A D V A N C E ** C A U T I O N

ADDRESS OF
HONORABLE CHARLES H. MARCH, MEMBER OF FEDERAL TRADE COMMISSION
BEFORE ANNUAL CONVENTION OF
THE NATIONAL CANNERS ASSOCIATION, CHICAGO, ILLINOIS.

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Gentlemen of the National Canners' Association:

I am greatly pleased to greet you here today in response to the invitation of your President, and to talk to you about the Federal Trade Commission and the Robinson-Patman Act.

Your Association was organized in 1907 and incorporated in 1909. Your organization is a voluntary, non-profit association, engaged in activities directed toward the advancement of canning foods. I understand that the membership of your Association embraces more than 75 per cent of the total production and well over 35 per cent of the canning companies.

The canning industry is basically engaged in preserving food from harvest to harvest and from place to place. Canning is the process of packing the food directly from the fields and orchards of the farmers in air-tight cans which are sealed and sterilized by heat. The principal classes of products are vegetables, fruits, meats and poultry, all coming direct from the farms; sea foods from the sea; and, in addition, specialities or prepared foods such as catsup, canned soups, etc. There are approximately three thousand canning units in the industry, ranging from the very large to extremely small.

I can not imagine any business that should be complimented more highly from a public standpoint than your industry. You preserve the foods which might otherwise be unconsumed and can them for future use. I believe some day you will be called upon to be a great benefactor to humanity. It may be that at some future time we will have a famine throughout the world. You will then be called upon to do as the Biblical Joseph did, to furnish food stored up in the years of plenty to take care of people in time of want.

Half a century ago discriminatory rebates granted by railroads to a selected few made possible the building of fabulous fortunes. It was under such advantage that huge fortunes were accumulated. The passage of the Interstate Commerce Act put an end to such practices.

The Sherman Act was passed in 1890. Between the 80's and the election of President Wilson in 1912, the American industrial scene had undergone a vast change. The great and numerous industries, such as steel, oil, coal, electric power and machinery had passed into the hands of powerful national corporations, and enforcement of the anti-trust laws by the Federal Government demanded a fully equipped bureau to cope with the growing monopoly power.

Two of the great achievements of President Wilson's first term were: First, the creation of the Federal Trade Commission for the administration and enforcement of the anti-trust law; and second, the Clayton Act, revising and strengthening the Sherman Act.

In the Federal Trade Commission, President Wilson and The Congress created a Federal body before which, for the first time in our history, monopoly was compelled to lay its cards on the table and justify its actions before trained experts in law and business. Office records, letters, contracts, all the practices of monopoly, were subpoenaed and brought before the Federal Trade Commission.

The aim of President Wilson and The Congress in creating the Federal Trade Commission was to have an independent and efficient tribunal - free from political control and unhampered by the slow methods of court delays and entanglements. They thought court procedure too slow, formal and expensive. They sought an effective and thoroughly equipped Federal administration, whereby the Federal Government would be able successfully to cope with its powerful adversaries and enforce the anti-trust and other laws.

Let me quote from a recent decision of the United States Supreme Court in which, speaking of the Commission, that Court said:

> "The commission is to be non-partisan; and it must, from the very nature of its duties, act with entire impartiality. It is charged with the enforcement of no policy except the policy of the law. Its duties are neither political nor executive, but predominantly quasi-judicial and quasi-legislative. Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts 'appointed by law and informed by experience'." Rathbun, etc. v. U. S., 295 U. S. 602.

M O N O P O L Y

Monopolistic ownership or control of the means of production implies 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. Retailers, as the channel through which consumers' goods flow into consumption, are important to your industry and you 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 well as those of the independent retailers, are bound up in the outcome of the struggle with monopoly.

Another aspect of monopoly quite similar to its contribution to business depressions is 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 of 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 false 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 farmers' 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 limitation 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 and 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 rest. 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 rail 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 President Roosevelt 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."

ROBINSON - PATMAN ACT

In recent years the large and powerful buyers have been using their advantage over small buyers by obtaining secret and unfair discounts in one form or another. The Federal Trade Commission in the Goodyear-Sears-Roebuck Tire case held these practices to be unlawful. This decision was rendered in March of last year.

The Congress, also awakened to this growing wicked discrimination in price between different purchasers of commodities, already had several bills in both houses of Congress and before adjourning in June enacted what has become known as the Robinson-Patman Act, which was passed and approved by President Roosevelt on June 19, 1936.

This Act will bring about a great improvement in the conduct of business in the whole land and will be productive of much good. Your ultimate customers are the retailers who have more at stake in this matter than the average citizen. If monopoly continues to grow, 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 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 independent 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 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 substantially to 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 discimination, 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 three-fold 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 prevent practices, 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 discimination 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 an interpretation. Neither I nor the Commission can express an informal opinion concerning application of the Act to the facts of particular cases. One reason 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.

You men gathered here, representing the canners of the country, have a common cause with the small retailers. They are your most dependable and lasting customers.

The Commission has issued fourteen complaints under the Robinson-Patman Act covering different phases of the law. Some of the cases have advanced to the stage of taking of testimony. These cases are being expedited with the end in view of having decision by the Commission at as early a date as possible.

While the Federal Trade Commission has thus, through formal and informal action, affected compliance, this is only a very minor part of the good accomplished by the Robinson-Patman Act. We know that whole industries have radically revised their selling prices and practices, resulting in compliance with the law to the benefit of the small business man.

This law is not a hard law to understand. Any dealer who wishes to comply with it will find no trouble whatever in doing so. It is a question of being fair and impartial to his customers.

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.

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