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ADDRESS BY

HONORABLE CHARLES H. MARCH, MEMBER OF FEDERAL TRADE COMMISSION

AT TRADE PRACTICE CONFERENCE FOR THE

AUTOMOBILE INDUSTRY,

HELD AT DETROIT, MICHIGAN,

APRIL 26, 1938.

Ladies and Gentlemen:

It is indeed a pleasure to meet with you, the members of this great industry, the automobile industry of America. In the name of the Federal Trade Commission I welcome you to this trade practice conference. We are met together, you on the part of the industry and we on the part of the government, to take friendly counsel with a view to establishing a constructive program to serve the best interests of the industry and the public. We in America take pride in the fact that those who govern and those who are governed can work together as friends. By pooling their best thoughts and cooperating they can the better reach that common goal which we all cherish and strive for, namely, the prosperity of business and the well being of all the people.

The Federal Trade Commission is anxious to assist your industry, and all industry, in maintaining business on a high plane of fair and ethical conduct, to protect the freedom and opportunity of business to develop and expand, and to protect the rights of the buying public, on which the prosperity of industry depends. It is to your interest as well as to the interest of the government that the buying power of the masses be maintained, and it is to the interest of the buying public that business be permitted to expand and develop free from the fetters and burdens of unfair competitive practices. Thus it is plain that by serving the public you serve your own best interests. With this unity of purpose we can work together in building firmly and constructively in the establishment of truly fair trade practices. We can, moreover, rightfully expect to speed progress toward this goal of fair service for the common good of all by voluntary united effort -- by friendly counsel in this cooperative undertaking -- for which purpose we are met here today. I say we may thus expect greater progress than may be hoped for when disunity leaves no alternative but the resort to compulsory legal proceedings for the correction of trade abuses.

Your industry has a great opportunity before it in this trade practice conference proceeding. It has the opportunity of demonstrating the value of cooperative endeavor, under Federal Trade Commission auspices, in what might be considered the process of true industrial democracy; where capital and labor, manufacturer and distributor, seller and buyer -- all engaged in production, distribution and consumption -- recognize their interrelated interests and work together under fair principles for the common good of all.

Yours is a truly national industry with an almost unanimous appeal, touching the lives and habits of nearly every man, woman and child throughout the country. The manufacture and distribution of automobiles and automobile products give employment to thousands of persons and add substantially to the country's volume of trade and commerce. The welfare of your industry necessarily affects the country's economic welfare, and we of the Federal Trade Commission have a very real interest in promoting this particular and general prosperity on a sound and lasting basis.

At the present time there are nearly 50,000 automobile dealers who market the products of our great factories which lead the world in producing passenger cars, motor trucks, tractors, as well as accessories and parts. There are nearly six million persons engaged in the automobile industry or identified with it in some way or dependent upon it in some manner. The total value of cars and trucks produced during the year 1936 amounted to two billion, four hundred and sixty-nine million dollars.

I am glad to see all the important divisions of this vast industry so well represented here. All have so much in common that the greatest good will be accomplished by a conference broad in scope.

It is both the purpose and the function of the Commission to retain the benefits of the advances made to date and to continue to improve business, individually as well as collectively. To achieve this improvement, we must frankly and courageously notice and take corrective action as to those trade practices which are harmful, or which block or stifle improvement, or which are unfair to industry as a whole, or to the consuming public whose patronage and good will are vital for the existence and growth of all industry.

The Federal Trade Commission is very anxious to assist your industry to make this task a success and help honest competitors maintain high standards of business conduct through the elimination of unfair and monopolistic practices. Such practices stifle and restrain competition and should be eliminated from the body politic, thus bringing about that true competitive economy which tends toward freedom and the expansion of business activity.

The Commission is an administrative agency of the Government exercising quasi-judicial functions. The purpose of its creation, as outlined by President Wilson in approving the Federal Trade Commission Act of 1914, was to serve as "a means of inquiry and of accommodation in the field of commerce" to "coordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law." It is our duty to see that trade and commerce are conducted on the basis of fair play within the policy of the law. In carrying out this function we prefer to have competitors keep within the law by friendly, cooperative action rather than through resort to compulsory legal proceedings which at times may be necessary to effectuate the correction demanded by the law and the public interest.

The Commission's organic law, passed in 1914, declared unfair methods of competition in commerce to be unlawful and charged the Commission with the duty of preventing them. The Wheeler-Lea Act, approved by the President March 21 of

this year, amends the Federal Trade Commission Act and strengthens the authority of the Commission to keep the channels of trade and commerce free from harmful practices. The law now provides that unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are unlawful. It also provides special civil and criminal restrictions and penalties against the use of false or misleading advertising of food, drugs, devices and cosmetics.

Another law relating to business practices which is administered by the Federal Trade Commission is the Robinson-Patman Act. It prohibits certain forms of discrimination in price and related practices. It is now possible under this legislation to eliminate many unfairly discriminatory practices, which business men themselves had long hoped might be accomplished. Discriminatory practices which "injure, destroy, or prevent competition" or which may "substantially lessen competition or tend to create a monopoly in any line of commerce" are prohibited.

This new law also extends the principle of non-discrimination into areas other than price as such. Whether or not they might be regarded as forms of indirect price discrimination under Section 2 (a), the act specifically declares it unlawful: To pay or grant or to receive or accept anything in the way of commission, brokerage, or other compensation, except for services rendered, either to the other party or to an intermediary who is acting for or is subject to the control of any party to the transaction other than the one paying such compensation; Subsection (d) makes it unlawful to pay or agree to pay compensation to, or for the benefit of, a customer for services or facilities furnished by or through such customer unless the same compensation "is available on proportionally equal terms" to competing customers; Subsection (e) makes it unlawful to discriminate in favor of one purchaser against another purchaser by furnishing or agreeing to furnish any services or facilities upon terms not accorded to all purchasers on proportionally equal terms.

It is also declared unlawful for any person "knowingly to induce or receive" a prohibited discrimination in price. This provision is very important to buyers, and the word "knowingly" appears to have been inserted for their protection.

With these general observations, I come now to the Commission's trade practice conference procedure, under which this conference is being held. This procedure has been developed by the Commission to aid industries in establishing and making more effective voluntary cooperation in preventing unfair methods of competition and unfair or deceptive acts or practices, and to raise the standards of business ethics for the protection of trade and industry as well as of the purchasing public.

This conference affords the members of the industry opportunity to assemble for the purpose of formulating and submitting proposed trade practice rules for the approval of the Commission. The trade practice rules proposed here will be submitted to the Commission for its consideration in the course of the proceeding. After preliminary consideration in the Commission the rules in appropriate form will be made available and all interested or affected parties will upon due public notice be afforded full opportunity to present any views, suggestions, or

criticisms which they may have concerning the rules proposed for the industry. Under this plan no one need fear that this conference today will be his last chance to be heard. There will be still further opportunity afforded by the Commission upon the public notice mentioned.

The Commission, as a matter of prime importance, must see that the rules as approved by it are within the law and in the public interest. No rule which sanctions or promotes any illegal act or practice can or will be approved by the Commission. This is in harmony with a reasonable and wise governmental policy of protection to honest business and to the consuming public.

It is, moreover, the Commission's purpose to see that the rules for your industry when finally promulgated neither work inequities or hardships nor give undue competitive advantage to one member or group over any other member or group. The rules must meet the test of fairness and justice. The rights of members of the industry cannot and will not be jeopardized. Under our procedure adequate means are provided for the protection of the legitimate interests of all.

In cooperating under good rules, all members of the industry are on the same fair competitive basis, and are given the protection of the Commission's authority as a disinterested and impartial umpire to see that the game of competition is played fairly and within the requirements of the law.

The unfair and dishonest practices which may be prevalent throughout an entire industry, frequently the result of inexorable forces of competition rather than deliberate design or unscrupulous scheming, are often corrected at a single stroke - by a single conference such as we are beginning today.

Not only does the Commission's trade practice conference procedure usually lead to prompt abandonment of unfair practices in the industry concerned, but the industry itself gets into the habit of self-discipline. The elevating standards of the scrupulous have a greater chance to operate and the destructive tendencies of the unscrupulous few lose their grip.

The Commission's policy is to see that the competitive race is fairly run, without favoritism and without unfair obstacles. The Federal Trade Commission Act is the legislative expression of that public policy adopted by Congress which supports the competitive system, but it means a civilized competition governed by fair rules and not a brutal, unscrupulous warfare.

A great many industries have availed themselves of this conference plan for self-regulation and self-discipline. Our experience has shown that obtaining compliance with the rules established is not a difficult problem. Business men usually respect their agreements. But compulsory statutory processes are available for enforcement, within Federal jurisdiction, of the Group I rules against an offender even though he has refused formally to accept such rules or has refrained from taking any part in the conference proceedings. This is so because the practices prohibited by Group I rules are violative of law.

I alluded to the fact that our procedure makes possible a fair measure of industrial self-government. Let us look briefly at this idea of self-government, this idea of democracy, for it is fundamental and of deep significance. Self-government has ever been the goal of mankind. Its struggle began with the dawn of civilization. All peoples of the world have striven for self-government. It is democracy's objective and purpose. In 1776 our ancestors had the fortitude, the courage and the conviction of purpose to establish the first successful democracy of the world. The principle of democracy, of self-government, is basic to us, to our institutions and our mode of life. We justly cherish it, and rightfully we are quick to defend it from alien ideologies of dictatorships.

Today we see peoples in various parts of the world apparently clamoring for dictatorships. Little do they realize the price they are paying. Ladies and gentlemen, I say to you, they are running after the false gods of tyranny and regimentation. Liberty and the right of self-government are being trampled upon and the peace of the world menaced. This trend in certain other countries is sufficient to give us pause and to remind ourselves of the gratitude we owe for our democratic institutions and principles. We want none of their dictatorships, their oppression, their ruthlessness. Our course to follow is that of democracy for therein alone lies the greatest measure of freedom and human happiness. Democratic principles, economically as well as politically, spell freedom and prosperity.

In our work today of setting up rules fair to all, the principles of democracy shall prevail, in which all have a voice from the least to the greatest.