rebuilt typewriters, plate glass and hickory handles. The hickory handle conference is significant in its bearing on the future usefulness of the trade practice conference procedure, in that the standards of quality adopted at the conferences were those which had previously been worked out by representatives of the industry in cooperation with the division of simplified practice of the Department of Commerce. In other words, the subscribers,

to the conference rules availed themselves of this means of translating the beneficent results of the helpful cooperation of the Department of Commerce into a binding agreement.

Scope of Trade Practice Conferences Broadening

In the past year the conferences have been even more constructive from the standpoint of the industries affected. Resolutions have been adopted providing for the publication of prices realized in actual transactions; condemning price discrimination in the language of Section 2 of the Clayton Act; declaring against the payment or allowance to buyers of commissions, bonuses, rebates or allowances of any kind; against the rendering of unusual services or the assumption of unusual charges without charging the customer therefor; against discrimination in price resulting from the allowance of quantity discounts on split shipments; against selling goods below cost; and against the dumping of considerable quantities of goods in territories outside of the subscriber's particular markets and selling such goods at prices below those prevailing in his own territory.

This brief review of recent accomplishments seems also to me to reflect the current trends of thought in Government and in industry. So far as possible the adjustment of the aspirations and needs of business with the law will be accomplished through conference and cooperation. Competition is to be preserved and the undue concentration of economic power avoided by encouraging and approving that degree of cooperation between independent businesses which will enable them to survive the competitive struggle and remain independent. Waste is to be eliminated and the public protected by the establishment of standards of grade and quality. And the extremes of overproduction and underproduction are to be avoided, and stability of employment promoted, by encouraging the dissemination and intelligent use of the essential facts of industry.

Firm Price Policy to Be Encouraged

Care in the pricing of products and the avoidance of secret departures from prices openly established will be favored to the end that industry may not be plunged into price wars to their impoverishment and demoralization. As in the past, the use of approved methods of cost accounting will be urged. The adoption of and adherence to a firm price policy will be encouraged. Such a policy is in keeping with Section 2 of the Clayton Act and is justified on other grounds as well. The products of one industry are the raw materials of another, and discrimination between competing concerns in the matter of prices on necessary materials, not based on differences in quality or quantity, will in the end give rise to the very evils that it is the purpose of the anti-trust laws to prevent.

At this stage we might well inquire what scope would be left to competitive effort under such a policy? What protection is afforded the public, and what becomes of the highly developed professional purchasing agent? I firmly believe that under such a system competition would continue to be the great regulator of our domestic economy. There would be no decrease, but a marked increase, in the steady march of progress. The struggle for greater efficiency, for the elimination of waste and for fixing standards of quality would continue with renewed vigor. Prices would be fixed not in concert, or by agreement, but by each industrial unit acting singly, and they would reflect the relative efficiency and individual policy of each concern. The striving for improvement in the quality of output would be unhampered by the temptation or need to lower standards in an effort to realize a profit in a chaotic market.

Rationalization Program Requires No Trust Law Tinkering

Under such a system the professional buyer would find ample opportunity for the legitimate employment of his talents. He could still shop for the lowest prices and

best quality. But the lying buyer would be effectively stopped, because the price quoted him in each instance would be the best that the bidder could offer, having due regard to the situation in his company and the prosperity of his industry, and would not be shaved to meet supposedly lower prices by competitors which actually existed only in the imagination of the buyer.

With the prospect of such a policy of rationalization under enlightened leadership in industry and an administration committed to cooperation and engineering efficiency, what is to be gained by trust law tinkering at this time? That peculiar conditions in the coal and oil industries call for special attention is admitted. As a member of the committee of nine of the Oil Conservation Board I joined in a recommendation for a modification of the anti-trust laws to meet the peculiar needs of the oil industry, and that recommendation has been indorsed by the American Bar Association. Section 7 of the Clayton Act exists as a nuisance

and only makes them more troublesome and expensive. But a proposal to repeal that provision might encounter as much sentiment in favor of preventing mergers as in allowing them, and no one can predict what the outcome would be. That there should be some rationalization of the law with respect to the maintenance of resale prices on competitive trade-marked goods is attested by the hopeless confusion into which this subject has been plunged by the conflicting and inconclusive decisions of the courts.

With these exceptions I can see no good end that can be served by the repeal or a general modification of the anti-trust laws. I do not believe that the country will ever abandon free and open competition as the keystone of its economic policy. An enlightened administrative policy will enable us to retain all the benefits of competition and to eliminate all that is bad. That the realization of these ideals is possible is attested by the accomplishments to date.

Central Welding Shop Leads to Economies

Modest Equipment and Resourceful Workmen Available for Repair, Construction or Production in All Metals

BY T. C. FETHERSTON*

It is frequently found that in plants which have had a cutting and welding outfit for a long time no clear idea is had of the maximum usefulness of the oxy-acetylene process. Thus a sheet metal company might purchase equipment to oxweld a particular lot of tanks and fail to realize, when a brake frame cracks, that there is already



A Good Welding Shop Without Elaborate Equipment. At right is oxy-acetylene equipment on a hand truck; another set is at the welding table in center; on wall is welding rod rack and at left is lime bin for annealing castings. In foreground is a variety of work done on steel, iron and alloys

on hand a means of speedy and economical repair. Again, a manufacturing plant might buy an outfit solely for repair work, never realizing that the welders could take an important place in direct production. Or a company might use its outfits for both repair and production work without thinking that they could also be used to install pipes, or to cut up scrap.

Conditions of this sort are not conducive to true economy because all available resources are not being utilized. But, on the other hand, it would seldom pay to employ a man solely to look for places to use the cutting and welding blowpipes. The best procedure is to let new applications come to light naturally.

This is done quite readily by establishing a central welding department or shop. It is not necessary that all oxy-acetylene operations be carried on in a special building, but rather that they be organized and assigned definite headquarters. Then if the machine shop wants a foot treadle repaired there is a place to take it. Or if the men tearing down old equipment want some steel work cut away there is a definite place where they can locate a "cutter" with the necessary equipment.

A central welding shop accomplishes several things: Operators know where to find apparatus; shop foremen know where to go to have cutting and welding jobs done; a shop warrants a welding foreman of more than ordinary ability; and executives have a means of keeping welding costs.

When one considers the number of jobs and diversity of work which can be done by such a department it can readily be appreciated that the shop need never be without work of some kind, even though it is quite modest in size and equipment. If there is no production work, the operators can always reduce the plant's scrap pile either by reclaiming material or by cutting up worthless junk. A well managed central welding shop will prove a real boon to any plant. It can be a self-contained unit, always busy and always assisting in cutting down operating expenses.

Development of the use of steel as a building material for bridges is dealt with in a 20-page booklet just issued by the American Institute of Steel Construction, Inc., 285 Madison Avenue, New York, entitled "Endurance and Beauty in Steel Bridges," by Charles Evan Fowler, consulting engineer. The booklet traces the uses of iron and steel in bridges from the last quarter of the eighteenth century down to the present time and discusses the advantages of the various types of steel spans now being constructed.

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