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**THE FEDERAL TRADE COMMISSION AND
OUR COMPETITIVE SYSTEM**

Address of

**Hon. Jas. M. Mead, Commissioner
Federal Trade Commission**

Before the

**GRINDING WHEEL INSTITUTE - ABRASIVE
GRAIN ASSOCIATION**

**Statler Hotel
Buffalo, New York**

THE FEDERAL TRADE COMMISSION AND OUR COMPETITIVE SYSTEM

It is a distinct honor to be invited to address you today, particularly in my home city of Buffalo. You were wise enough to locate a significant portion of your industry in this area. I join with those members of your industry who are located here in extending to the others a hearty welcome to our great city.

I shall address you today on the subject of the Federal Trade Commission; how it affects your business; what the Commission does to promote fair competition; to strengthen our economy, and therefore, our country.

These are perilous times in which we live. We are beset by powerful forces. We must be strong in order to stand our ground and live in peace and prosperity. Wendell Wilkie, a great American, said that only the strong can be free and only the productive can be strong. How has America kept and how will it keep its strength and thereby retain its freedom. America is strong and productive because of (1) the spiritual background and genius of our people; (2) our God given natural resources; and (3) our system of fair competitive enterprise. My remarks today are addressed to the third reason for our strength, that is, our system of free and fair competitive enterprise.

You are businessmen. You engage in your business perhaps without considering the great privilege which you have in choosing and following your particular line of endeavor. There are vast areas in this world where there is no significant amount of private enterprise, and the activities of the individual are closely regulated by the State from the cradle to the cemetery. The basic difference between our country and those areas, aside from religion is in the concept of government. The State may be either a great protector of the individual or a cruel tyrant. In our great land the Constitution protects the individual against a tyrannical government and guarantees you as an individual that the government will not take your life or property without due process of law. By the criminal law the State protects your property from thieves and your person from assault. By the antitrust laws the government protects you from unfair competitors and promotes a fair competitive economy in which you may live and prosper according to the fruits of your endeavors.

As to the antitrust laws, a brief historical reference may be of interest. After the industrial revolution and the advent of the machine age in the latter part of the 19th century, concentration of productive wealth and the resulting monopolistic conditions presented

very serious problems. In 1890 the Congress enacted the Sherman Act which made illegal, conspiracies and restraint of trade. In the early part of the 20th century due to the constantly increasing problems of monopoly and other unfair trade practices, there was a strong demand for legislation to supplement the Sherman Act. This demand culminated when President Woodrow Wilson sent a message to Congress in 1913 in which he recommended the creation of an Interstate Trade Commission.

The Congress in response to the message of President Wilson created the Federal Trade Commission in 1914. The Act of Congress provides for the appointment by the President, by and with the advice and consent of the Senate, of five Commissioners for terms of 7 years each. All policy and other important decisions of the Commission are made by a majority of the Commissioners. The work of the Commission may be generally divided into law enforcement by informal means and by litigation and the preparation of economic studies and reports to the Congress.

You are perhaps more directly interested in the Commission's law enforcement activities. Section 5 of the Federal Trade Commission Act makes it illegal to engage in unfair methods of competition or unfair or deceptive acts or practices in interstate commerce. You may ask how these provisions of this law affect you or your business. This law affects you very directly and very beneficially. For illustration, you may be interested in building an addition to your plant. Cement must be purchased for such construction. You have a right to expect that the cement that you purchase will be sold on the basis of a competitive price. You will not be quoted a competitive price if the manufacturers of that cement agree on the price they will quote you. A price fixed by a conspiracy is generally an unreasonable price. It is the Commission's duty to prevent conspiracies to fix the price of cement or any other commodity moving in interstate commerce so that you will enjoy the benefits not only of price competition but also of quality competition. Without this spur of competition quality deteriorates and conspirators may price themselves and you, their customer, out of the market.

You may be a large manufacturer but even so you are also a consumer. No concern makes all of the products it uses in the course of its operations. All business, therefore, is interested in buying at competitive prices the products it uses.

Another illustration of how the operations of the Commission may directly and beneficially affect you is that you may have a disagreement with your supplier of a vital commodity and he may cut off your supply. In order to keep you in line, he may go to your other potential suppliers and persuade them not to sell to you. If you cannot obtain this vital commodity necessary in your business,

you may be faced with bankruptcy. However, you can appeal to the Federal Trade Commission if your suppliers are engaged in commerce and if they have agreed to boycott you. You may never actually need the help of the Commission in a matter of this type but such help is there and it is available. Your suppliers also know that this help is available to you. The deterrent force of the Commission is a powerful instrument for law observance.

Another illustration is that you may be selling a first-rate product with considerable consumer appeal. A competitor, however, may disparage your product and injure the reputation of your business firm. You may appeal to the Commission as it is an unfair practice to make false and disparaging statements in respect to a competitor's product or his business or financial credit. Your unfair competitor may also violate the Federal Trade Commission Act if he attempts to pass off his product as your product, if he engages in commercial bribery, if he induces the breach by your employees of their employment contracts, if he threatens in bad faith you or others with patent infringement suits, or if he engages in other unfair competitive practices which may injure competition.

Another tremendous and important field in which the operations of the Commission directly and beneficially affect you is in the field of advertising. It is the duty of the Federal Trade Commission to prevent the false or deceptive advertising of goods sold in interstate commerce. This includes the advertising you see on television, read in newspapers and other periodicals and hear over the radio. If your competitor advertises falsely and customers are thereby induced to believe that they will get a better product from him than from you, they will buy his product in preference to yours. Trade is thereby unfairly diverted from you to him and your business is injured. The customer or consumer is injured because he has been led to believe that he will receive an article different from that which he actually receives. Both you as a competitor and the consumer may appeal for help to the Federal Trade Commission.

The Clayton Act was passed in 1914 and was amended by the Robinson-Patman Act in 1936. The Robinson-Patman amendment authorizes the Commission to prohibit discriminations in price which substantially lessen competition or tend to create a monopoly.

For illustration, your place of business is located near your competitors and both you and your competitor purchase your material requirements in substantially similar quantities from the same manufacturer. However, that manufacturer may sell to one of your competitors at a price lower than he sells to you and the others. Because he obtains this lower price, your favored competitor may manufacture or sell or distribute his product at a price lower than you and the other less favored competitors can charge. Your

customers begin trading with your competitor who is selling at the lower price. You lose business. This may be a case of illegal price discrimination and you may appeal to the Commission for aid. In addition, if the seller offers your competitor advertising or other allowances, he must offer such allowances to you on proportionally equal terms. That sounds like fair dealing and it makes common sense. It is also the law.

The Clayton Act also prohibits exclusive dealing contracts which may substantially injure competition or tend to create a monopoly. You may develop a product and then make plans to distribute it in a particular area. Your product has merit but it is new and you must distribute it in competition with another product already in the market which is distributed by a large manufacturer. You go to the outlets which would normally handle your product and you find that they are tied up with exclusive dealing contracts with the larger manufacturer. These outlets have been coerced by the larger manufacturer to agree not to handle any product competitive with that of the large manufacturer. If most or all of the existing outlets for distribution are closed to you, how can you distribute your product? If the result of these exclusive dealing contracts by the large manufacturer may be to substantially lessen competition, you can appeal to the Federal Trade Commission for help.

The Commission also administers the wool and fur labeling acts. As a consumer, when you and your family purchase clothing which purports to be wool or to be a particular kind of fur, you are entitled to know that the garment is properly labeled. The Commission sees to it that these garments are labeled properly and truthfully.

In order to promote observance of the law, the Commission has initiated the trade practice conference procedure. Members of an entire industry meet in conferences with representatives of the Commission and discuss the industry problems relating to unfair practices. These conferences are for the purpose of enlisting the cooperation of the industry in considering, and when advisable, in drafting rules for the purpose of simultaneously correcting unfair or otherwise illegal trade practices which may be common in an industry. These are referred to as trade practice conference rules. The Commission has found this procedure to be very successful. It has been informative to members of industry and has promoted fair competition, and at the same time has protected the public interest. The Commission, in recent years particularly, has endeavored to write rules in non-technical language so that they could be understood by the laymen. The Group One rules are, in effect, a statement by the Commission of applicable law. The Commission, of course, is limited in its latitude in any endeavor to restate the law. Group II Rules are usually not statements of fair trade law but are voluntary rules designed to promote ethical business standards.

In the deceptive practices field, the Commission frequently utilizes administrative treatment and informal stipulations to cease and desist to obtain compliance with the law. These are relatively inexpensive methods and when used by men of good faith they are as effective as binding orders to cease and desist. In price fixing cases, violations of the Clayton Act and in certain types of deceptive practice matters, the Commission issues formal complaints in order to obtain law compliance. These complaints are served on the respondent and thereafter a trial of the issues is held before a Hearing Examiner. Each respondent has the right of presentation of any competent and relevant evidence in his behalf and he also may cross-examine the witnesses called by the Government. If the record made in the course of trial sustains the allegations of the complaint, the hearing examiner may issue an initial decision containing his findings as to the facts and order to cease and desist. This decision may be appealed to the Commission on briefs and the Commission may hear the oral argument of counsel. If the Commission finds that the respondent has violated the law as charged in the complaint and issues its order to cease and desist, the respondent may appeal to the Courts. We welcome the review of our orders by the Courts. It is always helpful and beneficial for a public official to have someone looking over his shoulder. When I was in Congress it was my constituents here in Buffalo. Now that I am at the Commission it is the United States Courts of Appeals and the Supreme Court of the United States.

The Commission applauds the constructive work of the modern trade associations not only as they promote the interest of their members consistent with the law and the public interest, but also when they encourage competition and the elimination of illegal trade practices. There has at times been an element of mutual suspicion and distrust between trade associations and the Federal Trade Commission. I believe this feeling has been largely eliminated. There is a great variety of activities of trade associations. For the most part, trade association activities may be engaged in without adversely affecting competition and in fact promote competition. On the other hand, some activities may be used in an illegal manner.

Such activities include cooperative action of trade associations in connection with product and sales statistics, cost accounts, credit bureaus, and standardization of products. All of these cooperative practices have been used in the past as devices to fix prices and otherwise restrain trade. However, any one or all of these activities may be used under circumstances which do not violate the law but which promote fairly the well-being of the members of the association.

The important factors in determining the legality of such activities are the purpose and effect. The members of the trade association are in the best position to know why a principle is being

pursued and what results it produces. They are also in a position to develop a lawful constructive program and see to it that it does not become combined with illegal activities.

There are many activities that may be engaged in by trade associations which are extremely unlikely to restrain competition. These include legislative and informational services, research activities, assistance to the government as sources of information on matters concerning industry and representing the industry in dealings with the government and with labor, trade and consumer groups. Another broad field in this category concerns the elimination of ambiguity in descriptive terms used in trade terminology with reference to commodities and their characteristics. The Federal Trade Commission has worked with trade groups in this respect, as for illustration, in obtaining agreed standards as to such terms as "shock resistant," "gold-filled," etc.

One of the most important services a trade association can render its members is to keep them informed of the status of the law as it relates to their business practices. This meeting here today is an example of this important contribution which a trade association may make. I conversed in Washington with Mr. W. B. Thomas, Mr. William R. Noble and Mr. George F. Kohn. It was a very interesting meeting and I learned much as to the extent and to the problems of your great industry.

I have outlined to you above the role of the Commission in our economic system. It is your Commission as much as it is mine as it belongs to the American people. It has been the United States which has supplied most of the material wealth to support the free world. All of us know that our economic system is basically different from the system behind the Iron Curtain. We sometimes forget, however, that businessmen and consumers in most of the other areas of the free world do not enjoy the benefits of our competitive system. Great Britain does not enjoy the benefits of antitrust laws. Mr. Ludwell Denny, a noted American correspondent, recently wrote from London:

"Defenders of the present system argue that the British market is too small to stand competition. Monopoly and restrictive devices are required to combine a market large enough to justify sufficient capital investment and production, it is said.

"Some British trusts are relatively efficient. But the system as a whole gives those few an unfair profit, while protecting and perpetuating the inefficiency of the many."

Mr. Denny concludes that Britain's continuing economic crisis can be blamed largely on monopolists.

We must prevent that from happening here. It is vital to our safety as a nation to maintain a vigorous antitrust policy. This is not a partisan issue. The platforms of both the major political parties have for years urged a strong antitrust policy.

An ounce of prevention is worth a pound of cure. It may be too late to rescue Britain from the dead hand of the monopolists. Britain has been turning to State ownership. We still have the time here to protect our country from monopoly if we will only provide the means. In order for the Federal Trade Commission to perform its vital mission, it must have adequate personnel and that means adequate appropriations. That is the ax I grind with you gentlemen today. This industry is a good place to grind an ax. But it is your ax as well as mine. You cannot protect yourself against murderers and thieves without an adequate police force. You cannot keep your economy fair without making adequate provisions for the Federal Trade Commission and the antitrust division of the Department of Justice.

Approximately a year ago the Commission unanimously asked the Bureau of the Budget for an annual appropriation for the Commission of approximately seven million dollars for this fiscal year. The Commission finally received from the Congress an appropriation of approximately four million dollars. The Commission has had to make substantial reductions in force. Many experienced lawyers and economists trained for years at government expense in antitrust work have been dismissed from their positions. The government has a large investment in the training of these competent men. The government has now lost that investment. The Commission now has substantially fewer employees than it had in 1939 or in 1918. Since 1918 the gross national production of the United States has increased approximately 10 times in dollar value and in excess of 3 times in real value. The number of business firms has increased from approximately 2 million to 4 million. The advertising business of the United States now amounts to approximately 7 billion dollars a year which in dollar value amounts to approximately 28 times the amount when the Commission was first organized. In addition, the Congress has enacted many new statutes giving the Commission many more duties to perform, but we have not been given the personnel to perform such duties. We are spread too thin for even minimum enforcement.

In 1950 the Congress enacted the anti-merger statute which strengthened Section 7 of the Clayton Act by providing that if two competing corporations combined and the effect is to injure competition, the Commission may dissolve the merger. The purpose of this statute was to stem the growth of monopoly which results from mergers or combinations. The Commission does not have adequate funds to enforce that statute. Neither does the Commission have adequate funds to enforce the Robinson-Patman Act which is sometimes referred to as the Magna Charta of small business.

We must give our armed forces sufficient means to defend us on the field of battle. But we must also give our antitrust agencies sufficient funds to protect our competitive economy in the marts of trade. I believe most Americans favor a strong and vigorous anti-trust policy. I believe most Americans now realize how farsighted our statesmen were in 1890 when they passed the Sherman Act and again in 1914 when they passed the Federal Trade Commission Act. We need, however, something more than general statements in political platforms and polite phrases in campaign speeches. We need practical help to carry on this great effort. This is not a Democrat or Republican issue -- it is an American principle. At the Federal Trade Commission we need strong, courageous far-sighted lawyers and economists. We have as many as our limited budget will permit. We need more.

As I stated, the Commission during the current fiscal year has an appropriation amounting to 4 million dollars. There are approximately 160 million people in the United States. The appropriation for the Commission therefore is an amount equal to 2-1/2 cents per person per year. In view of its high purpose in helping to maintain our competitive economy, I believe that the American people will be willing to give once a year the monetary equivalent of a five cent cup of coffee or a package of chewing gum or the cost of playing a boogie woogie record in a juke box. We could do an adequate job with an annual appropriation of 8 million dollars.

Some people think of the Commission as a powerful ever present policeman. I dislike to confess weakness, but that picture is far from the truth. We have only approximately 60 men making field investigations in antimonopoly cases for all of the United States. That is only slightly better than an average of one man for each State of the United States. The lack of a sufficient number of investigators is the reason why practices which may be dangerous to fair competition and to our economy must await their turn for investigation. This waiting period may extend for many months. Too little and too late are sad words when time may be of the essence, particularly when the stake at issue may be vital to national survival.

Please remember that the train named Monopoly runs on a one-way track. It advances but it usually does not retreat. Great Britain is now learning that sad lesson. When and if the Monopoly train arrives -- look down the track. There will be a second section following not far behind. That section is named Government Ownership or Close Government Control.

Public utilities are of necessity at least semi-monopolies and must therefore be closely regulated by the government. But would you like to be required to ask a public utilities commission how to price your product? Consult with your friend from the telephone company as to the procedure which he must follow in pricing his product. Or would you relish having to buy your steel or copper or

cement through a government bureau? We at the Commission desire to prevent the withering consequences of monopoly as much as you do. The only way to prevent the consequences of monopoly is to prevent monopoly.

We want to preserve our system of free enterprise. Some of you may be Republicans, others Democrats. I am a Democrat. We want to continue to be Republicans or Democrats - not socialists or radicals or members of any of those other parties such as they have in Europe which are so far left that they complete the circle and meet at the far right in the totalitarian state. In Europe where they do not have antitrust laws some of the so-called conservatives by comparison make our extreme left wingers resemble McKinley Republicans. The European economy was approximately where our economy is today. We want progress within our traditional economic and political patterns of free enterprise and personal liberty. We do not want retrogression to socialism or worse.

American conservatives and liberals should both strongly support the antitrust laws. A true conservative wishes to retain those things which experience has proven to be good. The antitrust laws are designed to help retain the capitalistic system operating in a fair competitive economy. The true liberal wishes to retain his personal liberty but to move forward toward bringing more material prosperity to all of our people. Americans living under a capitalistic system and the antitrust laws have retained their personal liberty and have more of the material benefits of life than any people in the history of the world.

In conclusion, I state that with the various forms of socialism in recent years supplanting much of the system of private enterprise in the free nations of the old world -- with the economic system of all nations behind the Iron Curtain yielding to Marxian philosophy of totalitarian rule -- we must put our economic house in order. We must keep it in order. If we continue to maintain our fair competitive economy, we will continue to be strong, and with God's help we will continue to be free.