INTERLOCKING DIRECTORATES

It gives me great pleasure to present to this Committee the report of the Federal Trade Commission on interlocking directorates.

For a number of years the Commission has been endeavoring through its economic reports to help the Congress and the public discover the extent of the concentration of economic power, the means by which concentration is achieved, and the results that are to be expected therefrom. In 1948 the Commission submitted a report on the merger movement which showed that in eight years about 5½% of the assets of all American manufacturing corporations had been absorbed through mergers and that many of these mergers had been of a kind tending to reduce competition. Partly on the basis of this report your Committee sponsored a bill to amend Section 7 of the Clayton Act, which became law last December. In 1949 the Commission made a report showing the concentration of control over productive facilities which prevailed in 26 manufacturing industries in 1947. In 1950 the Commission published a report showing the extent to which the concentration of production in large companies was due to the use of large plants and the extent to which it was due to other factors. Your Committee held hearings on both of these reports and thus brought them to the attention of the Congress and of the public and made their significance clearer.

The report on interlocking directorates is a study of the way in which the largest manufacturing corporations are bound together through the presence of the same persons on their various boards of directors. Thus it presents some of the information that is needed to determine whether these companies may be expected to compete with each other or to act together in ways capable of reducing competition. It also provides some of the information that is needed to determine whether or not Section 8 of the Clayton Act, through which the Congress sought to prevent interlocking directorates that injure competition, is fulfilling its intended purpose.

The Clayton Act and the Federal Trade Commission Act were developed on a bi-partisan basis after the platforms of both the Democratic and Republican parties in 1912 had emphasized the importance of strengthening the antitrust laws. The provision about interlocking directorates was included in the Clayton Act in response to a specific request in President Wilson's message to Congress in 1914. He asked for a law "which will effectively prohibit and prevent such interlockings of the personnel of the directorates of great corporations--banks and railroads, industrial, commercial and public service bodies--as in effect result in making those who borrow and those who lend practically one and the same, those who sell and those who buy but the same persons trading with one another under different names and in different combinations and those who affect to compete in fact partners and masters of some whole field of business." The Committee report on the Clayton Act emphasized the same point, saying "The truth is that the only real service the director in a great number of corporations renders is in maintaining uniform policies throughout the entire system for which he

of a third company. For example, Standard Oil Company of Indiana, Standard Oil Company of California, Gulf Oil Corporation, and Continental Oil Company all had directors on the board of the Chase National Bank. Similarly, the Texas Company, Shell Union Oil Company and Tidewater Associated Oil Company all had directors on the board of Central Hanover Bank and Trust Company of Chicago, and Standard Oil Company of Indiana and the Texas Company each was represented on the board of Continental Illinois National Bank and Trust Company of Chicago. The significance of such indirect interlocking relationships differs from case to case. It tends to increase when more competitors are represented on the same board, when each competitor has more than one representative on the board, and when the same competitors are represented together on the boards of more than one company. It also tends to increase when the company on whose board the various competitors are represented has a business interest in the terms of the competition between the represented companies. When several competitors are represented on the board of a bank which finances them all, or of a large buyer of their products, or of a large supplier of their raw materials, there is a strong probability that the indirect relationship will impair competition. Indeed, it is hard to see how the directors from the various competing companies could perform their duties as directors except by working together to keep the competition of their companies within limits that would not adversely affect any of the companies involved. Decision of major policies of purchase and sale by the directors of the company in whose board the interlock takes place can scarcely fail to produce a working understanding as to the respective shares of that company's business to be enjoyed by the competing customers or suppliers from which the directors come.

Third, the present law makes no attempt to prevent injuries to competition that may be produced through interlocking relationships between suppliers and customers. Interlocking directorates which connect a supplier with his customer are common. Their typical purpose appears to be to create a two-way preferential relationship which gives the customer assurance of supplies on favorable terms and gives the supplier assurance of an outlet for his products. In other words, such an interlock has a purpose similar to that of vertical integration. Like vertical integration, it may be sometimes harmless and sometimes seriously harmful. So long as neither the supplier nor the customers has an important part of the total market, it is probable that the vertical relation between them will not jeopardize the opportunity for other concerns to sell or obtain goods. However, if the supplier is an important concern the loss of equal access to his products may be harmful to competition among the customers, and if the customer is an important concern the loss of the sales outlets which he controls may be harmful to competition among the suppliers. If a large supplier and a large customer work out a preferential trading relationship, there is a strong likelihood that other large suppliers and large customers will find it expedient to do the same thing in self-protection; and when such dancing-partner arrangements become general the effect is not only to give each of the dancing partners a good deal of relief from competitive pressure but also to make it difficult for small companies that have not been able to find dancing partners to have any share in the party.

Vertical interlocks are particularly serious when one of the interlocked companies is a public utility that has a duty to serve all customers without discrimination. The establishment of preferential relationships with such a utility defeats one of the basic purposes of public utility regulation.

The interlocking directorate report shows the prevalence of indirect interlocks between competitors and of interlocks both direct and indirect between suppliers and customers. On the basis of this report I am convinced that Section 8 of the Clayton Act as now written would cover only a small part of the problem of interlocking directorates even if it were effective in preventing direct interlocks between competitors.

Section 8 should be amended to take care of the inadequacies which have come to light. The amendment should tighten the law against evasion so that where a directorate may not be held by the director of another company it may also not be held by an officer, employee, agent or substantial stockholder of that other company. The amendment should broaden the law to cover the kinds of indirect interlocks between competitors in which a substantial lessening of competition is reasonably probable. It should also broaden the law to cover the kinds of vertical interlocks between suppliers and customers in which there is a reasonable probability that competition will be reduced. The Commission is now preparing draft legislation designed to accomplish these purposes.