

Remarks of

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I would like to begin with a modest word of good cheer.

There is life after election at the FTC. We are not "chicken little" and the sky is not falling. Eight years of Republican leadership during the Nixon and Ford administrations strengthened the FTC. Surely, it will survive four years of Reagan.

This is not to suggest that there is not ample room for gloom. Even under this Democratic Congress, and despite the unflinching support of President Carter, some of the Commission's most significant initiatives were curtailed. And while attention was focused on the Congress, the federal courts have grown increasingly resistant to the old theories which seek to stretch the limits of the FTC's authority or to impose innovative remedies.

And now we await a Reagan administration.

This is obviously an unsettling time in Washington. A new, or rather a bristly, but old fashioned broom is going to be sweeping clean. Those of us who continue to have faith in the responsibility and capacity of government to address social and economic evils and redress inequities may have to stand aside while those who advocate the freer play of private institutions have their day.

But, curiously, it may also be a time for the affirmation of certain values and bedrock principles which are shared by conservative and liberal alike. And perhaps most preeminent among these principles is a commitment to a strong competition policy.

In many economic arenas, regulation and competition represent alternative strategies for curing marketplace failures. Regulation attempts to cure market defects through direct government controls. As an alternative, competition policy seeks to cure market defects indirectly by restoring competitive conditions and by assuring that the consumer has the power and the choice and the essential information to serve as the private regulator of the marketplace through purchase decisions.

Indeed, many of us who have spent a good part of the last two decades concerned about the rights of consumers and the fairness and responsiveness of the marketplace to human needs, have grown increasingly to respect the power of competitive incentives, when operating in a free, open, honest and knowledgeable marketplace, to generate the highest quality products at the lowest competitive price -- prime consumer goals.

And liberals and conservatives alike, concerned about the vigor of American business and its capacity to meet the challenge from abroad, have also come to reaffirm their faith in vigorous competition -- competition which allows the successful and innovative to survive and prosper; competition which also allows those who can not or will not respond to competitive stimulus to fail. In short, a commitment to a strong and aggressive competition policy remains a sound economic policy.

For example, as many of you know, the FTC over the last several years has played an increasing role in challenging excessive regulation of professions and semi-professions, including self-regulation by professional associations and state boards which are often de facto extensions of professional trade associations. In these areas, we found classic types of antitrust violations: price fixing, boycotts, agreements not to compete, exclusionary practices. We have moved both to prosecute antitrust violations and to encourage states to reexamine public policies regarding the regulation of professionals. In essence, we are raising the same questions about the competitive health of our professions as we are doing about our steel and auto industries.

When the New York Times reports on the declining state of productivity in this country and the growing consensus that we need a revitalization policy, its charts and figures reveal that the segment of our economy which has the most sluggish rate of growth in productivity is the service sector. And prominent within the service sector is the delivery of health care and other professional and quasi-professional services. So it is not surprising that the FTC's program to challenge illegal, anticompetitive restraints in the professions has enjoyed the support of economic advocacy groups ranging from Consumer's Union to the American Enterprise Institute.

Conservatives have also supported FTC action to police deceptive and unsubstantiated advertising and to make certain that consumers have essential product and performance information where the market will not provide such information.

Let me quote from the chapter of the recent Heritage Foundation Project Team Report for the FTC -- chaired by Kendall Fleeaharty of the Chamber of Commerce. As to deceptive advertising, the report concludes, "FTC intervention, including stiff fines and mandatory advertising disclaimers, are entirely appropriate."

The report also looks favorably on the funeral rule, noting that "there is no effective remedy available to a consumer when a funeral home refuses to provide him with an itemized bill, or when it induces a family to purchase an unwanted package of services and goods for a funeral.

In those instances, the bereaved family has no adequate marketplace remedy. The discipline of the marketplace is inadequate when a customer's purchases are substantial, few and far between. In those cases, rules and regulations appear to be the only alternative."

So we may make a serious miscalculation if we assume that a conservative administration will undermine these initiatives.

This is especially true when we note with chagrin that much of the Commission's unfinished agenda still represents initiatives undertaken under the Republican leadership of

Caspar Weinberger, Miles Kirkpatrick, Lewis Engman and Calvin Collier. Many of those initiatives now reaching completion: the funeral rule, hearing aid rule, used car rule, and mobile home rule, were commenced in the mid-seventies and are now ready to be implemented subject, of course, to the legislative veto.

Nevertheless, the object of this conference -- to set forth the unfinished agendas as a yardstick against which to measure the performance of the New Administration -- is prudent and in the best traditions of citizen participation.

With respect to the Commission's own unfinished agenda, let me enter a couple of special notes:

First, unlike the Executive Branch agencies, as you know, the FTC is essentially a continuing body. Obviously a new President can appoint a new Chairman, but my fellow Commissioners and I serve for fixed terms. Thus, there is no sharp break between administrations.

Second, because I intend to remain as a Commissioner and in that role will continue to serve in a quasi-judicial capacity in hearing both cases and rules, it would not be possible or appropriate for me to spell out for you what I believe the Commission should do in each of its pending proceedings.

I am, however, attaching a list of major ongoing proceedings and projects at the Commission which citizens may wish to monitor. Also available is the FTC's submission to the

Regulatory Calendar, which spells out in detail the issues facing the Commission on pending and contemplated rulemakings. Finally, I have attached a summary of FTC accomplishments over the past four years -- accomplishments in which we take great pride and expect to be upheld and built upon in the coming years.

Now, I would like to discuss some broad areas of concern which I believe the Commission must continue to address in the coming years: This discussion is by no means exhaustive; it is framed in terms of broad categories, and thus omits mention of other important proceedings like the funeral rule, which is very nearly completed, and the inquiry into product standards and certifications.

1. Market Concentration - increasing concentration of economic assets nationwide are areas of specific concern. The FTC and the Antitrust Division have moderated, but not stalled, the drift. We still seem to be in the midst of a big merger wave, or rather a wave of big mergers. Our primary law enforcement focus, of course, is on amassing and misuse of economic power in particular product markets and industries. The classic "conglomerate merger" has not been a legitimate target for antitrust enforcement. If it could be shown that concentration of economic power -- market by market or economy-wide -- enables us to be more productive and more competitive in international markets or at home, we might have to accept otherwise disturbing levels of concentration. But, on many issues, all the trade-offs have yet to be made explicit, and it's not at all clear that such concentration is necessary or desirable even from the stand-point of efficiency.

So, while the antitrust agencies continue to employ their traditional enforcement tools, the search continues for new approaches suited to particular problems that may not have been foreseen by the enactors of our basic antitrust statutes. What should be our policy toward corporations that have maintained uneroded monopoly power for years and years with no end in sight? Should we continue the search for overt "predatory" conduct, equivalent to a "smoking gun," or might we directly break up these monopolies where doing so will not lessen the

productive efficiency of the industry? The pursuit of "no fault monopolization" is one proposal worthy of effort, along with other ways of defining what it takes for conduct to be "exclusionary" where an entrenched monopolist acts to preserve its market share from competitive inroads.

At the FTC, we have taken a lead in the debate over conglomerate merger legislation, and our staff provided a key legislative proposal that would put a cap on growth through merger by the nation's largest corporations. In the future, we might also consider incentives for divestiture, just as the tax laws now offer incentives toward conglomeration. We've also become increasingly concerned with circumstances in which competition in concentrated markets appears to be limited or reduced through sophisticated, facilitating practices and other strategic behavior, and we're working to develop hard-and-fast criteria and legal standards for this area of the law.

2. National competition policy. Competition policy embraces more than just antitrust; it also looks to the structure of our economy and the relationship between government and business at all levels -- occupational licensing, tariffs and quotas, price and entry regulations, the effects of tax policy and financial devices upon markets. There is little doubt that during the next decade the United States will need a more comprehensive competition policy that integrates these issues and regards the structure of the economy as a whole. The FTC has played a key role as an advocate for competition. We've made a start, but there's much left to do.

(a) Occupational deregulation may turn out to be one of our success stories. The FTC's concern about the anticompetitive effects of undue occupational restrictions and restraints on competition in the professions began under the Republican administration, and it's a good example of the importance and benefits of continuity at the FTC. But we've only scratched the surface of questionable occupational restrictions. Midwives, nurse practitioners, hygienists, dental auxiliaries, engineers, lawyers, contractors of all sorts, barbers and hairdressers, the list goes on. Some restraints in this area, of course, are not appropriate for legal challenge, but at the very least we can focus public attention on them, and document the substantial costs to the public that can exist.

(b) The subject of tariffs and quotas is a painful one, particularly when American jobs are at stake. These devices are costly to American consumers when they impede competition which might otherwise spur innovation and productivity,

and prevent access to cheaper or better-made foreign goods; but they may on occasion be necessary to enable an American industry to regain its footing in international competition. More work needs to be done in understanding these trade-offs and devising a comprehensive international competitive strategy.

3. International Competition Policy: the FTC is intensively examining the impact of world competition on the U.S. antitrust laws. Obviously, we have to make certain that the antitrust laws are not applied in such a way as to handicap American business in competing overseas, or here against foreign competitors. But these appear to be various myths and misconceptions abroad, which include the notion that one way for American business to regain its competitiveness and productivity and to compete internationally is to shelve the antitrust laws when foreign competition threatens, to bless the growth of national cartels or to blink while U.S. firms join international cartels. I remain convinced that vigorous competition rather than cartelization is the key to productivity and competitiveness, and that cartelization dulls the competitive edge and deprives consumers of the benefits of competition. It is no accident that Japan's surging prominence in automobile competition is the product of an economy, only one-third the size of the U.S., in which nine auto companies compete vigorously.

4. Product reliability - There has been a steady and alarming surge in consumer concern about shoddy products -- particularly for big-ticket items like housing, automobiles, and major appliances. American products will continue to lose their competitive edge to imports as American consumers suffer unreasonable losses until manufacturers embrace quality control and understand that consumers demand reliability.

Only recently through FTC efforts has the legal right of consumers to obtain free repairs for defective products become a reality. We've obtained more than 100 million dollars worth of auto repairs, and other free fixes for products like heat pumps and wood stoves.

The future looks promising for product reliability, and here are what I see as upcoming issues:

- Comparative performance information (for example on durability or quality ratings), is a market-oriented way for manufacturers and government to deal with product defects. More can be done to promote disclosure of such information to consumers.
- Reliability problems in automobiles should continue to be the focus of FTC scrutiny, with care taken to ensure that imports are held to the same standard as domestics.

- Housing defects cost the average new home buyer over \$1,000, according to a recent FTC/HUD survey, and the Commission should follow-up with targeted investigations and cases where necessary.
- The Mobile Home rule will be up for final consideration within the next year, giving us the opportunity to determine whether additional measures are needed to improve warranty performance.

5. Advertising - The FTC should move ahead with effective and informative remedies for unfair and deceptive advertising.

Among the measures that should be considered are:

- Performance standards which allow advertisers -- the communications experts -- to design a needed disclosure, so long as they meet the FTC's target for getting the message across.
- Corrective or counter ads, when legally necessary, which use information to cure deception, and put the facts in a format that counteracts misapprehension.

Cigarette advertising is an area the FTC must continue to monitor. Last week, the Surgeon General issued a new, comprehensive report on cigarette smoking and health which found that restraints on cigarette advertising may not effectively curb the impact of cigarette ads in stimulating smoking. That report included specific recommendations for FTC action with respect to cigarette advertising, and those recommendations must plainly be subject to thorough and timely study and response.

And, while I am not participating, the FTC's inquiry into children's advertising continues, within the limitations imposed by Congress.

6. The creditor-debtor relationship. As the economy continues to spiral downward, the relationship between creditors and debtors becomes more heated. We need to get a better handle on how consumers' rights can be protected without driving up the price of credit or making credit unavailable to lower-income persons.

- The Equal Credit Opportunity Act is one of the most important consumer credit laws. Vigilant enforcement should continue to ensure that working women and the elderly have access to credit and that blacks and other minorities do not face redlining tactics or other financial discrimination.
- FTC action under other federal credit laws will also be important -- like the Fair Debt Collection Practices Act to shield debtors from harrassment and abuse, and the Fair Credit Reporting Act to safeguard the privacy of personal information in credit reports.
- The proposed Credit Practices rule will soon be up to the FTC, giving us an opportunity to scrutinize the "fine print" clauses in consumer credit contracts.

7. New media technology. Direct broadcast satellite transmissions, interactive cable, data net terminals in homes, automative electronic funds transfer -- all these hold great

promise for consumers, making it easier to shop and undertake all types of business transactions. But they also pose lurking dangers.

The FTC should encourage the development of new media outlets, and specifically should promote their use in ways that benefit consumers, such as:

- Comparative food prices from retail outlets;
- Comparative performance ratings for locally provided services (e.g. TV or auto repair, home contractors, nursing homes, etc.).

The new media will also be used for advertising and marketing in ways that will be convenient and attractive. The Commission must determine, however, how to adapt traditional consumer protection standards to new media forms.

Some issues are:

- will interactive cable TV advertisements combined with instant electronic funds transfer result in high-pressure home sales and quick transactions? In this context, should we extend the current 3-day "cooling-off" rule for door-to-door home solicitation?
- will cable television operators assume the same responsibility for advertisements as broadcasters do through self-regulatory codes and clearance procedures?
- will local governments awarding cable television franchises provide for any protection for consumers against misleading ads or abusive selling practices on cable?

- will late delivery of electronically-ordered merchandise pose the same problems as did late delivery of mail-order goods?

8. Insurance - One of the most significant contributions made by the FTC during the last decade was the development of studies on the failure of existing insurance regulatory systems to protect consumers against abuses, as in the so-called medigap insurance frauds and duplicate charges, and to provide consumers with timely comparable information on which to base sound decisions in the buying of life insurance, as in our landmark study and proposed model state law on life insurance cost-disclosure. Congress moved to restrict FTC activities in the insurance area by its statutory requirement that future studies be undertaken only upon the majority vote of the Senate or House Commerce Committee. It is not clear at this moment in what areas the Congress will see fit to authorize insurance studies. But it is critical that this role, through which the FTC provides solid research and support for the insurance commissioners and citizens of states who wish to reform their insurance systems, continue.

9. Automobiles - Along with our examinations of reliability problems, the FTC must continue its other automobile projects.

- Auto repair frauds continue to be a primary consumer complaint. We should keep wrestling with the issue, looking at warranty and non-warranty remedies and comparative quality information about the reliability of auto repair services.

- The Used Car rule designed to provide key information, will soon be up for final FTC action.
- Dispute resolution systems seem to be particularly desirable in the automobile area, to give confidence to purchasers and reduce dissatisfaction. (Informal mechanisms for resolving consumer complaints should be promoted in other industries as well, like housing and appliances.)

10. Unfairness - Since 1938, the FTC has had the Congressionally mandated power to proceed not only against deceptive practices affecting consumers but unfair practices, as well. The Commission has always sought to use this broad authority sparingly and only in those cases in which consumers have been seriously injured in health or economic loss by such practices. The Commission is in the process of preparing for the Senate Commerce Committee a statement spelling out for the benefit of business and consumers alike its interpretation of the confines of its unfairness authority, and its explanation both of the need for that authority and of the restraints with which that authority is exercised. Despite this effort to allay undue business concerns at the breadth and uncertainty of our unfairness authority, there may very well be renewed efforts to strip the Commission of this authority, essential if the Commission is to continue to fulfill its time honored mission.

11. Remedies - The FTC must continue its efforts to shape cost-effective remedies which deliver real benefits to consumers. In addition to the advertising remedies cited earlier, an area of great significance is the self-help redress remedy -- like pro-rata refund and cancellation rights after a cooling-off period. These market incentive remedies hold great promise for the future.