ADVANCE *** CAUTION

ADDRESS BY HONORABLE CHARLES H. MARCH, CHAIRMAN OF FEDERAL TRADE COMMISSION, BEFORE ANNUAL CONVENTION OF NATIONAL ASSOCIATION OF RETAIL DRUGGISTS, AT PITTSBURGH, PENNSYLVANIA, THURSDAY, SEPTEMBER 24, 1936.

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MONOPOLY AND THE ROBINSON-PATMAN ACT

A year ago, when you invited me to address your convention at its annual meeting, I accepted your very kind invitation. An automobile accident prevented me from being with you at that time. However, I told you then that I would address you at this convention and although I made this promise a year in advance, I am happy to be with you on this occasion.

For many years, the retail trade was characterized by a diversity of ownership and operation not easily adaptable to the development of monopoly in the sense of unified ownership and control of the channels of distribution. By reason of the numbers engaged, localized competitive relationships, and close contact with the great mass of individual consumers, the retail trade probably retained more of the characteristics of old-fashioned American business than any other. In recent years, however, the growth of the chain store has awakened the general public to a realization that retail distribution is not wholly exempt from monopoly.

With reference to the development of chain stores, a study by the Federal Trade Commission showed that there are three national grocery chains which operate nearly 25,000 retail stores and do an annual business of $1,600,000,000. One of these chains operated more than 15,000 stores with total sales of more than $1,000,000,000. Sales by chain stores represent approximately twenty per cent of the aggregate retail sales in the United States. In particular lines, such as groceries and drugs, the proportion of business done by chains is substantially larger than in other retail trade. It is, therefore, obvious that the individual who owns and manages his own business is passing out of the picture in both wholesale and retail distribution as he is in the field of manufacturing.

The situation of the retailer simply gives us a new phase of an old problem, that of monopoly, a problem that touches at every point of our economic and social life.

Monopolistic ownership or control of the means of production connotes ownership of the things produced. It determines the amount to be produced, restricts the freedom to engage in productive pursuits, and consequently the amount of labor that may be employed. By fixing prices, it limits or restricts the quantity of goods which may be consumed.

Periodically, we have seen a glut of goods on the market with no purchasing power to move them into consumption. Monopoly's favorite remedy for that condition has been to further restrict production, but this has only further paralyzed the purchasing power of the consumer whose income depends upon the maintenance of production. You retailers, as the channel through which consumers'

goods flow into consumption, can appreciate the importance of maintaining purchasing power at a high level and having it widely spread among the families of your respective communities. Your economic interests as independent retailers are bound up in the outcome of the struggle with monopoly.

Another aspect of monopoly quite similar to its contribution to business depressionsis its power to oppress and exploit other groups which are unable to organize their own monopolies. Agriculture, for instance, is the means of livelihood of nearly half our population and the basic industry for all others. It has made little progress in the direction of organized control of its own prices or production. Without such control, it has had to bear the full impact of monopoly both in buying and selling. For years before the crash in 1929, agriculture was not prosperous, although other industries were enjoying a sort of wild prosperity, achieved largely at the expense of agriculture. Perhaps what then passed for national prosperity was only the prosperity of monopoly. It should be plain to all that with agriculture prostrate, even the pseudo prosperity of monopoly could not continue.

Mere receipt of greater income by our agricultural population, whether from prices driven upward by natural or artificial causes, or from subsidies paid by the Government, is in itself no permanent remedy. So long as there exists the power of monopoly to control the prices of what the farmer buys, increases in the farmer's income are but the occasion for equivalent increases in the prices he must pay. His relative position is not improved. Indeed, it is possible for his relative position to grow worse notwithstanding an increased income. The same is true also of other unorganized groups and classes of our population.

A most disturbing and puzzling feature of the present business improvement is that with industrial production back nearly to pre-depression levels, we still have substantial unemployment. It should be clear that unless these unemployed have their buying power restored, we shall sooner or later suffer another depression.

A related problem to that of monopoly is how to distribute purchasing power in equal ratio to the increase of machine production. Any general monopolization of the means of production and distribution carries with it limination of purchasing power. The inability of millions to produce, to purchase, and to consume is but the reflection of such monopolization.

In its broadest aspects, the problem of concentration of wealth is a world problem. It underlies the civil war in Spain, the communist revolution in Russia, the death of democracy in other countries. It has toppled kings from their thrones. It will drive to disaster dictators, whether economic or political, who thwart the masses in their effort to achieve a better standard of living and greater economic security. The whole world is in revolt against that philosophy of unnecessary scarcity which has been the philosophy of private monopoly.

The history of anti-trust legislation and its enforcement in the United States contains alternating periods of activity and quiescence. Just now we seem to be approaching the crest of a wave of activity. The recent passage of the utility holding company act, the Robinson-Patman Act, and consideration of the Wheeler anti-basing point bill indicate that there is a decided revival of interest in the subject of monopoly. The progressive elements in both major political parties have never lost interest in it, and the platforms of both now pledge a renewed attempt to enforce and strengthen the laws designed to protect the public against monopoly.

It is one thing to inveigh against monopoly in general and quite another to attack and dissolve it in a particular case. In two famous cases, where it was sought to dissolve the United States Steel Corporation and the International Harvester Company as unlawful monopolies, the courts refused to decree their dissolution. They held that not mere size and power, but behavior is the test of unlawful monopoly. This is the familiar doctrine of good trusts versus bad trusts. Under such a doctrine, it is possible for a concern to dominate an entire industry, and eliminate competition, yet not be an unlawful monopoly. The doctrine of "good trusts" was but a development of the so-called "rule of reason", where the Supreme Court held that not "every" combination in restraint of trade, as the statute reads, is a violation of law but only those combinations which unreasonably restrain trade.

If the effort to destroy monopoly is directed only against such monopolies as can be shown to have abused their power, it may be questioned how far reaching the relief will be, for the effect of monopoly on the concentration of wealth and the consequent limitation of purchasing power of consumers is not conditioned wholly on behavior. In its report to the President in November, 1934, concerning the basing point system of the steel industry, the Federal Trade Commission used these words:

> "If the capitalistic system does not function as a competitive economy, there will be increasing question whether it can or should endure. The real friends of capitalism are those who insist on preserving its competitive character."

You retailers have more at stake in this matter than the average citizen. If monopoly continues to grow, you and thousands of other business men will be the immediate victims. In its final report to the Senate on its chain store investigation, the Federal Trade Commission said:

> "Should the trend of the past 20 years, and particularly of the last decade, continue for a like period, we shall have a condition in some lines of chain store merchandising that few will dispute is monopolistic."

The Commission found that the ability of the chains to buy more cheaply than the independents was "a most substantial, if not the chief factor" in the lower selling prices which account so largely for the growth of chains.

It found that these lower buying prices of the chains were frequently granted unwillingly by the manufacturer who feared either that competitors would take away his large chain customers, or that the chains would discourage the sale of his goods, or make their own.

It found that there was frequently no definite relation between the quantities purchased and the prices or terms made to various purchasers.

It found that frequently price advantages were passed on to the chains in the form of brokerage or commissions to intermediaries, through special allowances for advertising or display, and through various indirect forms of concession not allowed to independent retailers.

Even one who would defend these practices as the expression of normal competition must admit that their tendency is to make the chains bigger and bigger and to accentuate whatever other factors tend toward monopoly.

Congress had those facts before it when it passed the Robinson-Patman Act. Of course that act is not in terms confined to chain store merchandising or even to retail distribution. It applies to all commodities and to the effect of discrimination on purchasers who compete in their resale regardless of who they may be.

The Robinson-Patman Act is an amendment to Section 2 of the Clayton Act which has been on the statute books since 1914. That section recognized that discrimination in price was one of the strongest weapons of monopoly. This had been demonstrated in the dissolution suits against the Standard Oil and American Tobacco combinations. In decreeing their dissolution, the Supreme Court specifically found that price discrimination had been an important factor in building up monopoly. Section 2 of the Clayton Act was intended to outlaw that method of creating monopoly. But it had to be shown that the effect of the discrimination might be to substantially lessen competition as a whole in any line of commerce or tend to create a monopoly therein.

While the Robinson-Patman Act retains that proviso, it adds another that is much easier to meet. Price discrimination is now declared unlawful where the effect may be "to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them." The general effect of that provision is to enlarge enormously the ability of one who is unlawfully discriminated against to protect himself.

Coupled with the right of suit for triple damages under Section 4 of the Clayton Act, this new provision sets up a requirement that should not be too difficult to meet. It makes easier the task of governmental agencies in enforcing the act. It is much easier to show the forbidden effect in individual instances than on an industry as a whole. In this it seems that the Act has applied the philosophy which the Supreme Court held to underlie the Clayton Act, namely, to stop practices in their incipiency, which if not stopped, tend toward monopoly.

Violation of the old law was also difficult to prove because of a proviso that discrimination in price was not unlawful when made "on account of" differences in the quantity sold or which made "only due allowance" for differences in cost of selling, transportation, or when made in good faith to meet competition.

The new law meets the matter of quantity in two ways: first, by providing that discrimination is permissible because of quantity only when it represents "due allowance for differences in the cost of manufacture, sale, or delivery resulting from" the differing quantities; second, by providing that the Federal Trade Commission may fix the quantity limits beyond which discrimination shall not be permitted, "where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce."

The old law was considered as requiring an affirmative showing by the Commission that the discrimination was not in good faith to meet competition. The new law puts the burden on the discriminator of showing that his discrimination is "in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor."

The new law extends the principle of non-discrimination into other areas than price as such. Whether they might be regarded as forms of indirect price discrimination or not, the act specifically declares it unlawful:

(a) to grant or receive, "except for services rendered", anything in the way of commission, brokerage or other compensation to an intermediary who is acting for or is subject to the control of any party to the transaction other than the one paying such compensation.

(b) to pay or agree to pay compensation to or for the benefit of a customer for his services or facilities unless the same compensation "is available on proportionally equal terms" to competing customers.

(c) to furnish or agree to furnish any services or facilities to one purchaser that are not "accorded to all purchasers on proportionally equal terms."

It is also declared unlawful for any person "knowingly to induce or receive" a prohibited discrimination in price.

The foregoing is intended merely as a general description of the Robinson-Patman Act and in no sense as an interpretation. Neither I nor the Commission can express an informal opinion concerning application of the act to the facts of particular cases. Among the cogent reasons for that policy is that the Commission is required by statute to exercise the quasi-judicial function of officially and formally deciding specific cases of alleged discrimination presented to it under the procedure specified by the statute.

The Commission has rendered a definite service to the public in a difficult field of monopoly. In this, it has served a purpose for which it was created and has thus conformed to the policy laid down by Congress. That policy is one of fundamental importance to the American people. The struggle to preserve free enterprise must not fail. There will be nothing gained by maintaining the forms of a freedom from which the substance has departed.

If we are to accept the process of concentration of business in a few hands as beyond control, then it is time to admit that our foremost national aim, individual opportunity, has been lost, and that what we had believed was our outstanding national trait, individual initiative, either has failed or is no longer worth preserving.

In the verse of John Boyle O'Reilly:

"Here . . . . . on this soil
Began the kingdom, not of kings, but men!
Began the making of the world again;
Where equal rights and equal bonds were set;
Where all the people equal-franchised met;
Where doom was writ of privilege and crown;
Where human breath blew all the idols down;
Where crests were nought, where vulture flags were furled,
And common men began to own the world."

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