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**SMALL BUSINESS AND THE FEDERAL TRADE
COMMISSION**

Address of

**Hon. Edward F. Howrey, Chairman
Federal Trade Commission**

Before the

**CONVENTION OF THE NATIONAL
ASSOCIATION OF RETAIL DRUGGISTS**

Chicago, Illinois

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APPROVED

SMALL BUSINESS AND THE FEDERAL TRADE COMMISSION

It is an honor to take part in the Fifty-fourth Annual Convention of the National Association of Retail Druggists.

The corner drug store is an American institution. From an ice cream soda after the show, and possibly a free review of the current magazines, to the desperately needed medicinal preparations in time of sickness, the retail drug stores of the country have become a permanent part of life in America.

Individually, retail druggists are small businessmen; collectively, you are a highly important segment of the Nation's economy. As independent businessmen, you are interested in what the Government is doing to preserve our private competitive enterprise system, of which you are a vital part.

This morning I would like to talk briefly on the subject of small business as I view it from the Federal Trade Commission.

The primary objective of the Commission is to preserve effective and vigorous competition. In order to accomplish this, small business must continue to be strong and aggressive; it must be protected from unfair competition. All inequitable handicaps should be eliminated so that small firms may grow in a healthy way and compete more effectively with their bigger competitors.

It is startling to realize the dynamic and important position occupied by small business today. While we hear much about big business, the truth is that the typical business unit in the United States is small. Nine out of every ten business concerns engaged in manufacturing operations are small concerns. They employ close to half of all persons engaged in manufacturing, and they account for more than one-third of total output.

It is reported by one of the largest automobile manufacturers that 58 percent of the total price of an automobile represents more than 10,000 purchased parts and that such parts are obtained from more than 7,000 different suppliers.

One of our great steel companies says that 40 percent of its total revenue is paid out to 54,000 suppliers of goods and services, and that at least 50,000 of these suppliers are small business concerns.

The majority of new ideas, new methods and inventions originate with small business. Of all the patents issued by the United States Patent Office during a seventeen-year period, approximately 77 percent went to individuals and small and medium-size businesses.

In the field of distribution, I find that if the corporations doing business in 1949 were divided into two groups - those with assets of more than \$250,000 and those with assets of less than \$250,000 - the smaller would contain about 90 percent of the retailers in the United States and 80 percent of the wholesalers. This is actually an understatement, because these figures do not take into account sole proprietorships and partnerships which are particularly important in distribution.

Figures of this kind are sometimes criticized on the ground that the number of small businessmen is a bad measure of their importance because a few big concerns outweigh many small ones. It is, of course, true that the big companies do more than a proportionate share of the total business. This is what is meant by saying they are big.

But even when the place of small business is measured by the amount of business done, it remains a solid and substantial part of the total. In both wholesaling and retailing, corporations with assets of less than a million dollars received in 1949 approximately half of the gross revenue of all corporations in the field.

I noted with interest just recently that your able Executive Secretary, John Dargavel, estimated that of the \$150 billion spent in retail stores in 1952 small retailers accounted for \$119 billion, or 80 percent of the total.

To me, these examples typify the interdependence of small and large business; they lend perspective to the indispensable role of small business, both economic and human, in our free enterprise system. The fact is that the American system, as we know it, cannot survive without both big and small business.

There are few topics, however, on which people are more likely to go to extremes than on the subject of small business. Some will whisper privately that there is no special problem and no occasion for a Government policy towards small business. This is not true.

Others will proclaim emphatically that small business is facing a crisis, that the very existence of the independent businessman is in danger, that unless drastic steps are taken to rescue him he will disappear and competition will disappear with him. This is also untrue, and such statements are less than complimentary to the brains and strength of the hundreds of thousands of small businessmen in this country.

Those who speak about the small business crisis advocate a wide variety of remedies, some of which are good and some of which are not. Included among the latter are a number of remedies which would do much damage both to the public interest and to small business itself.

One of these is the grant of various kinds of public subsidy to small business. Along this line small business becomes the ward of the state and a charge upon the taxpayer. It loses both its independence and its usefulness.

Another is the protection of small business by the imposition of such tight controls upon large business as to enmesh it in a strait-jacket of regulation. This runs counter to the public interest because, as I have indicated, there is a place for large business as well as small. It also runs counter to the small business interest because comprehensive regulation of the business process is bound to control all business, large and small.

Still another is a broad grant of immunity from the operation of the antitrust laws. Such a policy might conceivably help the first few small business groups to which it was applied. But as further inroads were made upon competition, these groups would lose by the monopolistic practices of others. Small business as a whole would lose because of the deadening of the competitive incentive and initiative. If competitive checks and balances are weakened, the larger concerns are likely to attain greater market advantage than the small business group.

Small business needs no such dubious remedies but rather special remedies adapted to its special problems.

I am confident that there is a greater awareness in Washington today of small business problems than at any previous time. During the first session of the present Congress legislation was enacted establishing for the first time in the country's history a comprehensive, independent, peacetime agency for small business. It is called the Small Business Administration.

This agency, as I understand it, will provide financing for small business, will assist small concerns to obtain a fair share of government contracts, and will otherwise help them with special problems.

The most obvious of these problems is that small enterprises are too small to do for themselves, individually, a good many things which large business can do, and which it is in the public interest to have done. Some of these things can be done by small concerns acting together, and where this is so, the proper role of government is to encourage and facilitate such joint action. Technological research and market research are good examples.

While the Federal Trade Commission supervises the competitive practices of both small and big business, it should make a special effort to protect small business from predatory practices. It should, in fact, have its own small business program.

With this in mind, I suggest the following:

1. A vigorous application of the antimonopoly and anti-discrimination statutes is an important part of a policy favorable to small business. So long as the vigor and fairness of competition is maintained, small businessmen will have a fair chance to perform their economic functions and prosper accordingly. They should not want more, and they do not need more to preserve their place in the sun.

2. A separate Small Business Division should be established within the Commission. One of the principal complaints of small businessmen is the mystery and delay surrounding their requests for action against unfair competitors or other suspected violators. They say they drop their complaints in the hopper and never hear from them again unless and until a formal complaint issues.

One of the duties of the Small Business Division would be to keep small concerns informed, and to expedite the movement of their matters through the Commission.

3. The Commission should strengthen the administration of the Robinson-Patman Act and seek wider compliance with its provisions. In this connection we propose to establish an advisory committee on cost justification.

Although savings in cost constitute the primary justification for lawful price differentials under the Act, there has been little advancement in the field of distribution cost accounting during the 17 years it has been on the books. Business concerns have found it very difficult, if not impossible, to determine precisely what cost savings are allowable and how they may be proved. The few distribution cost studies that have been developed have been very expensive and have involved detailed functional analyses of the seller's entire business.

These difficulties have engendered widespread disregard of the prohibitions against price discrimination. This is so because sellers cannot, in our competitive economy, rely on a one-price policy. In order to compete they must be able, where the occasion requires it, to pass on to the buyer the actual savings created by the buyer's method of doing business.

It is our hope that this advisory committee will be able to ascertain whether it is feasible for the Commission to formulate standards of proof and procedures for costing which can be adopted by the Commission as guides to business enterprises desirous of complying with this important statute. The results of this activity, which should greatly stimulate compliance with the Act, will prove especially helpful to smaller concerns.

It is recognized that no cost accounting system can give instantaneous Robinson-Patman Act answers, but in my opinion there is no necessary conflict between better costs for Commission purposes and more useful costs for management.

4. The investigative work of the Commission should be improved and expanded. All of the Commission's work, its successes or its failures, depend primarily upon the facts which are developed by the examiners in the field. The attorneys in charge of this work have received neither the recognition nor the support necessary for a successful administration of the Commission's laws. Subject to surveys now in progress, I propose to make recommendations that will raise the investigative work to a status equal with that of our other work.

5. Another problem affecting small business which we must solve concerns compliance by respondents with cease and desist orders entered against them. Hundreds of lawyers are being utilized to obtain cease and desist orders while a mere handful are employed in obtaining compliance with the 4500 orders already on the books. There seems to be an unawareness of whether these orders are being complied with or violated. It is useless, it seems to us, for the Commission to enter orders unless it sees to it that they are obeyed, either voluntarily or through appropriate enforcement proceedings against those who deliberately or wilfully ignore them.

I have recently established a special staff committee within the Commission to formulate ways and means to correct this weakness.

Failure to obtain compliance constitutes a waste of public money, has a demoralizing effect on competitors and members of the public who have been injured, and tends to encourage a general disregard of the antitrust and trade regulation laws, oftentimes to the direct detriment of small businessmen trying to enter or remain in a highly competitive market.

6. The Commission should not seek to nullify the McGuire Act, which has the strong support of small business, by the application of unrealistic legalisms or strained statutory interpretation. This Act, as you know, exempts from the operation of the Federal antitrust laws vertical resale price maintenance contracts which are legal under state fair trade acts.

At the time the McGuire Act was introduced the Commission deemed the bill not to be in the public interest and urged Congress to reject it. The Act is now on the books; and Congress, by an overwhelming vote, has left no doubt concerning the basic purpose and intent of the legislation.

In closing, I want to emphasize that the Commission, in developing its future enforcement policies with respect to all of the statutes it administers, should hew closely to the intent of Congress. The

prosecuting functions should be reserved for the swift and effective elimination of "hard core" violations of law.

In the past the Commission has not utilized its funds in a manner best calculated to prohibit those acts and practices which Congress found and declared to be injurious to competition. It has over-emphasized, I believe, fringe issues which were punitive in nature and of no practical benefit to small business.

In the future I hope the Commission will forego peripheral "test" cases of doubtful validity and questionable economic consequence.

Only when this approach is taken can we venture to claim that the Federal Trade Commission is performing its duty to the competitive system and that the public is obtaining a fair return on its law-enforcement dollar.