ADDRESS

By

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FEDERAL TRADE COMMISSION

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THE NATIONAL ASSOCIATION OF INDEPENDENT TIRE DEALERS

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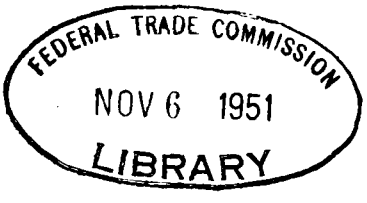

The butcher, the baker, and the candlestick maker are able to sell their wares by developing and repeating slogans, but slogans will not sell ideas to critical and skeptical people. This has been discovered by those who are trying to sell our philosophy to peoples committed to another. The slogan which has not proved adequate to sell our philosophy is: "The American way of life." While that phrase is an apt name for the synthesis made up of all the realities, the ideals and goals of life in our country, it is realized that it is a mere abstraction to most of the peoples of the world, and that as such it cannot of itself convince them of the superiority of our way. We must take the skin off the words of this slogan and reveal the specific facts which give them meaning.

Many besides those who are immediately responsible for the task of winning over peoples now committed to other ways of life by selling them on "the American way" are engaged in attempting to define more clearly what is meant by our way of life. Mr. Paul G. Hoffman, for example, is conducting a forum on behalf of the Advertising Council in New York and the initial results have been published under the title "A Round Table Discussion of the Basic Elements of a Free and Dynamic Society."

All of us must aid those whose immediate responsibility it is to analyze the American way of life and to publicize the results. We cannot leave the task wholly to them or to formal groups organized for the specific purpose. That would not be the American way. Nor is the task too difficult. In fact, this great convention itself is a contribution both to the analysis and to the necessary publicity. For surely this conference is a part of our American way. It and thousands like it which are held every year throughout the length and breadth of this land are truly and uniquely American.

Here you are, more than 2,000 strong, all engaged in the same business, from all parts of the country, meeting of your own volition and at your own expense at the seat of your government, to discuss among yourselves, with your suppliers, and with officials of your government, the manifold and complex problems of your industry. There is no secrecy; there are no fears. There will be no obedience to orders, for no orders will be given. There will be no rewards, just as there will be no reprisals. There will be information. There will be discussion. And in the end, there will be understanding and appreciation of different points of view -- an understanding and appreciation that enable us to live together as we do despite those differences.

That is the quintessence of the American way of life, for it is the democratic way. Harmony is achieved by understanding and appreciating differences, not by eliminating them. In that respect the harmony of democracy is achieved in much the same way as it is in a symphony. In a symphony we do not have a single movement, a single rhythm, a single key, but several movements, different rhythms, and different keys. The totalitarians are not composers of symphonies -- they are Johnnie one notes. They do not strive for unity -- they demand uniformity.

From the columns of your "Dealer News," I have learned that this Thirty-first annual conference "will possess a real international flavor" by virtue of the attendance here of many from other countries. It is inevitable that these guests will report what they have observed. Thus this convention will

have been the means both of exemplifying and publicizing the democratic process in America -- the key to an understanding of what is meant by the American way of life. You are therefore to be congratulated, and I do so, heartily and sincerely.

This convention will also be greatly concerned with competition. In doing so it will further aid in the analysis of what constitutes the American way of life, for competition is, and long has been, the governing philosophy of our economic system. By 1914 that philosophy had become so dominant that it was institutionalized in the Federal Trade Commission of which I now have the honor of being the Chairman. I do not mean by this that other departments of government are not partially occupied with maintaining competition, for they are, and in important respects. I merely want to emphasize that the maintenance of competition is the single duty of the Federal Trade Commission.

The Federal Trade Commission is not only charged with maintaining competition under existing laws, but with recommending remedial legislation where it finds, upon investigation, that existing laws are inadequate. The activities of the Commission with respect to corporate mergers will serve to illustrate how these dual functions have been carried out. Members of NAITD, being well within the category of small or independent businessmen, should be interested in these activities which are designed to protect them as essential elements in our competitive system.

Soon after the Federal Trade Commission Act was passed in 1914, Congress enacted the Clayton Act, Section 7 of which prohibited one corporation engaged in interstate commerce from acquiring the capital stock of another corporation so engaged, if the effect, in reasonable probability, was to substantially lessen competition between the acquiring and acquired corporations, or to restrain commerce in any section or community, or to tend to create a monopoly in any line of commerce.

Prior to 1914, the Department of Justice had demonstrated in the Northern Securities, the Standard Oil, and the American Tobacco cases that dissolution was possible under the Sherman Act, but Section 7 of the Clayton Act was necessary if the growth of monopoly was to be stopped before it was sufficient to violate the Sherman Act or require dissolution. Section 7 was to accomplish this because under it, the test of illegality was the competitive effect which was reasonably probable rather than that which had in fact already occurred, which is the test under the Sherman Act.

Section 7 was to prevent the first step which theretofore had normally been taken in the process of consolidation, namely, the acquisition of capital stock. That had been the case in the first great merger movement which occurred from about 1890 to 1904.

Unfortunately, it was not foreseen that corporations could continue to merge through the acquisition of physical assets and thus avoid Section 7. That they could, turned out to be true. The 1920's saw another major merger movement and the Commission was powerless to stop it. Section 7 became a nullity after four decisions by the Supreme Court. The first three cases held in effect that the Commission must act after the acquisition of the stock but prior to the acquisition of assets, and the fourth held that even though the Commission had issued its complaint prior to the acquisition of assets, it lost jurisdiction if the assets were acquired prior to the entry of an order.

Then followed a series of Federal Trade Commission reports to Congress, setting forth the extent to which mergers continued and recommending that Section 7 be amended. During this period the third and fourth merger waves took place, one prior to and one during and after the last world war. Let me read you what the Commission told Congress in 1948:

> "No great stretch of the imagination is required to foresee that it nothing is done to check the growth in concentration, either the giant corporations will ultimately take over the country or the Government will be impelled to step in and impose some form of direct regulation in the public interest. In either event, collectivism will have triumphed over free enterprise, and the theory of competition will have been relegated to the limbo of well intentioned but ineffective ideals. . .Either this country is going down the road of collectivism, or it must stand and fight for competition as the protector of all that is embodied in free enterprise. Crucial in that fight must be some effective means of preventing giant corporations from steadily increasing their power at the expense of small business. Therein lies the real significance of the proposed amendment to the Clayton Act, for without it the rise in economic concentration cannot be checked nor can the opportunity for a resurgence of effective competition be preserved."

In December 1950 Congress amended Section 7 of the Clayton Act. The amendment covers the acquisition of both capital stock and physical assets. The nature of the economic effect which must now be shown in order to make the acquisition unlawful is such as to include mergers that were not prohibited under the old language of the original law.

I do not wish to imply, however, that Congress intended to prohibit all mergers. It did not. On the other hand, it did not intend to ignore small bites by large firms which, though perhaps not individually significant, have a cumulative effect leading to monopoly power. On this point the Senate Committee on the Judiciary, in reporting on the amendment, said:

> "The intent here, as in other parts of the Clayton Act, is to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding."

It is too soon to say how effective amended Section 7 will prove to be in stemming the tide of economic concentration. I can only say that the Commission will act where, under the law, the facts warrant; and if that does not adequately correct the situation, the Commission will again recommend remedial legislation.

The problem of bigness and fewness is presented to the Commission in other ways than through the application of Section 7 of the Clayton Act. I refer to that problem as it arises under the quantity-limit proviso of Section 2 of the same Act. Under the quantity-limit proviso, when large buyers of a commodity are so few that the quantity price differentials they receive are unjustly discriminatory or promotive of monopoly among either the buyers or sellers, or both, the Commission may fix what is known as a quantity limit. This operates to prevent the granting of quantity differentials on any quantity greater than that stated as the limit.

As you know, in its first proceeding under the quantity-limit proviso, the Commission is considering whether a quantity-limit should be established as to replacement tires and tubes. When the Commission will reach its final decision in the matter, I cannot forecast. I can only assure you that since I have been a member of the Commission, no matter has come before it which has merited and has received more thoughtful study; I can further assure you that it is moving forward toward a final conclusion just as rapidly as possible. The Commission is as eager as you are for the day of final decision to arrive.