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PRESS RELEASE

Federal Trade Commissioner James M. Mead, whose term expires next Monday, today issued a statement summarizing his views on the Commission's work and its problems.

The statement follows:

INTRODUCTION

I am completing my term of office as Commissioner of the Federal Trade Commission. I served from 1950 to 1953 as the first permanent Chairman of the Commission appointed by the President pursuant to Reorganization Plan No. 8.

The Commission has now experienced the completion of the terms of two permanent Chairmen. I was appointed by President Truman. Mr. Edward F. Howrey, who recently resigned as Chairman, was appointed by President Eisenhower. A study of the operations of the Commission under these two Chairmen would doubtless reveal differences in policies and in operations of the Commission. Such a study might be of value to future Commissions so that the better practices of each of these administrations could be preserved.

During my tenure as Chairman, vigorous and fruitful action was taken to clear the Commission docket of old cases. New investigations and complaints were initiated and economic reports issued which were of substantial import to the economy.

During my tenure, the morale of the Commission attained an exceptionally high level. The staff of the Commission knew that if they were honest and diligent in their work they would be secure in their positions regardless of politics or other forms of favoritism. Appointments to the professional and clerical staff were made without regard to religious or political affiliation. There was definitely created at the Commission a career service based on merit.

Professional personnel at the Commission were encouraged in independent thinking and initiative. The only team or party line to which the staff was expected to give loyalty were principles of public morality, the policies duly promulgated by the Commission and the laws of the Congress as interpreted by the Commission and the Courts.

In my opinion, a Regulatory Agency, such as the Commission, can only give permanent honest, efficient and impartial service by maintaining a career-merit system of employment and promotion. Good Government is not only morally right but it is also good politics.

During my tenure as Chairman, the Commission took vigorous action to prevent the growth of monopolies and to prevent unfair trade practices. All laws administered by the Commission were enforced with vigor and sympathetic understanding.

The Commission was created as an arm of Congress. The recent Reorganization Plan No. 8 delegates to the Chairman of the Commission all executive powers of the Commission, including the power to hire and fire personnel on the staff. The Chairman is removable as Chairman at the will of the President. This Plan impairs the independence of the Commission because it increases substantially the power and influence of the President over the operations of the Commission. The power to select the Chairman of the Commission should be returned to the Commission, and the control over the operations of the Commission should be placed in the Commissioners and not in one man, the Chairman.

Certain Committees of the current Congress have done constructive service in investigating the operations of the Commission. I believe that substantial good has and will result from such investigations.

In my opinion, the Commission is one of the most important civilian agencies of the Government. The Federal Trade Commission and Clayton Acts are charters of economic freedom. The Commission should be nourished with increased appropriations and encouraged in its sometimes lonely fights for the consuming public.

The Commission has on its staff a large number of outstanding men and women devoted to the public service. To them I express my admiration and appreciation for the significant meritorious work they have done and are doing for their country. To my colleagues on the Commission, past and present, I express my appreciation for their courtesies and consideration.

I am issuing a statement which outlines in more detail my views as to the Commission and its operations.

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As I complete my term of office as a Commissioner of the Federal Trade Commission, and formerly as Chairman of the Commission, I consider it proper to give an account of my stewardship in that public office. In addition, a statement of certain conclusions based on my experience at the Commission may be helpful to Commissioners who will succeed me and to those who are interested in the Federal Trade Commission.

The Commission was established in 1914 by the Congress on the recommendation of a great President, Woodrow Wilson. The basic reason for establishing the Commission was to create an agency which would foster and protect our competitive system of free enterprise and would be vigorous in preventing the growth of monopoly and the use of unfair trade practices in interstate commerce. The Congress delegated to the Commission a wide latitude of discretion and extensive jurisdiction to accomplish its purposes. The jurisdiction and the opportunities of the Commission stagger the imagination. The Commission's horizons in the

field of interstate commerce are almost unlimited. For illustration, what are the limits of the terms expressed in the statute, the prevention of unfair methods of competition and unfair or deceptive acts or practices?

The Commission's goal as indicated by its basic statute is to attain for our domestic economy the ideal in competitive relations, that is, the use of fair dealing by all those engaged in selling and buying commodities in interstate commerce. Because of the frailties of human nature, that goal will not be obtained in the foreseeable future. It is perhaps due in part to the reason that this ideal condition of trade is not attainable that the Commission has been and will be criticized by sincere men as long as there is a Commission. We should strive for that ideal and perhaps at some future time when human beings attain perfection in their relationships with one another, there will be no need for a Federal Trade Commission.

ORGANIZATION AND PERSONNEL POLICIES

I shall now address myself to the organization of the Federal Trade Commission. The agency is composed of five Commissioners appointed for a term of seven years each by the President of the United States. Until the Reorganization Plan No. 8 of 1950, the executive power of the Commission and the employment and dismissal of personnel were responsibilities of the entire Commission. In 1950 these powers were vested in the Chairman of the Commission appointed by the President and serving as Chairman at the will of the President. I was the first so-called permanent Chairman of the Commission appointed under this provision. I served as Chairman from 1950 to 1953. Recently the second permanent Chairman has resigned from the Commission. He served from 1953 to 1955. I believe it would be informative if the organization and policies of the Commission during these years would be studied and compared so that the more desirable policies of each administration would be utilized by the future Commissions.

During my service in the House of Representatives and the Senate of the United States, I sponsored much legislation designed to strengthen the merit system of employment in Government. An important element in the strength of our Government depends on the honesty, integrity and ability of Government employes. I believe it has been amply demonstrated that these employes should be free from political influence, patronage and favoritism. This can only be accomplished by a merit system of employment and promotion. During my term of office as Chairman of the Commission all the clerical force at the Commission, subject to the Civil Service Regulations, were employed, promoted and, if necessary, dismissed, strictly in accordance with Civil Service regulations. As to Attorneys, a Board of Legal Examiners operated within the Commission and all applicants for attorney positions were invited to appear before this Board and to state their qualifications for employment. The Attorney applicants were graded according to their experience, educational qualifications, etc., and all Attorneys were appointed from the register so established. No questions were asked as to politics or religious affiliation. Promotions within the Commission were made on merit on the basis of the recommendations of the Bureau and Division Chiefs. Under that system persons with qualifications and possessing merit were appointed to the staff of the Commission. As promotions were based on merit, the employes knew they were considered for promotion on the basis of their own efforts and not because of political preference. Among the personnel of the Commission I believe that system created efficiency, loyalty and good will.

The Federal Trade Commission was created by the Congress as an arm of Congress itself. It is my considered opinion that the lodging of the executive and administrative powers of the Commission in a Chairman appointed by the President of the United States has the undesirable effect of making the Commission more an agency of the Executive than of the Congress. To that extent the Commission ceases to be an independent agency and becomes an executive agency. A regulatory Commission with quasi-legislative and quasi-judicial powers should be entirely independent of Executive control and influence. The Commission was created by the Congress as a bipartisan agency with not more than three of the Commissioners members of the same political party. The Executive Department is not bipartisan. The judicial function should be entirely separate from the political function of Government.

It is my opinion that Reorganization Plan No. 8, as it affects the Federal Trade Commission, should be repealed and the Chairman of the Federal Trade Commission should be selected by the membership of the Commission. It is also my opinion that the executive powers of the Commission should be delegated by the Commission to an Executive Director who should report to the entire Commission and not to the Chairman.

SELECTION OF CASES

One of the important, and perhaps the most important, problem of a Regulatory Agency is the plan or policy to be used in the selection of cases to initiate and to investigate. The Commission has very wide jurisdiction and very limited funds and personnel. With unfair practices and monopolistic tendencies rampant in our economy, the Commission does not have the means to tilt with windmills or to engage in legalistic explorations which have no real effect on competition. The Commission receives a great number of complaints from consumers, and from competitors who believe they are injured because of practices of other competitors. Should the Commission only sift and sort what the tide brings in with its daily mail, or should the Commission also, after careful analysis, on its own initiative inquire into competitive practices? What are the responsibilities of the Commissioners in this field and how much of the selection process should the Commissioners delegate to the staff of the Commission? The Commission has recently delegated to the staff certain powers to close, without full reference to the Commission, matters which have been investigated, and which the staff believes should be closed. I opposed that delegation of authority. In my opinion, the Commissioners are as much personally responsible for the investigatory and selective process as they are for the judicial process of deciding the cases after complaints have been issued.

ARE COMMISSIONERS SOLELY JUDGES?

I have noted lately a tendency for the Commissioners to gather around themselves judicial robes and to assume the rarified atmosphere of appellate judges. The Congress did not intend this Commission to be only an appellate court. The Congress extended its own powerful arm when it created this Commission. The judicial robe is not becoming to an arm of Congress. It is true that when the Commission decides cases it has a quasi-judicial function. However, the Commission has many functions and one of its functions should not be over-emphasized. It is a question of degree. The Congress gave this Commission wide inquisitorial powers to ferret out and to find facts, to publish facts and

to issue orders which would prohibit further violations of the law. In flexing the arm of Congress, the Commission acts as sheriffs, grand jurors and ultimate fact finders. An effective regulator may have the respect of those whom he regulates, but he very seldom has their love and affection. If the Congress had intended to create a court, the Congress would have draped the judicial robes around an administrative court and would have lodged the investigating and prosecuting powers of the Commission elsewhere. The Commission should not by its actions persuade the Congress that the decision Congress made in 1914 was a mistake.

CONSENT SETTLEMENT RULE

One of the very important procedural rules of the Commission is that relative to settlements by agreement between counsel for the Commission and counsel for respondents. In other words, after the Commission issues a formal complaint against a respondent or respondents containing charges of law violations, the parties may wish to settle the case without the taking of evidence. One of the great advantages of litigated cases involving unfair trade practices is that it places the history of the practices on the public record so that all may read and learn. The evidence points up the need for an order to cease and desist by the Commission and is of great benefit to competitors and others who are interested in the development of trade law. When a case is settled without trial these advantages do not accrue. There is the possibility that the action by the regulating body will not adequately protect the public interest. The public may not have the means to be informed of this situation. Therefore, in a Regulatory Commission such as the Federal Trade Commission, the consent settlement procedures should be very carefully considered from the standpoint of the public interest.

The Commission has recently adopted a new consent settlement rule. I oppose certain provisions of that rule, namely, (1) The Rule permits settlement by fewer than all the respondents named as parties in the complaint; (2) The rule permits settlement of part of the issues of the complaint and not all of the issues raised by the complaint; (3) The rule permits consent settlements at any time even after the testimony has been taken; and (4) The rule contemplates, as I understand it, the Hearing Examiner acting as a sort of mediator in the consent settlement discussions between counsel for respondents and counsel for the Government. If my interpretation of this provision is correct, the Examiner would depart from his strictly quasi-judicial functions. The Examiner should have no other function than judicial. I placed in the files of the Commission a memorandum discussing in more detail my objections to these provisions of the consent settlement rule. I trust that succeeding Commissioners will read that memorandum, and in the light of experience with the actual operation of the rule, the provisions of the rule will be further considered.

CONSPIRACY CASES

In the field of the legal operations of the Commission there are certain factors which, in my opinion, deserve careful study and analysis. One of the most important of these is the problem of investigating, trying, and deciding cases involving conspiracies to fix prices and to otherwise restrain trade. In certain manufacturing industries there are now only a few large corporations

who control the economic power and selling practices in those industries. In such industries pricing and production policies may be established without the governing influence of the law of supply and demand and without due regard to the interest of the consumer. As I stated in my Dissent in Metal Lath Manufacturers Association, et al., Docket 5449:

> "It is elementary that a price fixed by conspiracy is not a competitive price. A 'rigged' price is generally higher than a competitive price. The basic purpose of a price conspiracy is generally to achieve a higher stabilized price for the product.
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> "The public policy of the United States is that the public is entitled by law to purchase articles offered for sale in interstate commerce at a price determined by the free play of competitive forces. In fact, the Sherman Act provides that conspiracies in restraint of trade are a criminal offense against the United States. Our economic strength is due in large measure to that public policy. To the extent that we protect it, we will remain strong and free.
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> "Competition, like truth, is a hard task master. The easy way is to follow the pattern of least resistance. The easy way is the conspiracy way. The conspirator favors the shortsighted, temporary price advantages which may be achieved by a conspiracy rather than the long view of a strong enduring industry."

In the Metal Lath case, in discussing the use of patents by conspirators to maintain illegal monopolies or other restraints of trade, I stated:

> "Patent law was designed to encourage invention by protecting the inventor and his licensees from piracy and to enable the inventor for a reasonable time to enjoy the fruits of his originality. Patent law was not designed to afford a legal cloak of protection to an industry-wide price stabilization agreement. Under the Patent law, for the duration of the patent the price arrangement between the holder of the patent and his licensee acting on a bilateral basis in the protection of the patent monopoly is exempt generally from the application of the antitrust laws. This exemption, however, does not apply to an industry-wide horizontal, multilateral agreement between and among the licensor and the other licensee producers. That, basically, is a concert of action among all the producers to fix the price of the product involved. If the Courts had not so interpreted the patent and antitrust laws the Congress would have amended those laws so as to protect the public against the use of an otherwise useful and needed principle of law."

In reference to the question of proving a conspiracy to restrain trade, I also stated:

> "The ability of the Regulatory Agency to perceive a conspiracy should keep pace with the skill of the conspirator in concealing the conspiracy. Otherwise, the finder of facts would be in the difficult position of an old-style Indian trying to track his man by looking for foot prints and broken twigs on a city sidewalk. Thankfully, we do have modern Indians. The Courts have recognized that the law of conspiracy should be and is dynamic. Discerning judges of our time have understood

the realities of the modern type of planned common course of action by sellers intent on 'stabilizing upward' prices. These judges have interpreted the law as it was intended by the Congress.

"In an antitrust conspiracy case a few simple questions should be asked and answered. Are the prices in the industry competitive? Do purchasers have price alternatives? From all the facts, would a reasonable man conclude that the identical prices in the industry are due to a planned common course of action by the sellers? * * *

"Modern price conspiracies usually may only be proven by showing the activities of sellers over a substantial period of years. It is unrealistic to assume that a pricing conspiracy can be proved by proving only acts of the alleged conspirators for a period of a month or a year or even two years prior to the complaint. In order to prove such conspiracies, it may be necessary to begin the proof with evidence as to events taking place several years prior to the complaint when the foundation of the conspiracy was laid and the procedures and techniques of pricing were established. The conspiratorial tree having been planted and duly nourished in its formative period, the conspirators may continue for several years to enjoy the ill gotten fruits from this tree with a minimum of overt observable gardening on their part. * * *

"The detecting and proving of the modern streamlined matured pricing conspiracy admittedly is difficult. Identity of prices for short periods of time on homogeneous products such as cement, sand, etc. may be the result of competition. The problem is to determine whether or not the identical prices are the result of competition or conspiracy. For this task one must be aware of the dynamic concept of the law of conspiracy. * * * It is frequently noted that Federal Trade Commissioners are, or should be, experts in the field of unfair methods of competition. I fully agree. It is in conspiracy law that this expertness should be most valuable in the public interest. This Commission should be capable because of its expertness to pierce the outer deceptive facades of make-believe competitive conduct and detect the collective concert of action by conspirators underneath. The Commissioner should understand and recognize normal competitive behavior as distinguished from conspiratorial behavior. In conspiracy law the Courts have shown the way as indicated by the opinions quoted above. This Commission with its expertness should blaze the paths and thereby assure the consuming public that the prices of widely used commodities will be determined not by the few but by the impartial law of supply and demand.

"If this Commission wrongs a corporation, the corporation can appeal to the Courts for relief. If this Commission wrongs the public in deciding a case, there is no appeal by the public to the Courts. We have, therefore, a great responsibility because, for the public, we are the Court of last resort.

"Corporations represent wealth owned by individuals. Corporations are, therefore, entitled to due process and to the impartial administration of justice. The Federal Trade Commission, when it issues a complaint, acts for the people of the United States. The people, in actions before this Commission, are also entitled to due process and to impartial justice."

ROBINSON-PATMAN ACT

The Robinson-Patman Act, which was an amendment to the Clayton Act, has often been referred to as the Magna Carta of small business. The Act has been attacked by some persons for the alleged reason that the Act is inconsistent with the provisions of the Sherman Act. It is alleged that the Sherman Act favors hard competition and that the Robinson-Patman Act favors soft competition. In my opinion this concept is erroneous, but it may be due in part to a misunderstanding of the theory and provisions of the Robinson-Patman Act. It is my opinion that an intelligent and vigorous enforcement of the Robinson-Patman Act encourages fair competition. It is my view that fair competition over a long period results in hard competition to the advantage of both the sellers and the buyers of goods.

As I stated in my Dissent in General Foods Corporation, Docket 5675:

"The Robinson-Patman Act promotes hard, fair competition. For illustration, General Foods, the dominant seller, encountered a degree of competition on the West Coast. Competition is vitalized by any one or more of the following: (1) lowering prices; (2) raising quality; or (3) better selling methods. General Foods chose to use a 'deal' offer which was in fact a price reduction. But did this Goliath march bravely on the field of battle and compete with these little Davids by making this 'deal' available to all of its customers? That would have been a choice by General Foods <u>for</u> hard and fair competition between General Foods and the small business competitors. But General Foods did not so choose. It chose instead to have its customers in the other sections of the country, who did not enjoy the fruits resulting from this competition by the small competitors, to be charged higher prices so that General Foods would have a war chest to beat down the small business competition. For General Foods - it was soft competition. For the small competitors - it was unfair competition.

"Under this system the small local area businessman cannot compete on even approximately equal terms with the nation-wide distributor. The large corporation can play its area pricing patterns like a piano. It can crush small business competition wherever the latter appears and charge the tariff to its other customers who have no price alternatives. The little Davids are deprived of even their sling shots in their contest with Goliath. Is that hard or soft competition for Goliath? It is soft for the dominant seller, the Goliath. It is calamitous for small business, the little Davids.

"Because of his limited area distribution, each of the small businessman's customers is generally in competition with the other customers. The small distributor, therefore, must charge all of his customers proportionately equal prices or else he may be guilty of an illegal price discrimination. The nation-wide distributor, of course, has many customers who are not in competition with each other and he may charge different prices in different areas without directly injuring the non-favored customers. If the nation-wide distributor can legally use this area price discrimination weapon against his small competitors, he has another powerful weapon to add to his arsenal which includes mass production, nation-wide advertising, large financial resources, research facilities, and many others. Should a large distributor receive a price subsidy from other areas of the country in order to compete with a few small competitors on the West Coast? Again I ask, is that hard or soft competition - for General Foods?"

The Supreme Court of the United States in the Standard Oil of Indiana case held that the good faith meeting of competition was an absolute defense to a charge of price discrimination under Section 2(a) of the Clayton Act as amended by the Robinson-Patman Act. I am of the opinion that the Congress should amend this Section of the Act so that the good faith meeting of an equally low price of a competitor would not be an absolute defense if the result of the discrimination may be to injure competition or tend to create a monopoly. As the law has been interpreted by the Supreme Court, the question of such illegality depends upon whether or not the seller who discriminates in price does so in good faith. I believe that the right of the seller to compete freely should be balanced against the right of customers of the seller not to be injured by price discriminations. When the private right to compete conflicts with the public right to be free of injury to competition, then the public right should prevail.

WORKABLE COMPETITION?

A number of writers on economic matters have recently published articles or made statements to the effect that the antitrust laws should be re-examined in the light of the realities of current commercial practices. It is my view that the time-tested theories of the existing antitrust laws have proven their worth by aiding in the building of an economy which is the most powerful in the world. Competition is the foundation of our economic system. We should not now repeal or substantially revise a system of laws which has meant so much to our country. It is, of course, proper that the Congress should periodically review the application of these basic theories to current practices, and if procedural amendments are necessary in the public interest, then such legislation should be passed by the Congress. However, those are matters of Congressional policy and are not matters for decision by the Federal Trade Commission. As I stated in the General Foods case:

> "Monopoly and competition has been a favorite subject recently of learned economists. We are advised from the cloistered halls of economic thinking that perfect price competition does not exist. Our aim, we are told, should be to obtain the most desirable form of imperfect competition. There is, however, a disagreement among economists as to which is the preferred type of imperfect competition. We hear such terms as countervailing powers, workable competition, effective competition, potential competition, substitute products, etc. Some of the economists appear to give doctrinal support for the thesis that the antitrust laws as interpreted by the Courts are not outmoded. It is indicated that we should view the problem of competition on a much broader basis than heretofore.
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> "For illustration, if the manufacturer of a product becomes too monopolistic a competitive substitute product will be developed and thus curb the monopolistic practice and make unnecessary an antitrust legal proceeding. This broad type of cosmic economic thinking is interesting, if indefinite. However, this Commission is enforcing a specific statute. We are dealing here with questions of fact about injury to certain small competitors. We are not dealing with general economic theories."

MERGERS AND SECTION 7 OF THE CLAYTON ACT

The recent report of the Commission on Corporate Mergers and Acquisitions shows that we have been experiencing a period of a substantial number of mergers of corporations. The Commission merger report states that since 1949 the pace of important mergers and acquisitions has been rising and that in 1954 the number reported in financial manuals was three times that of 1949 and just slightly less than the number reported for each of the immediate postwar years of 1946 and 1947 when the activity had reached a postwar peak. It is probably true that a number of these mergers were simply a result of growing industries and the mergers may promote competition rather than restrain it. It is also probably true that a number of the mergers will result in unfortunate additional concentrations of wealth and economic power that will not promote competition.

The Celler-Kefauver Anti-Merger Act which was an amendment to Section 7 of the Clayton Act was a very important forward step in the history of the antitrust laws. That law was soundly conceived. In my opinion, however, experience has indicated that certain procedural amendments to the law are indicated. Such suggested amendments are as follows:

1. Merging corporations should be required to supply appropriate information to the Commission and to the Department of Justice in ample time for the particular agency to study and digest material before the merger is consummated.

2. Corporations above a certain size which contemplate mergers should be required to obtain a clearance from the Commission before consummating the mergers.

3. The law should be amended to include the assets of banks.

4. The law should be amended to include the merging of two corporations when only one of such corporations is engaged in interstate commerce.

5. The law should be amended so as to give the enforcing agencies adequate authority over the disposition of the assets acquired in an illegal manner.

I have discussed these points more fully in a statement submitted to the Antimonopoly Subcommittee of the Judiciary Committee of the House of Representatives.

ECONOMIC EVIDENCE IN CLAYTON ACT CASES

It has recently been advocated that in Clayton Act matters the Commission should receive extensive economic evidence to determine whether or not there has been the injury to competition required by various sections in the Act. It has been stated that in this respect the Commission is in a different position from the Courts and that the Commission as a body of experts should welcome in litigated cases substantial economic evidence. In regard to this question I stated in my Concurring Opinion in Pillsbury Mills, Docket 6000:

"The extent and character of economic or other data which is necessary in any particular case in order for the Commission to make an informed decision is a matter which must be determined by the facts of that particular case.

"Economics is not an exact science. The economic factors and economic theories available for exposition relating to what effect a merger, an exclusive dealing contract or a discriminating price may have on competition may be so many and so changing that proceedings attempting to explore thoroughly all facets would have no foreseeable termination dates.

"Many distinguished officials of Government and members of the Bar have been disturbed because of the length of trial records in administrative hearings. Consideration is now being given to various means to shorten these records so as to reduce the expense for all the parties, including the Government. Shorter yet adequate records should result in a reasonably prompt determination of issues. We certainly do not desire to take any action which will unnecessarily lengthen the records in cases before this Commission.

"In my opinion the Commission does not desire economic or other data in trial records just for the sake of the data. We are trying cases in order to determine public legal rights. We are not in this forum making extensive economic investigations for the purpose of adding to the general store of knowledge. The facts to be determined may be so apparent that a reasonable man could fairly decide the issues without the benefit of extensive data. In such cases extensive hearings should be avoided.

"The Commission was established so that the public would get prompt informed action when there is a reasonable probability that a trade act or practice will injure competition. Prompt informed action is particularly necessary in cases of mergers which may be finally found to be illegal. The passage of time may make much more difficult the task of unscrambling the assets of the merged companies and restoring competition to its original form.

"In short, I agree with the result of the Commission's action in this case. I approve of the dispatch with which this decision was reached. In my opinion, however, the Commission does not desire to 'gild the lily' by encouraging hearing examiners to admit in trial records interesting but unnecessary factual data. An expert can practice his expertness and yet act decisively and with dispatch. An expert can also be a reasonable man."

THE PER SE AND RULE OF REASON CONTROVERSY

Recently among persons interested in the antitrust laws there have been statements, articles and opinions written on the proposition that the Rule of Reason approach should be used in deciding Clayton Act cases. Others have advocated what is sometimes referred to as the per se approach. In regard to this question, in a recently published article, I stated:

"Many able experts on the antitrust laws have discussed extensively and learnedly the question of whether or not the per se doctrine or the 'Rule of Reason' should be followed in interpreting the antitrust laws. I suggest that these phrases are labels or slogans not recognized by statute law. Ideas are prisoners of the written and spoken word. Legal concepts should not also be confined and devitalized by being compartmentalized into idea-proof labels or slogans. Labels and slogans encourage lazy thinking and defy logic and reason. Talleyrand indicated that in diplomacy words are used to conceal thoughts. In the law words should be used to reveal and clarify thinking.

"I suggest that we consider first a common starting point where all who consider the problem must look for basic principles. That is, the statute law. Congress is the only source in law which properly may express itself in terms of per se fiats. In certain sections of the antitrust laws, Congress has very simply and clearly stated that particular practices are illegal. In these sections Congress did not state that the acts or practices are illegal provided that they have certain effects. Congress in its wisdom stated that the particular acts or practices are illegal and the question of effect is not material to any litigation brought under such sections. * * *

"Congress has enacted other provisions in the antitrust laws which state that methods, acts or practices are illegal only if the effect may be to substantially lessen competition or tend to create a monopoly. The per se doctrine does not apply and should not be applied to these provisions by the agency charged with the enforcement of such provisions. For illustration, not all price differences or exclusive dealing contracts or mergers are illegal. The test of their legality is and should be the statutory test. It is not and should not be a test such as the per se doctrine or the 'Rule of Reason' or any other test, label or slogan not authorized by the acts of Congress. * * *

"The point of this article is that the Federal Trade Commission is a fact finding agency composed of experts. In deciding its cases it should only use the test provided for it by the Congress in statute law. The Commission should have before it in trial records sufficient facts on which to decide the particular case. To act justly, it should have nothing less. To act promptly, it should have nothing more."

MARKINGS ON IMPORTED ARTICLES

One of the more important and controversial fields in the Commission's jurisdiction over advertising is the question of marking imported merchandise so that the consumer will be informed that the merchandise is imported. Many leaders of Labor and industry have advocated a policy of patronizing home industries, which they have a perfect right to do. The Federal Trade Commission has succeeded in its decisions in writing into the law a principle that unless an article is otherwise marked, the consumer is entitled to believe that the article is made in the United States. In 1954 I was of the opinion that the decision of the Commission in the Manco Watch Strap Company case, Docket 5854 seriously impaired the principle that the American consumer was entitled to be informed adequately that goods were imported when such was the fact. In the matter of J. M. Moore Import-Export Company, Docket 6087, I stated:

"The Commission in its decision in the Manco case substantially narrowed and qualified the principle that sellers of foreign made goods should disclose the fact that the goods are manufactured abroad. The Commission in effect stated that this disclosure is necessary only if there is a domestic product sold at a price comparable to the price at which the imported product is sold. That decision introduced into the law a principle which will be very difficult and complicated to enforce. For illustration, what is a 'comparable' price? If the price of a domestic product is $5.00 and the price of the imported product is $4.00 -- are such prices comparable? If the answer is in the negative, what are the exact prices expressed in terms of dollars and cents for the prices to be 'comparable.' Is not quality as well as price important to the consumer?

"In my opinion the decision of the majority in the Manco case places an intolerable burden on the Government in enforcing the statute in this particular field. Under the decision the Government must attempt to prove the particular price range in which the American consumer will refuse to pay a higher price for the domestic product and will choose to purchase in turn the foreign made product.

"In my opinion the correct approach has been and should be to determine:

(1) whether or not the fact that products made in America or abroad is a material fact to a substantial number of consumers in the United States because such consumers prefer to buy American made goods;

(2) whether or not the failure to reveal the foreign origin of products cause such consumers to believe the products are made in the United States.

If the answers to Questions (1) and (2) are in the affirmative then it is unfair practice for the seller to fail to reveal the material fact that the products are made in a foreign country.

"This approach does not favor American made products or foreign made products. It simply requires the seller to state a material fact regarding his foreign made product, that is, the fact that such product is foreign made, and the country of origin. The consumer, thus informed, can make up his own mind.

"The Commission does not have to guess what is in the consumer's mind regarding comparative prices or quality. This principle is enforceable, informative, and effective."

CONCLUSION

In conclusion, I wish to re-emphasize the high purpose of the Federal Trade Commission as exemplified in the ideals of Woodrow Wilson and Brandies. The Commission was to strive for the ideal of perfect competition. It has, of course, fallen short of that ideal and many friends of the Commission have been the first to criticize the Commission for its failures.

In general, the Commission has been blessed with a staff of men and women devoted to the high principles for which the Commission was established. I have found that their devotion to duty has exemplified the highest traditions of public service. I leave the Commission with great respect for the staff of the Commission, past and present.

The road of monopolistic practices leads only to socialism, fascism or some other form of economic dictatorship. Skilled and artful pleaders for monopolists are unfortunately successful at times in thwarting the will of Congress and of the people by aiding in evasions of the antitrust laws. A measure of their success in such evasions is also a milestone on the road to socialism. The history of Germany immediately before Hitler should be a lesson to anyone who would but read and think.

Regulatory Commissions of Government, such as the Federal Trade Commission, are essential to protect the interests of all of the people of the United States. Abraham Lincoln said many years ago that this nation could not endure half slave and half free. Our free competitive enterprise system cannot endure if it is competitive only half the time. Monopolistic practices are like a cancer. Without surgery they expand. They do not contract.

Eternal vigilance by the Federal Trade Commission is vital to maintaining our competitive economy. Such vigilance cannot be neutral or detached. It must be vigorous and alert and willing to pierce technicalities, legal and economic, and understand the substance and meaning of monopolistic and other trade restraining practices and their results and effects. Understanding, however, is not enough. There must also be effective and vigorous action on behalf of the public interest. I hope and trust that the Federal Trade Commission will supply that type of action.