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THE 75th ANNIVERSARY
OF THE
FEDERAL TRADE COMMISSION

Remarks of

Janet Steiger
Chairman
Federal Trade Commission

before

a symposium commemorating
the agency's
seventy-fifth year

Washington, D.C.

November 29, 1989

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Good afternoon to you all. It is a great pleasure to welcome you to the FTC's seventy-fifth anniversary observances -- to our Diamond Jubilee. We have all made it as far as Queen Victoria did, and I hope we'll be here in 25 years for the 100th!

This afternoon's symposium will be a particularly appropriate way of marking this anniversary. It brings together in one room people from many aspects of our institutional life, and from many stages of our history. In this respect it resembles the final chapter of an Agatha Christie novel. We have with us a sprinkling of respectable citizens (members of state agencies and consumer groups); the usual suspects (our current Commissioners); the people who probably did it (our former Commissioners); and some of the people who really did it (the members of Congress). The rest of you are left in the role of detective trying to sort out who did what and to whom.

In our endeavor today, we have the advantage of the advice of not five but nineteen Federal Trade Commissioners, past and present. In addition to myself, Commissioners Calvani, Azcuenaga, Strenio, and Owen, we are graced with the presence of five former Chairmen: Earl Kintner, Paul Rand Dixon, Miles Kirkpatrick, Lew Engman, and Cal Collier. Former Chairmen Jim Miller and Mike Pertschuk joined us at luncheon, earlier today. We are also pleased to welcome five former Commissioners. Mary Gardner Jones was the first woman Commissioner, and I note happily that a majority of our Commissioners are now women. Pat Bailey was the third woman. Commissioner Margot Machol was the fifth. David Clanton and George Douglas are also with us today,

and we appreciate their contributions to this celebration. Our most sentimental tie with our past is our longtime bailiff, Willie Shelton.

The FTC was founded in 1914 as the joint product of several minds. President Wilson wanted an agency that would bring specialization and economic expertise to the task of regulating commerce. Senator Newlands of Nevada wanted an agency that could halt the growth of market power before it had reached Sherman Act proportions. And Louis Brandeis wanted an agency that could take up the slack if the Sherman Act was undercut by a hostile judiciary. The formula that they agreed on called for an agency with the power to prevent "unfair methods of competition."

Congress used this elastic language in order to give the new agency some flexibility in reaching business abuses. That flexible approach had drawbacks, however, that would become apparent in the course of time. The early FTC decided to proceed solely on a case-by-case basis, and not to add specificity to the "unfairness" prohibition through an administrative gloss.

By the 1930's consumer protection was formally recognized as a separate area of activity, grafted originally onto the unfair methods of competition rubric. We had originally been able to challenge false advertising, for example, since we could show that it diverted trade from honest firms and was therefore an unfair method of competition. This formula proved unsatisfactory for the firm establishment of a consumer protection policy. For instance, in the 1931 Raladam case, while the Commission showed

that the advertising for a patent medicine was deceptive, it neglected to call any injured competitors as witnesses, and so the case had to be dismissed. Congress then passed the Wheeler-Lea Amendment in 1938, giving us the power to sue directly to prevent "unfair or deceptive acts or practices."

The Commission's powers were again significantly expanded in the late 1970's, as the result of two statutes. The Magnuson-Moss Act gave us special remedies and special rulemaking powers for consumer protection matters. The Hart-Scott-Rodino Act set up the reporting system that allows us to review proposed mergers before the fact.

Principal accomplishments

Our history is not just one of statutes, however. Along the way the Commission has won major victories for consumers. Let's start with consumer protection. We've had at least three landmark accomplishments there. First, we established in the early years of the agency that false or deceptive advertising will violate the FTC Act. This ensures that consumers receive accurate information, and, as a result, helps ensure that consumer sovereignty will prevail in a market economy. Second, we established the requirement for prior ad substantiation. This ensures that consumers have confidence in advertising and will remain willing to rely on it. Third, we have given shape to the very general prohibition against "unfair" consumer practices. That provision enables the Commission to prohibit coercion and

other direct threats to consumer sovereignty. Its implications were enduringly set out in the Statement of Basis and Purpose for the 1964 Cigarette Rule, despite the fact that the operation of the rule itself was suspended by Congress.

On the competition side we can also identify three principal accomplishments. First, we have been, over the years, a primary architect of the nation's merger policy. It was one of our reports to Congress that sparked the Celler-Kefauver Amendment -- which extended the Clayton Act to asset acquisitions -- and we have also been primarily responsible for administering the H-S-R premerger program. Second, the Commission has played an important role in keeping competitors from using economic coercion -- in the form of group boycotts -- as a means of preventing consumers from being offered a full range of marketplace choices. Third, we have been in the forefront in extending the antitrust laws to the professions. The Justice Department deserves credit for several early cases, but the Commission has been particularly active in expanding consumer choice and permitting market-oriented cost containment efforts, both in health care and in other markets for professional services. Not a bad record either.

The Bureau of Economics always tends to get shortchanged on these tally lists, I'm afraid. That's because so much of their work is in support of the other bureaus' activities. Yet their contributions have been absolutely crucial. It is the economic sophistication of our work, more than anything else, that gives

it its credibility. Moreover, the Bureau of Economics has managed a certain number of projects of its own, particularly in the advocacy field where a scholarly approach is especially persuasive.

Criticisms of the agency

While I'm proud of our record on the whole, this is not to say that we couldn't improve upon it. We've certainly come in for our share of criticism. The agency, saddled with the task of putting meat in the bare bones of a broad statute has been accused, cyclically, of doing too little or too much. Each swing in the FTC enforcement policy brought critical commentary from observers who thought the Commission's approach had gone too far. So, for example, when the Commission of the 1960's focused on distributional restraints, the first Kirkpatrick Committee report suggested that we should turn our energies toward larger-scale and more economically-complex matters. The Commission of the 1970's moved decisively in that direction. Another group of observers then suggested that we had become too involved in social-policy issues and should return to a core focus on consumer welfare. And in the 1980's the agency moved back in that direction.

We now have on the table a second Kirkpatrick Committee report from the ABA. This too is critical in some ways, but I find it to be a constructive criticism. The report praises the general mission of the FTC, and accepts the fact of dual

antitrust enforcement with the Justice Department. It also suggests many specific ways in which the performance of our mission can be improved.

The new ABA Report will be the focus of our discussion this afternoon. That seems right to me, since any good birthday celebration should be forward-looking. We are fortunate to have with us today several members of the ABA panel, and several senior members of the FTC staff. On behalf of the Commission, I want today to thank Chairman Kirkpatrick, the Kirkpatrick Committee and the Antitrust Section of the American Bar Association for the dedication of time and talent to the work we will discuss today. The Kirkpatrick report is only the latest of a long line of supportive efforts by the ABA on the behalf of the FTC.

To commence our program, I will call on Harry M. Reasoner, the current chairman of the Antitrust Section of the American Bar Association, who has come to us all the way from Houston, where he is a partner in Vinson and Elkins.

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And we will later hear from my good friend, Jim Rill, who kindly accepted our invitation to participate today. We wouldn't think of celebrating our survival without his presence and his wisdom. In a short period of time he has helped us forge what I

am confident will be a close and harmonious relationship with the Antitrust Division.

Conclusion

Thank you one and all for an enlightening three hours. I am sure I speak for everyone here when I say that we have all profited immensely.

Amid constructive criticisms, thoughtful suggestions and fascinating dialogue, a central message comes through this afternoon - the FTC exists to support the workings of a free market economy. We are here to uphold consumer choice and the rule of consumer sovereignty.

The work of our competition mission must address the first - it must ensure that the marketplace provides a full array of options undiminished by artificial constraints. The consumer protection mission addresses our second charge - it must assure consumers can choose freely among those options without their choices being distorted by misinformation or significant omission.

Our task is thus a useful and honorable one and an agency with such a task is entitled to reach its 75th birthday in good spirits - and so we have - and in doing so we have, I think, justified the confidence of our Founders. We have defined a mission for ourselves in rounded economic terms. I like to think that Wilson, Newlands and Brandeis would say we have worked to do what was asked of us in 1914 and succeeded surprisingly well.

This concludes the symposium. Now, I propose we adjourn to the Top of The Trade for our 75th anniversary reception.