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REMARKS OF
MICHAEL PERTSCHUK
COMMISSIONER
FEDERAL TRADE COMMISSION
BEFORE
THE NATIONAL ASSOCIATION OF RETAIL DEALERS OF AMERICA
CONFERENCE

JANUARY 11, 1982
CAESAR'S PALACE
LAS VEGAS, NEVADA

Just a little over a year ago, while I was visiting with family for the holidays, a close relative, a small textile manufacturer, confessed to a dark secret: He had voted for Reagan even though he knew it meant voting me out of my job as FTC Chairman.

"He's going to get government off the backs of business," he said, "and it's just got to help."

A year later he was in bankruptcy. Though his business was fundamentally sound, he had been pulled down by a combination of interest rates (and as a small manufacturer you know that the rates he had to pay were not prime rates), slow-paying customers, themselves stressed by the recession, and gun-shy creditors who called in their loans.

He's now retired and the government is off his back -- except for his social security check.

This painful story, close to home, seems to me symptomatic of the many ironies -- and tragedies -- that small business, and the American public generally, is experiencing as we move into the era of Reagan Administration policies.

I think that many of you know that, in its role as enforcer of the antitrust laws, the FTC has long served as a protector of smaller businesses against unfair competition at the hands of would be corporate predators. We have challenged in the past -- and up to this date have continued to challenge -- both price and territorial restrictions on retailers imposed by manufacturers or dictated by so called power buyers. It has been the FTC rather than the Justice Department which has brought cases challenging business conduct which discriminates against smaller competitors.

In merger enforcement the Commission's historical record has been characterized by the persistent enforcement of the antitrust laws against horizontal, vertical and conglomerate mergers.

And where the law has fallen short, as it too often has in maintaining a diverse economy characterized by independent enterprises, we have sought reform of the law. So in 1979, we went to Congress recommending legislation to stem the epidemic of huge conglomerate mergers.

Perhaps most importantly, the Commission's antitrust enforcement actions have consistently reflected a deep concern about increasing concentration and dominance of industries by a few large firms.

In the consumer protection area, the Commission has initiated a number of actions which I believe can help the honest small competitor and make the marketplace work in a fairer and more vigorously competitive fashion. For example, the Commission's franchise rule requires franchisors to furnish critical information to prospective franchisees. Our voluntary standards rulemaking proceeding is examining practices in product standard-setting and certification which may unfairly disadvantage smaller firms with new and innovative products.

Now I readily confess that small business' affection for the FTC has, at times, been sorely tried. Particularly in the development of consumer protection rules, small businesses have felt -- sometimes with justice -- that the heavy hand of regulation threatened to fall unequally upon them. And I do not want to fly under false colors myself. I came to the FTC initially as a consumer advocate, not as a small business advocate, though from the first I was committed to carry out the Commission's historic role in guarding small business against the predatory anti-competitive practices of business giants.

In the consumer protection area, I have favored and still favor rules which would impose new regulations on small business, such as our rule to require used car dealers to disclose defects which they already know about

in the cars they're selling, and our proposed funeral rule which would require funeral directors to make price information available over the telephone and to give the bereaved family a price list itemizing the separate possible components of a funeral.

Even where the Commission has voted to add some burdens to business, however, it has been done only after a long and exhaustive review of the evidence supporting the need for a rule, possible less burdensome alternatives, and the costs of imposing the rule requirements. I do not expect the small business community to enthusiastically embrace rules which impose extra burdens. That would defy human nature. But I would urge you to ask yourself if something like the used car rule is really an unjustified burden to the honest dealer. And, ask yourself too, whether the FTC's efforts to formulate standards for dealing with consumers have not, in most cases, helped business in its own efforts to police itself and to strengthen its reputation for reliable quality and service.

So I believe it's fair to say the Commission's record in dealing with small business has been historically a good one -- good for business and good for consumers. But where are we going with the Reagan administration and the policies of the new Chairman, Mr. Miller?

Certainly the Reagan campaign's promises to rid business of the straightjacket of federal regulation resonated as harmoniously in the breasts of small business-people as any American's -- and with reason! Small business is often ill-equipped to deal with the detail and paperwork burdens and legal complications of proliferating regulations from the local, state and federal level tumbling over one another.

Mr. David Stockman, a rabid deregulator if ever there was one, wasted no time at all in zeroing in on the Federal Trade Commission for the deregulatory guillotine. But Stockman's budget knife was poised to carve out -- not the FTC's consumer protection mission -- but its antitrust mission. Stockman would have terminated the Commission's historic responsibility -- dating from 1915 -- to police the marketplace against antitrust violations and its unique role, under such laws as the Robinson-Patman Act, to prevent smaller businesses from falling victim to unfair price discrimination and predatory practices by business giants. If it weren't for the yelps and howls of the small business representatives in Washington and those Congressmen still concerned about the survival of small business, the Federal Trade Commission's role in preserving competition would have been abolished, not by an Act of Congress but by the cruel knife of the budget cutter.

Frustrated on that front, Stockman declared that the FTC's ten regional offices were the next target of opportunity for demolition. It is certainly an irony that an administration among whose rhetorical themes is getting the government back to the people and away from Washington would propose to eliminate those very branches of the FTC which are the closest to the communities they serve. It is the Commission's regional offices which handle complaints from small businesses of unfair competition. And over the years it has been the Commission's regional offices which have investigated and urged upon the Commission the great majority of complaints against discrimination and other distributional restraints, which may harm small competitors. Investigations and complaints are the visible tip of the iceberg. But who knows how many would-be law violators have been deterred by an informal call from an FTC regional office or by the knowledge that the Commission's offices were there, ready to accept complaints.

So far Stockman's efforts to close the Bureau of Competition and the Regional Offices have been frustrated by Congress, but the Commission's budget for investigation and prosecution of antitrust violations has been cut back. This, of course, has been true for most agencies, but at the FTC the cutbacks have been compounded by a shift of money and lawyers by the new leadership, away from investigation of price discrimination, dealer restrictions and

other so-called distributional restraints into the search for horizontal price-fixing, an area which the Justice Department with its criminal authority can police far more efficiently than the FTC.

A second major shift has been the new administration's distinct lack of enthusiasm for vigorous enforcement of laws prohibiting anticompetitive mergers. The Justice Department is engaged in revising the traditional guidelines for challenging mergers, an effort which is almost certain to ease the standards for challenging horizontal mergers between competitors. Both Assistant Attorney General Baxter and Chairman Miller have indicated that vertical mergers are simply unlikely to pose a competitive problem. Both of them appear to believe in a theoretical world of large integrated companies which operate without preferring their own wholesale or manufacturing operations over other customers or sellers.

As to Robinson-Patman enforcement against price discrimination, I quote from the report of the administration's transition team, headed by Jim Miller, "Small business is extraordinarily important to our economy." But the report goes on to say, "... even judicious selection of Robinson-Patman cases would constitute an inefficient means of supporting this segment of the economy."

Finally as to the problem of economic concentration and "bigness" generally, I believe the old FTC and the new administration have distinctly different views of what's good for our economy and for our society. Again, I quote from the transition team report, headed by Miller, "Conglomerate mergers tend to generate efficiencies, and the Commission should be wary of standing in their way." And, of course, Attorney General Smith made a point to tell us that "Bigness in business does not necessarily mean badness."

Although the Reagan administration has protested that their changed signals on antitrust enforcement have had no effect on merger activity, it's undeniable that there has been a flood tide of merger activity this year. According to the merger reporting company of W.T. Grimm, there was a total of 1,807 mergers and acquisitions in the first nine months of 1981, with a total value of \$60.8 billion. This compares with 1,354 mergers and acquisitions worth \$30.9 billion in the first nine months of 1980. Frankly, it's hard to conceive of a Mobil attempting to acquire a Conoco or a Marathon, major competitors in all levels of the oil industry, during any previous administration. And we all know about the increasing number of mergers in the financial industries -- for example, Sears' purchase of Dean Witter and Coldwell, Banker, Prudential's acquisition of Bache, and American Express's acquisition of Shearson, Loeb -- which may come back to haunt the small business

community as well as consumers generally, with fewer opportunities to shop around for credit.

This new tolerance of larger mergers and increased concentration is troubling indeed. Efficiency, according to the economists' models, is the watchword of this administration, and, of course, efficiency and productivity are the key goals of economic policy. Yet the Reagan policymakers tend to view corporate giantism as synonymous with efficiency without sufficiently valuing the innovation, the resourcefulness, the concern about local communities, and the job-creating potential of small business. In short, the economists' value of efficiency is too narrow a view of what's good for our society. But the people seem to understand what the economists do not. A recent poll appearing in the National Journal showed that, by two to one, the public felt small business was more responsive to people's needs than large business.

Do we really think it's sufficient for this country to end up with industries in which only two or three giants compete? That vision belies the fear of generations of business and governmental leaders who feared deeply the concentration of economic power in the hands of fewer and fewer business barons.

I'm afraid that the administration's tilt toward large business extends to other economic policies as well. Let me return to that close relative with the small textile firm in bankruptcy. He's not blaming Reagan and maybe it's

unfair for me to. But I have no trouble judging that this administration's policies have contributed to economic hell for small business.

High interest rates continue to be the administration's bitter medicine for inflation, but larger businesses through their command of prime rates (or below) as well as discriminatory tax credits and other tax breaks simply have not been hit as hard.

Many small businesses and their representatives in Washington welcomed the President's tax break, then took a second look at who was really benefiting. After examining the proposal, the Small Business Legislative Council, in desperation, told a Senate Financial Subcommittee:

"To put it bluntly, the small business community (is) being taken for a ride on a piece of legislation authored by representatives of the major corporate powers in this country ... It will be difficult to write a tax bill better designed to speed the extinction of small business."

A tax policy oriented toward high interests rates eliminating taxes for big corporations, the virtual shut-down of the Small Business Administration with its loan and aggressive small business advocacy programs, government procurement and research and development programs skewed toward big business -- all testify to the principal that, when the Reagan administration waxes eloquently about the glories of the unfettered free marketplace, what they are talking about is the freedom of the corporate elephants to dance with abandon among the small business chickens.

I have great respect, personally, for the new Chairman of the FTC and for the lawyers and economists whom he has brought to the Commission to carry out its policies. They are men and women, who, for the most part, have spent many years, often on university campuses, developing theories which lead them to believe deeply in the benign workings of the marketplace and the evils of government intervention in it. While I have my doubts about some of the President's regulators, especially in the environmental area, the new men and women at the Commission are not themselves tied to or beholden to big business or lobbies. They believe deeply that their policies are in the best interests of consumers.

But their simplistic faith in the benign workings of the unfettered marketplace has an Alice-in-Wonderland quality about it. They believe that the marketplace will punish monopolists, predatory price cutters, and price discriminators. Of course, there may be some small business and consumer victims along the way but ultimately the marketplace is self-correcting, they say. They're not worried about mergers, and they're not terribly worried about bigness. They're not worried about conglomerates gobbling up one company after another today, such as the recent attempted purchases of oil companies fueled by extraordinary profits, earned, not through entrepreneurial genius, but

through an OPEC cartel's success in exploiting the world's oil consumers. The hard truth is that, if we have to wait to allow the market to erode monopoly power or punish the predators, many small business victims of anti-competitive practices will continue to fall by the wayside.

The regulatory reform movement, the reaction against successive federal as well as other regulation, began in the early 70's. It was in many aspects a healthy reaction to the uncontrolled growth of regulation and the excessive concentration of authority in the hands of bureaucrats, many of them remote from the people and problems that the regulations were designed to cure. I can tell you that many of us involved in regulation learned the hard way to avoid the excesses and the irrationalities of regulation. And the process of regulatory reform is well underway. But I'm concerned, and I think you should be too, that in the name of regulatory reform, and in the name of freeing the marketplace, biases are being built into our tax and monetary and other government policies which will accelerate the trend toward giantism in the American economy and the progressive destruction of the small enterprise segment of American business -- the segment which still produces the majority of real innovations and is by far the vast source of new jobs. Small business, perhaps we need to be reminded, has also been a great source of democratic diversity and independence in our society, a hedge against the excessive accumulation, not only of economic power, but of political power.

I do not believe that the interests of consumers and small business are fundamentally in conflict. I believe that regulation is often necessary to set the ground rules by which competitors can fairly compete and consumers can get a fair and equal shake. But as a regulator, I know that regulations must be stripped to the minimum, that the cost of needless or ineffective regulation will ultimately be born by the consumer. As good businessmen, I expect you know as well as any one the difference between a shoddy bargain and a good one. For small business as well as consumers, I believe that much of this administration's actions, as distinguished from its rhetoric, are shoddy bargains. I know that the voice of your association and your members will be added to those who urge Congress and the administration to treat small business fairly and equitably in the evolution of government economic policies in a time of terrible economic stress. Be on guard that neither small business nor consumers fall victim to policies shaped and implemented primarily for the benefit of those who are already strong and powerful and, thus, whose influence far exceeds their numbers. As John Kenneth Galbraith has said, "That a large share of all economic comment comes from people of comfortable means will not be in doubt ... it follows that the voice of economic advantage being louder regularly gets mistaken for the voice of the masses."