ADDRESS ON

TRUST AND CARTEL PROBLEM IN THE UNITED STATES AND ITS RELATION TO FURTHER LEGISLATION AS RECOMMENDED BY THE TEMPORARY NATIONAL ECONOMIC COMMITTEE

DELIVERED BY

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TRUST AND CARTEL PROBLEM IN THE UNITED STATES AND ITS RELATION TO FURTHER LEGISLATION AS RECOMMENDED BY THE TEMPORARY NATIONAL ECONOMIC COMMITTEE

The problem of trusts and monopolies has been of serious concern to the people since ancient times. The fight against it has gone on through the ages. When brought under control as to one form, it frequently breaks out in another form. For more than a half century the control of monopoly in this country has been a pressing national issue.

SHERMAN ANTITRUST ACT

After an unprecedented number of combinations and conspiracies in restraint of trade and a nation-wide protest against such practices there was enacted by the Congress and approved by the President on July 2, 1890, what is generally called the "Sherman Antitrust Act," providing that "Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal." Section 2 of such Act provides that "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor," punishable, upon conviction thereof, by fine or imprisonment, or both.1/

There have been varying policies or periods of enforcement of this statute, dependent upon the attitude of those charged with its enforcement and the facilities available. There was also variation in the interpretation and application of the act by the courts.

Out of the many interpretations of this law there grew confusion and uncertainty that encouraged the development of monopolistic practices; among such interpretations may be mentioned the "Rule of Reason," which the Supreme Court read into the Antitrust Act by a divided court in 1911.2/ This so-called rule of reason, or what is essentially the same thing, namely, the doctrine of good and bad trusts, was characterized by President Taft, in a message to Congress as follows:

> "I venture to think that this is to put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to best judgment. It is to thrust upon the courts a burden they have no precedents to enable them to carry, and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster."3/

Thereafter the Supreme Court held that size and power, no matter how great, does not constitute unlawful monopoly.

1/Sherman Act U.S.C., Title 15, Sec. 1.
2/Standard Oil Company of N. J. et al. vs. U. S. 221 U. S. 1; U. S. vs. American Tobacco Company, 221 U. S. 106.
3/Message, January 7, 1910, Congressional Record, 61st Congress, 2nd Sess., page 382.

In the experience under the Sherman Act up to 1914 it was found that it was largely through the use of unfair competitive practices and the employment of certain specific devices that monopoly was able to attain its end.

FEDERAL TRADE COMMISSION ACT

With a view of strengthening and supplementing the law against restraints of trade and monopolistic practices President Woodrow Wilson delivered a message to Congress 4/ making certain recommendations which culminated in the enactment, September 26, 1914, of the Federal Trade Commission Act, providing for the establishment of the Federal Trade Commission, declaring unfair methods of competition in commerce to be unlawful, and empowering and directing the Commission to prevent such methods.5/

The courts uniformly hold that practices which are violative of the Sherman Antitrust Act amount to unfair methods of competition within the meaning of the Federal Trade Commission Act, and through the latter law the Federal Trade Commission is empowered to suppress such practices as an unfair method of competition.6/

CLAYTON ACT

This was followed by the enactment, October 15, 1914, of the Clayton Act in which section 2 declares it to be unlawful for any person engaged in commerce to discriminate among his own customers in prices, services or facilities; section 3 declares unlawful tying contracts between persons engaged in commerce; section 7 prohibits the acquisition by one corporation of the capital stock of a competing corporation, or the consolidation of two or more competing corporations by acquisition of stock; where the effect may be to substantially lessen competition, tend to create a monopoly or restrain trade; section 8 forbids interlocking directors in two or more corporations under certain conditions; and section 11 provides for the enforcement of the sections mentioned.7/

Section 2 of the Clayton Act was amended and expanded June 19, 1936, by the Robinson-Patman Anti-discrimination Act.8/

The Federal Trade Commission and the Department of Justice were given concurrent authority to enforce the provisions of the Act mentioned except that the Commission was not given such authority with respect to common carriers and banks.

The Antitrust Laws were enacted for the prevention of monopolies and conspiracies in restraint of trade and to preserve and protect free enterprise. They embrace positive expressions of the inflexible

4/Congressional Record, 63rd Congress, Second Session, page 1963.
5/Federal Trade Commission Act. U.S.C., Title 15, Sec. 41.
6/F.T.C. vs. Beechnut Packing Company, 257 U. S. 441; Fashion Originators Guild vs. F.T.C., 312 U. S. 457-463; F.T.C. vs. Pacific States Paper Association, 273 U. S. 52; Eugene Dietzgen Company, et al., vs. Federal Trade Commission, 142 Fed. (2d) 312.
7/Clayton Act U.S.C. Title 15, Sec. 12.
8/Robinson-Patman Anti-discrimination Act U.S.C. Title 15, Sec. 13, as amended.

will of the American people to preserve freedom of economic opportunity. The national platforms of the two great political parties have repeatedly and recently declared in favor of the strengthening and enforcement of these laws. No such platform has declared in favor of the repeal or weakening of the Antitrust Laws. There is undoubtedly an overwhelming sentiment among the masses of the people in opposition to monopolies and conspiracies in restraint of trade.

Cartel is another name for trust or monopoly, generally in its worst form and usually international in scope. Others will discuss the general subject of cartels, but I do wish to state that investigations made by the Department of Justice and the Federal Trade Commission disclose the fact that in many industries American companies have entered into agreements with foreign cartels, generally preventing or restricting commerce to and from the United States, as well as having other provisions in violation of our laws and national policy. You have doubtless read in the press of some of these agreements which even hampered our country in its prosecution of the recent war.

I have been requested to address you on the subject of the "Trust and Cartel Problem in the United States and its relation to further legislation as recommended by the Temporary National Economic Committee."

PRESIDENT ROOSEVELT'S MESSAGE

The establishment of this Committee was the culmination of a message to the Congress by President Franklin D. Roosevelt on April 29, 1938.9/ In his message the President, among other things, gave official statistics showing the vast concentration of private assets and power into the hands of a few. He also declared:

> "Private enterprise is ceasing to be free enterprise and is becoming a cluster of private collectivisms; masking itself as a system of free enterprise after the American model, it is in fact becoming a concealed cartel system after the European model.
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> "The enforcement of free competition is the least regulation business can expect.
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> "* * the existing antitrust laws are inadequate.
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> "Once it is realized that business monopoly in America paralyzes the system of free enterprise on which it is grafted, and is as fatal to those who manipulate it as to the people who suffer beneath its impositions, action by the Government to eliminate these artificial restraints will be welcomed by industry throughout the Nation."

9/Senate Document 173, 75th Congress, 3rd Sess.

TEMPORARY NATIONAL ECONOMIC COMMITTEE

Pursuant to the President's message and recommendations, the 75th Congress enacted a resolution authorizing and directing a select committee to make a full and complete study and investigation with respect to the concentration of economic power in, and financial control over, production and distribution of goods and services.10/

Under this resolution the Temporary National Economic Committee was created, composed of three members of the Senate, three members of the House of Representatives, representatives of the Department of Justice, Securities and Exchange Commission, Federal Trade Commission, Department of Labor, Department of the Treasury and the Department of Commerce.

For about three years this committee held public hearings. After presentations by representatives of various government agencies, a cordial invitation was extended to representatives of business and any others, who desired to do so, to appear and present their views. Many representatives of business accepted this invitation. No one was denied an opportunity to be heard.

This was the most comprehensive and intensive study of our economic system ever undertaken.

In its final report to Congress 11/ the committee stated:

> "It is important that it be made clear at this point that the recommendations hereinafter made are all premised on the proposition that the public policy evidenced by the Sherman Act and by the Clayton and Federal Trade Commission Acts holds as good today as it did when this legislation was enacted. All of this committee's recommendations are in furtherance of that public policy, and in this connection it is significant that in all the hearings held before this committee no witness so much as suggested any substantive change in the basic philosophy of those laws."

Time will not permit even a reading of the report and recommendations of the Temporary National Economic Committee; however, I commend it to your careful reading.

While the report contains many recommendations, I shall only discuss two of them.

In their efforts to control production, fix prices and otherwise effectuate monopoly, members of industry, disposed to do so, have sought by various methods and devices to effectuate those ends in the hope that they could thereby evade the laws enacted for the prevention of monopolies and conspiracies in restraint of trade.

10/Public Resolution No. 113, 75th Congress.
11/Senate Document No. 35, 77th Congress, 1st Sess.

CORPORATE MERGERS

The third recommendation of the Temporary National Economic Committee for legislative changes in the Antitrust Laws, unanimously approved by the committee, was in part as follows:

"The Committee has given serious consideration to the problem of corporate mergers and consolidations, this process being recognized as one which has for years hastened the growth of the concentration of economic power and has contributed in major part toward the elimination of competition. Section 7 of the Clayton Act forbids the acquisition of stock in competing companies where the effect is or may be to lessen competition. That law has fallen far short of gaining its objective, in part because the law does not prohibit the acquisition of assets of competing corporations, thus affording a convenient way of circumventing the obvious intention of the law. The committee, in its preliminary report, recommended that section 7 of the Clayton Act be amended so as to include within its prohibitions the acquisition of assets of competitors under conditions applicable to stock under the existing law."

In the present Congress Senator O'Mahoney introduced in the Senate,12/ and Representative Estes Kefauver introduced in the House,13/ identical bills following the recommendations of the Temporary National Economic Committee to amend sections 7 and 11 of the Clayton Act, these bills being respectively referred to the Committees on the Judiciary of the Senate and the House.

The Federal Trade Commission instituted proceedings under these sections of the Clayton Act from time to time in an effort to carry out the intent of the Congress. Section 7 did not, by the wording employed, specifically prohibit the acquisition by one corporation of one or more other corporations, no matter how dangerous the effect as to competition and monopoly might be, if the acquisition was accomplished through the purchase of physical properties, rather than of stock. It was not long before the absorption of competing corporations usually followed that method.

In 1926 the Supreme Court, by a majority of one, decided that, if the acquiring corporation had so used its stock purchases as to secure title to the physical assets of the corporation acquired before the Commission issued its complaint, an order by the Commission requiring divestiture of the assets was improvident.14/ This was held, although the opinion expressly recognized that the seizure of the assets was made possible by acquisitions of stock in violation of the section.

This was not all. In 1934 the case of Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission 15/ was decided. By a vote of 5 to 4, the Court held that if an acquiring corporation secures title to the physical assets of a corporation, whose stock it has acquired,

12/S. 615, 79th Congress, 1st Sess.
13/H.R. 2357, 79th Congress, 1st Sess.
14/F.T.C. vs. Western Meat Company, Thatcher Manufacturing Co. vs. Federal Trade Commission, and Swift & Co. vs. F.T.C. 272 U. S. 554-564.
15/Arrow-Hart & Heggeman Electric Co. vs. F.T.C. 291 U. S. 587.

before the Commission issues its final order, the Commission lacks power to direct a divestiture of the physical assets. In this case likewise the unlawful character of the acquisition of stock through which the acquisition of the assets was accomplished, was noted and deemed immaterial.

The Commission, of course, must investigate before it can issue a complaint and after complaint is issued must proceed in the orderly fashion contemplated by section 11 of the Clayton Act. Thus section 7, as construed by the Supreme Court, gives abundant opportunity to the parties to perfect corporate consolidations through obtaining title to the physical assets before the Commission can issue its order of divestiture of the stock. Section 7 of the Clayton Act thus became of no practical value as a means for preventing either the progressive elimination of competition or monopoly through mergers and other corporate consolidations.

In view of the Supreme Court decisions, the Commission, beginning in 1927, recommended in each of its annual reports to the Congress 16/ amendment of section 7 to proscribe the lessening of competition and the growth of monopoly through corporate acquisition, not only of "stock or other share capital" as already provided by the section, but also through acquisition of physical assets.

The consolidation of corporate entities and economic power has gone forward continuously since the T.N.E.C. reported. This is shown by recent statistics presented in the Senate by Senator O'Mahoney on February 12, 1945,17/ and by a report presented to the President on February 21, 1945, by Chairman J. A. Krug of the War Production Board.18/ The evidence is overwhelming that corporate consolidation is going forward rapidly and with increased acceleration following the war.

The remedy sought by the Congress in its enactment of section 7 of the Clayton Act proved insufficient to halt, or even substantially retard, this movement; the Sherman Act has likewise been so interpreted by the Supreme Court as to render it ineffective in preventing concentration of power in fewer and fewer, larger and larger corporations.19/ The Court has held that the Sherman Act affords no remedy preventive of a corporate consolidation, no matter how large it may be or how great a power it may vest in a single corporate entity; and that the act avails only to prevent the abuse of that power after the consolidation has been consummated.20/

Hearings on this bill were held before a Subcommittee of the Committee on the Judiciary of the House.21/ In my appearance before the Subcommittee as Chairman of the Federal Trade Commission, I said in part:

16/F.T.C. Annual Reports 1927-1945.
17/Congressional Record, 79th Congress, 1st Sess., Vol. 91, part 1, page 1010.
18/Smaller War Plants Corp. Progress Report No. 16 - Feb. 21, 1945.
19/U. S. vs. U. S. Steel, 251 U. S. 417; U. S. vs. International Harvester Company, 274 U. S. 693.
20/See footnote 19.
21/Hearings on H.R. 2357 - 79th Congress, 2nd Sess.

"This bill may very well be considered the acid test of our faith in the feasibility and desirability of maintaining a free and competitive system of private enterprise. It proposes a definite legislative reaffirmation and revitalization of the philosophy which Congress incorporated in section 7 of the Clayton Act when it was passed in 1914. The Act itself was a reaffirmation and intended implementation of the philosophy of the Sherman Act which in turn was a declaration of national economic policy rooted in the traditions of the common law. As our late President stated in his message to the Congress urging the formation of the Temporary National Economic Committee and making various recommendations for strengthening the antitrust laws, 'No man of good faith will misinterpret these proposals. They derive from the oldest American tradition.' Among the recommendations submitted in that same Presidential message was one for 'more rigid scrutiny' of corporate mergers, consolidations, and acquisitions 'than that now provided by the Clayton Act to prevent their consummation when not clearly in the public interest.'

* * *

"It was not just a coincidence that the loopholes in the statute which became manifest through Court decisions after the Commission attempted to enforce it were followed by a wave of corporate acquisitions and consolidations and of speculation in their securities that became a substantial factor in the crash of 1929 and the onset of the great depression. Many fail to realize that the capitalization of prospective earning power based upon the elimination of competition involves speculation in the decline and ultimate denial of the economic validity of our institutions. More and more the field of investment becomes narrowed to industries under monopolistic control and to the relatively few individuals whose income provides the bulk of the country's savings. Concentration of wealth is the alter ego of monopoly. Economic depression merely tends to accelerate the trend as weaker units of industry are absorbed by the stronger.

* * *

"The rejection of the principles of this bill would be to continue our mistaken policy of attacking only the looser and less permanent forms of monopolistic control and to temporize with the more effective and more permanent forms of concentrated economic power.

"The question to be faced is whether the government will require economic events to conform to its basic economic philosophy. Stripped to its bare essentials the basic question posed by this bill is whether we care enough about maintaining the institutions to which we have given such abundant lip service, to act with the skill, vigor, and decisiveness that the diagnosis demands."

An invitation was extended publicly and by letters to large business organizations and any others who desired to be heard on the bill to appear and state their views, but none of them appeared.

The bill was amended in some particulars, reintroduced and reported to the House, and is now on the calendar awaiting consideration.22/

BASING-POINT SYSTEM

Another device which has been extensively and successfully employed to fix prices and prevent competition is known as the "basing-point system."

The Temporary National Economic Committee unanimously recommended as follows:

> "Extensive hearings on basing-point systems showed that they are used in many industries as an effective device for eliminating price competition.
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> "During the last 20 years basing-point systems and variations of such systems, known technically as 'zone pricing systems' and 'freight equalization systems,' have spread widely in American industry. Many of the products of important industries are priced by basing-point or analogous systems, * * *. (Here are named numerous industries.)
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> "The elimination of such systems under existing law would involve a costly process of prosecuting separately and individually many industries, and place a heavy burden upon antitrust enforcement appropriations.
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> "We therefore recommend that the Congress enact legislation declaring such pricing systems to be illegal.
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> "The committee is not impressed with the argument that a legislative outlawing of basing-point systems will cause disturbances in the rearrangement of business through a restoration of competitive conditions in industries now employing basing-point systems. Such disturbances may be costly to those who have been practicing monopoly. But the long-run gain to the public interest by a restoration of competition in many important industries is clearly more advantageous."23/

Before any intelligent appraisal of the basing-point system can be made it is necessary to bear in mind certain of its essential features. It is a formula method of pricing, which when appropriately implemented and observed, automatically produces identical delivered prices for all sellers at any given destination. Its success depends first of all upon a common requirement by each seller that purchases be made only at delivered prices and a common refusal to quote or sell f.o.b. mill. Each delivered price is calculated from some governing basing point and has no necessary relation to the actual shipping point. The actual cost of transportation may be greater or less than

22/H.R. 5535 - 79th Congress, 2nd Sess., Report 1820.
23/Senate Document No. 35, 77th Congress, 1st Sess.

the amount used to calculate the delivered price. Nonbasing-point mills are enabled to and must, if the system is to function, take advantage of their location by adding the full amount of their freight advantage, sometimes called "phantom freight," to the basing-point price. Basing-point mills are enabled to realize their full base price and sometimes "phantom freight" in territory where their respective basing points control the delivered prices. Other mills, whether basing-point or nonbasing-point mills, that quote in each such territory must, if the system is to function, recognize and adopt the governing base price and the delivered prices calculated thereon. Just as identical delivered prices automatically result from the system, so wide variations in the prices realized by each mill from its various customers are the automatic result. Each result is the necessary complement of the other.

PITTSBURGH PLUS CASE

The Pittsburgh Plus system was one whereby all steel producers at any given time quoted and sold their steel products to buyers at any given destination at identical delivered prices. All steel producers whose plants were located at points other than Pittsburgh used Pittsburgh as a base upon which to quote and sell their steel. All manufacturers of steel products at the time of the Commission's Pittsburgh Plus case 24/ used the same base price and added to that price the freight charge from Pittsburgh to the destination point. This was true whether the steel was made at Pittsburgh or not. A large percentage of the steel was not produced at Pittsburgh. This system enabled the sellers to quote an identical delivered price to all buyers at every destination. The steel producers absorbed the actual freight charge from their mills on such products to destination. Sometimes the producing point was nearer the customer than Pittsburgh and sometimes farther away. Under this system a Chicago consumer, for instance, who bought his steel from a Chicago mill who produced the steel paid the Pittsburgh base price plus freight from Pittsburgh to Chicago. In such case all of the freight was, of course, "phantom." This system placed Chicago fabricators and those at other places closer to the producing point than Pittsburgh at a competitive disadvantage with competitor Pittsburgh fabricators.

Following numerous complaints from members of industry, the Federal Trade Commission directed an investigation and issued a complaint against the United States Steel Corporation and others. After the conclusion of the hearings, the Commission issued an order directing the respondents to cease and desist from employing the Pittsburgh plus system. The respondents filed a report with the Commission advising that they would comply with the order. However, 14 years thereafter they appealed the case to the Circuit Court of Appeals at Philadelphia and with the aid of various procedural maneuvers and wartime delays have so far avoided submitting the case for a decision on the merits, although the appeal was filed in 1938.

24/ F.T.C. vs. U. S. Steel, Docket No. 760.

CORN PRODUCTS REFINING COMPANY AND A. E. STALEY MANUFACTURING COMPANY CASES

The Supreme Court of the United States recently handed down two important and far-reaching decisions relating to the basing-point system of delivered prices.25/ In opinions by Chief Justice Stone, and without dissent from any of the associate justices, the Court sustained findings and orders by the Federal Trade Commission against Corn Products Refining Company and A. E. Staley Manufacturing Company, two of the leading manufacturers of glucose or corn syrup, which is used largely in the production of candy and table syrup.

Both companies made up their delivered prices by adding to a Chicago base price the freight from Chicago to the various cities where their customers were located. Staley followed that practice though all its shipments were made from Decatur, Illinois, and the Corn Products Company did so though many of its shipments were made from its plant at Kansas City. As a necessary result, Staley charged many of its customers delivered prices that included more than the actual freight from Decatur and appropriated the differences between the actual and the imputed freight as unearned or phantom freight, making them part of its net price realizations. The Corn Products Company did likewise on its shipments from its Kansas City plant. The court held that the failure to make due allowance in such delivered prices for the differences in the cost of delivery constituted systematic price discrimination in violation of the Robinson-Patman Act. The court upheld the Commission in its conclusion that there was a dangerous probability that the purchasers in cities thus discriminated against were substantially handicapped in their ability to compete with candy manufacturers located elsewhere. The court also held that price discrimination inherent in such practice could not be justified by Staley as being in good faith to meet an equally low price of a competitor but was, in fact, a method of meeting higher prices of its competitors.

The opinions appear to be a confirmation of the Federal Trade Commission's condemnation of the practice in the Pittsburgh Plus case ~~against~~ against the United States Steel Corporation and also to provide a new instrument for dealing with the problem of monopoly and monopolistic pricing practices.

The orders issued by the Commission, and which were upheld by the Supreme Court, directed both Corn Products and Staley to cease and desist from discriminating in price between different purchasers of glucose or corn syrup of like grade and quality in the manner and form that was reflected by their basing-point delivered price system above described.

Subsequently the Commission was upheld by the Seventh Circuit Court of Appeals in cases involving the use of basing point systems and methods of price fixing in the malt industry and in the milk and ice cream can industry. They did not ask for review by the Supreme Court.

Other pending Commission proceedings are directed against use of the basing-point pricing system in the sale of such products as cement,

25/Corn Products Refining Company, et al. vs. F.T.C. 324 U. S. 726; A.E. Staley Manufacturing Co. vs. F.T.C. 324 U. S. 746.

rigid steel conduit, chain, refractory products, cast iron soil pipe, and asbestos pipe covering.26/ Most of these however, involve the status of the system as a device for suppressing price competition among producers of the commodity and not as a method of exacting discriminatory prices. The first two are pending on review in the courts.

CEMENT INSTITUTE CASE

The Federal Trade Commission issued complaint against the Cement Institute and its 75 corporate members.27/ Fifty odd prominent law firms entered their appearance as representing the respondents. The evidence taken embraced over 46,000 pages of testimony and about 3,000 exhibits. The case was elaborately briefed and the Commission heard oral arguments for several days.

The Commission entered an order directing respondents to cease and desist from engaging in or continuing any combination or conspiracy to sell cement at prices arrived at by use of their multiple basing-point delivered-price system.28/ The Commission found that the respondents' practices constituted unfair methods of competition in violation of the Federal Trade Commission Act and their delivered-price system resulted in discrimination in price among their respective customers, in violation of the Robinson-Patman Act.29/

On the basis of its findings, the Commission concluded that, from the evidence of record, the capacity, tendency and effect of the combination maintained by the respondents has been to hinder, lessen, restrain and suppress competition in the sale and distribution of cement between the several States; to deprive purchasers of cement, both private and governmental, of the benefits of competition in price; to systematically maintain artificial and monopolistic prices in the sale and distribution of cement; to prevent purchasers from utilizing motor trucks or water carriers for the transport of cement and from obtaining benefits which might accrue from the use of such transportation agencies; to require that purchases of cement be made on a delivered-price basis, and to prevent and defeat efforts of purchasers to avoid this requirement; frequently to deprive agencies of the Federal Government of the benefits of all or a part of the lower land-grant rates available to such purchasers; to require certain agencies of the Federal Government to purchase their requirements of cement through dealers at higher prices than are available in direct purchases from manufacturers; to establish and maintain an agreed classification of customers who may purchase cement from manufacturers thereof; to maintain uniform terms and conditions of sale; to hinder and obstruct the sale of imported cement through restraints upon those who deal in such cement; and otherwise to promote and maintain their multiple basing-point delivered-price system and obstruct and defeat any form of competition which threatens the continued use and maintenance of the system and the uniformity of prices created and maintained by its use.30/

26/F.T.C. vs. Cement Institute, et al., Docket No. 3167; F.T.C. vs. Rigid Steel Conduit, Docket 4452; F.T.C. vs. Wire, Rope & Strand Manufacturers Association, Inc., et al., Docket No. 4443, 35 F.T.C. 756; F.T.C. vs. Refractories Institute Docket No. 4900; F.T.C. vs. Cast Iron Soil Pipe, Docket 3091; F.T.C. vs. Acme Asbestos Covering and Floor Company, et al., 38 F.T.C. 342.
27/The Cement Institute, et al., Docket No. 3167.
28/Docket No. 3167, Findings and Order, 7/17/43.
29/See footnote 28.
30/See footnote 28.

The respondents appealed to the Court of Appeals of the Seventh Circuit, and have filed about a score of different motions, which were decided against respondents by the court. Final argument of counsel was heard by the court on May 2, 1946.

These cases give some indication of the difficulties and expense involved in case by case proceeding, and show the importance of enactment of legislation banning the so-called basing-point system, if such practices are to be stopped.

While most business men are honest and ethical, yet there are always some who will seek to take advantage of their competitors and of the consuming public.

The desire to possess, a generally prevalent human instinct, has resulted in the employment of unfair and predatory practices throughout the life of mankind.

As aptly expressed by Kipling:

"We are very slightly changed
From the semi-apes who ranged
India's prehistoric clay;
Whoso drew the longest bow
Ran his brother down, you know,
As we run men down today.

"'Dowb,' the first of all his race,
Met the Mammoth face to face
On the lake or in the cave,
Stole the steadiest canoe,
Ate the quarry others slew,
Died - and took the finest grave.

"When they scratched the reindeer-bone,
Some one made the sketch his own,
Filched it from the artist - then,
Even in those early days,
Won a simple Viceroy's praise
Through the toil of other men."

The little man has had to fight a continuous battle from the beginning. It has often been not a question of the "survival of the fittest," but the survival of the strongest.

It is my conviction that to allow great interests a free hand and to permit them to destroy competition would be to make war against the very principle on which our Government was established, namely, 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.

Government cannot ensure equality to all men, but it should ensure equality of opportunity. It should see to it that the game is played fairly.

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