C A U T I O N *** A D V A N C E

ADVANCE COPY OF ADDRESS BY CHAIRMAN CHARLES H. MARCH, OF THE FEDERAL TRADE COMMISSION, AT THE ELEVENTH ANNUAL DINNER OF THE DRUG, CHEMICAL AND ALLIED TRADES SECTION OF THE NEW YORK BOARD OF TRADE, INC., AT THE WALDORF-ASTORIA HOTEL IN NEW YORK CITY ON THE EVENING OF THURSDAY, MARCH 19, 1936. FOR RELEASE ON DELIVERY.

Mr. Toastmaster, Ladies and Gentlemen:

I am very happy to be your guest at this large and representative annual gathering of your industry, and to have this opportunity to talk to you about the work of the Federal Trade Commission.

A little more than a year ago, it was my privilege to preside over a trade practice conference for the wholesale drug industry, held in Chicago. I had the pleasure of meeting many of you at that time. You who were there should be proud that that proved one of the most successful trade practice conferences ever sponsored by our Commission. Also, you will be gratified to know that the trade practice rules adopted at that conference have been lived up to by your industry with such unanimity that very few violations have been reported to the Commission. What has been done in the wholesale drug industry through the trade practice conference procedure has been or is being done in a great many other industries. This cooperative effort on the part of business to put its own house in order is an inspiring thing.

One of the reasons assigned for inviting me to speak to you tonight is that the work of the Federal Trade Commission is not as generally known and understood as it should be. Unfortunately, that is true. But it is not as true as it used to be. One reason for the increasing public knowledge of the work of the Commission is the trade practice conference procedure, and the spread of the idea of cooperative effort on the part of business. One reason why the work of the Federal Trade Commission has not been as widely known to the public is that it is seldom of a spectacular character. It is none the less important, valuable and effective. The more that is known of the Commission's work and the better it is understood, the more it will be appreciated.

History and Purposes of the Act.

The Federal Trade Commission is an administrative agency, exercising quasi-judicial functions. It is next to the oldest independent agency of the Federal Government. The Federal Trade Commission Act was signed by President Wilson on September 26, 1914. In a public statement issued at that time, President Wilson said that in the Commission's establishment, there had been created

> "A means of inquiry and of accommodation in the field of commerce which ought to both coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law."

He added that the Commission had been created with "powers of guidance and accommodation which have relieved business men of unfounded fears and set them upon the road of helpful and confident enterprise."

While the Commission has certain other powers and duties, its principal functions are twofold:

1. To prevent unfair methods of competition in commerce;

2. To make investigations at the direction of the President, the Congress, upon the request of the Attorney General, or upon its own initiative.

You are more interested in the first of these functions, and I shall therefore pass over the second, that is the investigational work of the Commission, with only a brief reference. However, let me say that it would be difficult to understate the importance of the investigational work which the Commission has done and is doing, or exaggerate its value to the American public. During its life, the Commission has conducted more than 80 general investigations and fact-finding studies. Notable among these have been the food inquiry, which resulted in the passage of the Packers and Stockyards Act; the chain store inquiry; investigations of the steel and textile industries, and of electric and gas utilities, to mention only a few of the more important. These inquiries have resulted in wholesome legislation, and in reforms which business and industry themselves have adopted due to the publicity attendant upon the Commission's investigations and reports. In many instances, they have resulted in savings to the public amounting in the aggregate to hundreds of millions of dollars. Merely the publicity attendant upon these investigations has been a powerful corrective of abuses which had become prevalent among the industries investigated.

Legislation resulting directly or indirectly from these inquiries has included the Packers and Stockyards Act, the Truth-in-Securities law, and the act for the regulation of stock exchanges, to mention only a few.

But you business men are more interested in the work of the Commission in the prevention of unfair trade practices than in its investigational functions.

Matters coming before the Commission directly probably affect the interests of more people than those referred to any other Federal agency. Sometimes a single case directly affects millions of citizens. Some affect practically every household. They have to do with nearly everything we eat, drink, wear, or make use of in any way.

The objective of the Commission is protection of honest competitors and the consuming public from fraudulent and misleading practices in commerce. In so many words, the Commission's organic Act directs it to prevent those subject to the Act "from using unfair methods of competition in commerce."

Procedure before the Commission is simple and effective. A case may originate in any one of several ways. The most common origin is through complaint of an unfair trade practice made by a competitor or a consumer. No formality is required for anyone to bring a matter to the Commission's attention. A letter setting forth the facts is sufficient, or it may be done by a personal call. In no case is the identity of the complainant made public.

When a matter is brought to the Commission's attention, it orders an investigation. If from the facts it appears that the law is being violated, the Commission orders a complaint served upon the alleged offender, who is thereafter known as the "respondent". He is allowed a reasonable time in which to make answer, after which the case is ordered to trial. Hearings are held, briefs filed, and the case argued before the Commission, which then takes the matter under advisement and renders its decision as in the usual court proceeding.

If the Commission finds that the facts bear out the allegations of the complaint, it issues an order requiring the respondent to cease and desist from the unlawful practices set out in the findings. The respondent has the right of appeal to the U. S. Circuit Court of Appeals, and finally to the U. S. Supreme Court.

If the Commission finds that one of its orders is being violated, it presents the facts to the Court of Appeals in the appropriate circuit and asks that its order be enforced. Its cases are given priority in these Courts. If the Court finds that the order is valid, and is being violated, it requires the respondent to obey the cease and desist order. In case of violation of the Court's order, the matter may be then handled by the Court as in a contempt proceeding, that is a penalty may be imposed.

We have developed another procedure, more informal, known as the stipulation procedure, by which we have been able to expedite our work and save a great deal of expense.

It frequently happens that a violation occurs through ignorance, and that the attention of the offender has only to be called to the fact to induce him to stop. Instead of issuing a formal complaint, the Commission allows the individual or corporation complained against an opportunity to sign a stipulation to cease and desist from the practices charged. If he does so, further action is suspended; if he refuses, the case goes to trial.

The Commission believes this procedure protects the American consumer from numerous unfair methods of competition, and, by reason of its simplicity and economy, reaches a far larger number of abuses than would otherwise be possible. Also, this procedure saves large sums, both to the government and to respondents. It should be said, however, that whether a respondent shall be permitted to sign a stipulation is entirely within the discretion of the Commission. This privilege is never permitted where violations are especially malicious and to the serious injury of the public.

Some may ask just what are unfair methods of competition in commerce, within the meaning of the Commission's Act. Congress wisely did not attempt to define the term, because unfair competition may take any one of a thousand forms. On this point, the Supreme Court said: "In the nature of things, it was impossible to describe and define in advance just what constituted unfair competition, and in the final analysis it became a question of law, after the facts were ascertained." Therefore, each case must be considered in the light of the facts pertinent thereto.

In general, unfair trade practices may be grouped into two classes: those which involve an element of fraud or dishonesty, and those not inherently dishonest but which are restrictive of fair competition. It is the job of the Commission, therefore, when a complaint comes to its attention, to ascertain the facts and render its judgment on those facts. Conclusive evidence that the Commission's work is thorough is to be found in the record of its cases appealed to the Courts. For example, during the fiscal year ended June 30, 1935, Commission orders were approved in all of the 10 cases taken to Circuit Courts of Appeals. From February, 1935, to February of this year, 19 Commission orders were appealed to Circuit Courts of Appeals, and in none was the Commission overruled.

Cases decided by the Commission affect every competitor in the business engaged in by the respondents; as well as consumers of the commodities involved. When you eliminate an unfair practice by one competitor, every honest competitor is benefited thereby, as well as all consumers of the products involved. What this is worth to the public it is not possible to estimate, but the amount would be large.

As appreciation of the value of its work grows, more business men and consumers are turning to the Commission for relief from dishonest practices. This is evidenced by the recent heavy increase in the Commission's legal work. In the last two years, this increase has been very marked. During the fiscal year 1934, there were 1,629 cases before the Commission, whereas for the fiscal year 1935 the number increased to 3,385. From the number of cases coming to the Commission thus far this year, it is estimated the total number to come to its attention during the year will be in excess of 4,500.

Trade Practice Conferences.

In its work of suppressing unfair methods of competition in commerce, the Commission has developed a plan whereby it is possible to accomplish this objective by wholesale, at great saving both to the government and to business. I refer to the Commission's trade practice conference procedure. This procedure is a logical development of the Commission's effort, in cooperation with business, to protect the public from unscrupulous men who are out to exploit the public and increase their profits at no matter what cost to honest competitors and the public.

This procedure, about which you are likely to hear much more, affords an opportunity for members of a particular business to sit down together and, under the sponsorship of the Commission, consider their particular problems, and collectively agree to the abandonment of unfair practices. Under this procedure, members of a business take the initiative in establishing a degree of self-government by setting up their own code of business ethics, subject, of course, to the approval of the Commission. This means that they must be within the law. Thus all members of a given business are placed on the same fair competitive basis. When unfair practices in an industry are thus eliminated, every honest member of that industry is benefited, and it is made easier to require unscrupulous persons to keep within the law. The consuming public is also a direct beneficiary. That is where the primary concern of the Federal Trade Commission lies, for it is the public interest with which the Commission must at all times concern itself.

By this procedure, often the unfair and dishonest practices of an entire industry are corrected at a single conference, whereas, if it were necessary to take action against each individual offender, hundreds of proceedings might have to be instituted.

The Commission's trade practice conference procedure usually leads to the prompt abandonment of unfair practices by the entire industry concerned. Moreover, an industry thus grows into the habit of policing itself, and its honest members, who constitute the large majority, cooperate in bringing about enforcement of the law.

Since inauguration of the Commission's trade practice procedure, approximately 175 conferences have been held. It is gratifying to report that agreements so arrived at have been observed by an overwhelming majority of the members of the industries concerned.

Applications from more than 40 industries for such conferences are now pending. Some are from very large and important industries. In addition, representatives of approximately 200 other industries have made inquiry as to necessary steps for holding conferences. It would be difficult to overemphasize the importance of this growth of cooperative spirit in business.

Amendments to the Federal Trade Commission Act.

I have discussed briefly the origin and history of the Commission. Now a word about certain proposed amendments to the organic act under which the Commission functions. Most of these amendments were recommended by the Commission in its last annual report, in the light of its twenty-one years of experience under its Act. These amendments were introduced in the Senate by Senator Wheeler, of Montana, Chairman of the Senate Committee on Interstate Commerce, which has favorably reported the amendments to the Senate, and in the House by Representative Rayburn, of Texas, Chairman of the House Committee on Interstate and Foreign Commerce. I refer to these amendments because considerable misinformation exists about them. No doubt some of it has been circulated by interests unfriendly to the purposes of the amendments, and possibly to the original act. The principal amendment proposed is to Section 5 of the Commission's act, which would insert therein the words "and unfair or deceptive acts and practices", so that the language of that section, as amended, would read: "That unfair methods of competition in commerce and unfair or deceptive acts and practices in commerce are hereby declared unlawful."

Without this amendment, there is question whether the Commission has jurisdiction of an unfair practice where it develops that the offender has a monopoly in his field, and therefore has no competitor, or in a case where all competitors are equally guilty of the same practice. In one case, carried to the Supreme Court, a Commission order to cease and desist was voided because the court took the position that all of the competitors of the respondent disclosed by the record had been equally guilty. The court said it was not the business of the government to protect one knave from another. Thus no matter how much the public might be injured, the Commission may be powerless to give it the protection to which it is entitled. The proposed amendment would clear away doubt as to the Commission's jurisdiction. That is the purpose of the amendment.

For the most part, the other amendments are either clarifying or procedural.

The fundamental purposes of the Federal Trade Commission Act and those sections of the Clayton of which the Commission has jurisdiction, are to eliminate unfair trade practices and such practices as tend substantially to lessen competition or create monopolies. Some have felt that there has been a tendency in recent years away from these purposes; that there has been a lessening of the public demand for enforcement of the anti-monopoly laws. In my judgment, this tendency has been fostered on the one hand by selfish interests whose practices these laws were intended to stop, and on the other by a growing belief that preservation of competition was an economic fallacy and mistake. I do not believe it can be successfully denied that this latter belief has been artificially encouraged. It is easy to say that because great enterprises exist in considerable number, and are frequently able to operate at low cost, the public interest would be better served by their encouragement than by their regulation or elimination. But this argument fails to take into account the disastrous results to the public which usually follow the concentration of an enterprise largely or almost exclusively in a

few large units. Experience has shown that the capacity some large businesses may have to give the public the benefit of low prices is often exercised only at great cost to themselves, a cost which even they can afford only temporarily. It is as true now as when the laws against monopolies were passed, that once success has attended efforts of large enterprises to drive from the field the small competitors who cannot meet these temporarily lowered prices without fatal loss to themselves, such selfish interests usually raise prices to even higher levels than they were before.

It is my belief that the late severe economic depression can be traced in large degree to reprehensible practices of selfish interests, many of which were unsoundly and excessively capitalized. These practices were not properly controlled, because the country had become so blinded by temporary prosperity as to accept the theory that monopolies were beneficial rather than dangerous.

What happened? In their greed for profit, monopolistic enterprises charged more than the traffic could bear. They had no regard for ultimate consequences. By eliminating competition, they thought they were on their way to greater success and greater riches. Actually, however, as it turned out, fewer people were able to buy the products of the big business enterprises which had concentrated output in their own hands, for that very concentration deprived many of their means of livelihood and thus destroyed their purchasing power. The result, so often called over-production, would probably better be termed under-consumption.

It is my conviction that to allow great interests a free hand and permit them to destroy competition is not only disadvantageous to a principle on which our government was established, that is, equal opportunity for all who may be fitted to improve their position by reason of their own energy and initiative. By this I do not mean that it was ever intended to protect the lazy or incompetent. I do mean that the right of every man to use his brain and energy and gain a fair reward therefor should be preserved and protected.

If we are to accept the process of concentration of business in a few hands as beyond control, then it is time to admit that our foremost national aim, individual opportunity, has been lost, and that what we had believed was our outstanding national trait, individual initiative, either has failed or is no longer worth preserving.

I am afraid we have been taking the sturdiness of American individualism too much for granted. It is time we examined into this American characteristic and decided whether we are to use it, or lose it. If we are to abandon this trait, either we place ourselves at the mercy of selfish combinations, or we must take more and more reliance on government.

For my part, I hold that through wise enactments, the rights of the individual should be protected, and that individual initiative and capacity should have a fair chance to assert themselves honestly and efficiently, and receive the just reward to which they are entitled.

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