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MEMORANDUM

In re economic investigations undertaken by the Federal Trade Commission on its own initiative relating to (1) the practice of resale price maintenance, (2) bases on which prices are made, (3) blue-sky operations and (4) intercorporate relations between the du Pont, United States Steel and General Motors Companies.

December 12, 1927.

INTRODUCTION

The Federal Trade Commission in July, 1927, announced four inquiries of an economic nature which it had undertaken on its own initiative.

The declared purpose of these inquiries was to employ the time and talent of its corps of economists, industrial experts and investigators as much as possible on constructive inquiries which would develop facts of interest and benefit to Congress and to the business world in the consideration of important economic questions.

The Commission has many times ordered such investigations on its own motion, but in recent years its staff has devoted itself mainly to inquiries made pursuant to Congressional Resolutions. The purpose of the Commission was not in any degree to delay or supplant the work being done for Congress, but merely to keep its organization usefully employed when and as the Congressional work would permit.

Lack of understanding as to the true scope and purpose of these inquiries has given rise to question as to the authority of the Commission to make them, as to their usefulness from the standpoint of the public, and as to the methods employed in conducting them. To the end that full information may be available to all who are interested in the work of the Commission, the following brief is offered which treats of these points in order.

I. AUTHORITY.

(1) Recommendations of Industrial Commission. By Act of Congress approved June 16, 1898, there was created a body known as the Industrial Commission consisting of five members of the Senate, five members of the House of Representatives, and nine other persons representing the different industries and employments. It was the duty of the Industrial Commission to investigate questions pertaining to immigration, labor, agriculture, manufacturing and business, and to report to Congress and to suggest such legislation as it might deem best upon those subjects.

The final report of said commission, dated February 10, 1902, contains specific recommendation for the creation of a permanent bureau to "make such inspection and examination of the business and accounts of (corporations engaged in interstate or foreign commerce), as will guarantee the completeness and accuracy of the information needed to ascertain whether such corporations are observing the conditions prescribed in the Act, and to enforce penalties against delinquents; and to collate and publish information regarding such combinations and the industries in which they may be engaged so as to furnish to the Congress proper information for possible future legislation".

In explanation of this recommendation the Industrial Commission added:

"The publicity secured by the governmental agency should be such as will prevent the deception of the public through secrecy in the organization and management of industrial combinations, or through false information. Such agency would also have at its command the best sources of information regarding special privileges or discriminations, of whatever nature, by which industrial combinations secure monopoly or become dangerous to the public welfare. It is probable that the provisions herein recommended will be sufficient to remove most of the abuses which have arisen in connection with industrial combinations. The remedies suggested may be employed with little or no danger to industrial prosperity and with the certainty of securing information which should enable the Congress to protect the public by further legislation, if necessary."

(2) Creation of the Bureau of Corporations. This led the Congress by Act approved February 14, 1903 to create in the Department of Commerce and Labor the Bureau of Corporations, headed by a Commissioner of Corporations. It was provided that such Commissioner of Corporations should have power -

"to make x x x diligent investigations into the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several states and with foreign nations x x x, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce and to report such data to the President from time to time as he shall require x x x."

And, in general, it was provided that the Commissioner of Corporations should have and exercise the same powers in reference to industrial corporations and combinations as had been conferred on the Interstate Commerce Commission in respect of common carriers in the matter of issuing subpoenas, etc.

(3) Inquiries by Commissioner of Corporations. Under said Act of Congress the Commissioner of Corporations made a total of twenty-one economic investigations, ten on his own initiative (or pursuant to the direction of the Secretary of Commerce) and eleven pursuant to Congressional resolutions, as follows:

Inquiries made on the initiative of the Executive Department
(Commissioner of Corporations, Secretary of Commerce and Labor, etc.)

Tobacco Industry (3 vols.)	trust, prices, profits, etc.
Cotton Tare (1 vol.)	trade practices
Water Power (1 vol.)	economic development and control
Corporate Taxation (7 vols.)	legislation, jurisprudence, effects
Laws Concerning Foreign Corporations (1 vol.)	legislation, jurisprudence
Shingle Industry (1 vol.)	economic conditions
Trust Laws and Unfair Competition (1 vol.)	legislation, jurisprudence, policy
Resale Price Maintenance (not finished)	economic conditions and effects
Efficiency and Size (not finished)	economic conditions
Corporation Statistics (not finished)	general financial data.

Inquiries made pursuant to a Congressional Resolution.

Beef Industry (1 vol.)	H. R. March 7, 1904, restraint of trade, prices
Transportation by Water (4 vols.)	H. R. 831, 1907, R. R. control of carriers and general conditions
Petroleum Industry (3 vols.)	H. R. Feb. 15, 1905, restraint of trade, prices
Patents (1 vol.)	Joint Res. Feb. 18, 1907, patents of U.S. employees
Cotton Exchanges (3 vols.)	H. R. Feb. 4, 1907, prices, restraint of trade
Steel Industry (3 vols.)	H. R. 448, 1905, restraint of trade etc., costs
Lumber Industry (4 vols.)	H. R. Jan. 18, 1907, restraint of trade etc., control of lumber supplies
International Harvester Co. (2 vols.)	S. R. Dec. 17, 1906, trust, prices, etc.
Petroleum Industry (report by F. T. C.)	S. R. June 18, 1913, prices, etc.
Fertilizer Industry (report by F. T. C.)	S. R. 487, 62d Cong., 3d Sess., prices, restraint of trade
Healdton Oil Field (1 vol.)	S. R. March 28, 1914, prices.

(4) Provisions of the Federal Trade Commission Act. The Congress with full knowledge of the policy and practice of the Bureau of Corporations conferred on the Federal Trade Commission the same powers with respect to economic investigations as had been conferred on the Commissioner of Corporations and in almost the same language.

Thus:

Sec. 6. That the commission shall also have power -

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

* * * * *

(f) To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(5) Reports and debates show that it was intended that the Commission should have power to make such inquiries. Not only does the statute expressly confer on the Federal Trade Commission the power to make economic inquiries on its own initiative, but the proceedings in Congress attending the passage of the Act show that such delegation of power was a main purpose of the legislation.

EXCERPTS FROM COMMITTEE AND CONFERENCE REPORTS CONCERNING THE POWER OF THE FEDERAL TRADE COMMISSION UNDER SECTION 6, SUB-SECTIONS a, b AND f.

House Report No. 533, 63d Congress, 2d Session, to accompany H. R. 15613.

Therefore the bill removes entirely from the control of the President and the Secretary of Commerce the investigations conducted and the information acquired by the commission under the authority heretofore exercised by the Bureau of Corporations or the Commissioner of Corporations. All such investigations may hereafter be made upon the initiative of the commission, within constitutional limitations, and the information obtained may be made public entirely at the discretion of the commission. (p. 3).

There has been no attempt to deal with the question of maintenance of fixed prices. The commission has been given no power to pass orders in any way regulating production. It has not been clothed with authority to make a declaration as to the innocuousness of any particular corporation or agreement, even if coupled with the right to revoke such order in the future. All those problems are interwoven with the industrial business of the country in such a way as to be effectively legislated upon, if at all, only after the most exhaustive investigation by trained experts.

It must be remembered that this commission enters a new field of governmental activity. The history of the Interstate Commerce Commission is conclusive evidence that the best legislation regarding many of the problems to come before the interstate-trade commission will be produced from time to time as the result of the reports of the commission after exhaustive inquiries and investigations. x x x It is largely the experience of the independent commission itself that will afford Congress the accurate information necessary to give to the country from time to time the additional legislation which may be needed.

Those facts which ought to be the common property and the common knowledge of American business men are for the first time to be gathered and controlled as to their publicity by an independent commission. Powers of investigation, safeguarded by proper constitutional limitations, are taken from a now subordinate department under the control of the Executive and given to this nonpartisan body. (pp. 7-8).

Senate Report No. 597, 63d Congress, 2d Session, to accompany
H. R. 15613 (pp. 11-12):

The commission has power to investigate the organization, business, financial condition, conduct, practices, and management of any corporation subject to the act which it may designate, and its relation to other corporations and to individuals, associations and partnerships, and in aid thereof to require the production of information, statements, and records and the examination of books, documents, correspondence, contracts, etc., affecting the commerce in which such corporation is engaged, and to require annual or special reports from such corporations or classes of corporations as the commission may designate. The commission may make public any information obtained by it except as to trade processes, names of customers, and other matters not deemed to be of public importance; and may also make annual and special reports to Congress, including recommendations for additional legislation.

It will be seen that while large powers of investigation are given, they are not greatly in excess of those possessed and for years exercised by the Bureau of Corporations. x x x The powers, of course, must be large, but the exercise of the powers will not be against law-abiding business, but against lawless business. It will be persuasive and corrective rather than punitive so far as well-intentioned business is concerned. Although the commission is given a wide discretion, experience has proved that governmental administrative bodies seldom abuse such authority. To attempt to make precise limits between what they may and what they may not do would often seriously hamper their successful administration. To almost every inquiry it might be possible to make specious objections which, while lacking any real merit, might effectively clog the conduct of the inquiry.

6. Many inquiries have been initiated by the Commission of its own motion. It has been said of the pending investigations that they are an innovation and constitute further unauthorized meddling with private business. As will later appear the inquiries are novel in that they are directed to the ascertainment of facts which will be of the utmost benefit to private business; but it can not be said that in ordering inquiries the Commission is undertaking anything new.

The first inquiry begun by the Commission (disregarding those inherited from the Bureau of Corporations) was one of great public importance, and it was initiated by the Commission, namely, the inquiry into cooperation in American export trade, which resulted in the enactment of the Webb-Pomerene Export Trade Act.

Quite frequently since that time the Commission has initiated inquiries not connected with the exercise of its administrative functions under Section 5 of its organic act, or under the Clayton act. Most all of these have been assigned to the Economic Division. In some cases reports were not published, or only informal mimeographed reports were made.

This list does not indicate any of the numerous cost inquiries made during the war, many of which were apparently made under general orders from the President, but does include those which under special order of the Commission after the war were made a subject of further study and on which printed reports were issued.

There are also omitted certain minor inquiries made at the suggestion of Congressional Committees.

This list, with approximate dates of initiation, follows:

Cooperation in American Export Trade, 1915
Trade and Tariffs in South America, 1915
Lumber Industry, 1916
Premiums, Coupons and Trading Stamps, 1918
Leather and Shoe Industry, 1918
Copper Costs, 1919
Coal Costs, 1919
Steel Costs and Profits, 1919
Canned Food Costs, 1919
Lumber Costs and Profits, 1919
Flour Milling Costs and Profits, 1919
Woolen Rag Trade, 1919
Wyoming Petroleum Industry, 1919
Paper Industry, 1919
Coal Prices, 1919
Steel Prices, 1919
Lumber Prices, 1920
Cotton Textile Prices, 1920
Leather Prices, 1920
Flour Prices, 1920
Hoarding Food Products, 1920
Blue Sky Securities, 1921
Cooperation in Foreign Countries, 1924
Terminal Elevators, 1924
Lumber Associations, 1926
Panhandle Petroleum, 1926.

(7) Commission's authority not affected by limitation on Appropriation Act. Beginning with the Appropriation Act approved March 3, 1925, appropriations for the work of the Federal Trade Commission have carried the following limitation:

"No part of this sum shall be expended for investigations requested by either House of Congress, except those requested by concurrent resolution of Congress, but this limitation shall not apply to investigations and reports in connection with alleged violations of the anti-trust acts by any corporation."

This limitation applies only to investigations requested by either House of Congress and has no application to inquiries undertaken by the Commission on its own motion. Not only is this plain on its face, but

such is the ruling of the Attorney General. (See opinion to the President, dated October 24, 1925, 34 Op. A. G., 553; also see discussion in printed hearings before Sub-committee of House Committee on Appropriations in Charge of Independent Offices Appropriation Bill for 1928, 69th Cong. 2d. Sess., pp. 253-261).

The work, moreover, entails no additional expense. On the contrary, the Commission is steadily reducing its expenditures in harmony with current ideas of economical administration. Its appropriation for 1927 was \$997,000; its current (1928) appropriation is \$984,350; and the budget estimate for 1929 is \$963,000.

II. USEFULNESS

(1) Resale price maintenance inquiry.

(a) Preamble. This inquiry was initiated by a resolution of the Commission which set forth the problem by way of preamble and directed the Chief Economist to ascertain and report to the Commission the essential facts. The recitals of this preamble speak for themselves:

"WHEREAS several bills providing for resale price maintenance have been introduced in Congress since 1920 including Merritt bill, Kelly bill, the Wyant bill and the Williams bill; and

"WHEREAS in 1916 on a referendum of the Chamber of Commerce of the United States about 74 per cent of the votes cast were in favor of legislation permitting resale price maintenance; and

"WHEREAS in 1926 on a similar referendum about 54 per cent of the votes were in favor; and

"WHEREAS this Commission many years ago recommended that Congress enact legislation permitting resale price maintenance under certain conditions of Governmental control; and

"WHEREAS it seems probable that agitation for some legislation of this character will continue; and

"WHEREAS there has been no thorough and comprehensive investigation of the economic advantages and disadvantages of such legislation."

(b) Commended by the Chamber of Commerce. Shortly after the inquiry was announced the Commission received the following letter from the Chairman of the Board of Directors of the Chamber of Commerce of the United States:

"August 3, 1927.

Dear Mr. Commissioner:

I have just read the resolution offered by you and adopted by the Federal Trade Commission providing for an investigation and report on resale price maintenance. It seems to me that a searching investigation as outlined by you is most timely. The problem may be approached from many angles and its sound solution is important and far-reaching.

I want you and your colleagues and your Chief Economist to know that the Chamber of Commerce of the United States stands ready to cooperate in this investigation in any way within its power.

Very sincerely yours,

(signed) Edwin B. Parker,
Chairman.

Hon. A. F. Myers,
Federal Trade Commission,
Washington, D. C."

(c) Offers of cooperation. From the first announcement that the Federal Trade Commission proposed to make an inquiry regarding resale price maintenance, exceptional interest has been exhibited both by opponents and proponents of the practice. One result has been an unusual number of offers of cooperation from associations and concerns desiring to furnish information on the subject.

The following associations have furnished lists of their memberships as a basis for distribution of schedules and have promised the cooperation of their membership in furnishing information: The Stationers Association of New York; The Southern Wholesale Confectioners Association; The American Fair Trade League and the Kansas City Druggists' Association. Other associations that have promised their cooperation are the American Grocery Specialty Manufacturers Association; the American Booksellers Association; the National Hardware Association of the United States; the Wholesale Grocers Association of Southern New England; the Texas Hardware Jobbers Association and the New York Pharmaceutical Conference.

In addition certain publications have submitted information which they regard may be valuable for or against the subject of price maintenance. The most noteworthy of these spontaneous offers are those of Printer's Ink, which has furnished a bibliography of articles published in recent years, and the Hardware Journal of Philadelphia, which has forwarded certain correspondence published in its pages, in connection with a discussion of the subject from several angles.

Another group of associations that has transmitted material on the subject is composed of the Tobacco Board of Trade of Massachusetts; the Tobacco Jobbers of Baltimore; the Tobacco and Candy Jobbers of Chicago; the Wholesale Tobacco Distributors of Detroit and vicinity; the Wholesale Tobacco Distributors of Philadelphia and vicinity; and the Tobacco Jobbers of Pittsburgh, Pennsylvania. The Tobacco Board of Trade of Massachusetts sent in a report on conditions in the tobacco business and suggestions for consideration in connection with the Commission's study of resale price maintenance. This report was approved by the other tobacco associations listed above.

The National Association of Retail Druggists, representing a membership of some 53,000 retail druggists of the United States, has of its own motion submitted a list of questions or subjects intended to be helpful in connection with the development of a schedule for use in obtaining information from the retail trade.

Representatives of the National Retail Dry Goods Association have also visited the office of the Commission for the purpose of offering suggestions regarding a schedule, and have stated that their membership is able and willing to furnish information along the lines requested in the schedule of the Harvard Bureau of Business Research with which they have been cooperating in furnishing statistical and other information.

Scores of requests for copies of the questionnaire have been received from concerns desiring to cooperate in the inquiry.

(d) Confusion in law. The question of resale price maintenance is one of the most troublesome with which the Commission has to deal in the present state of the decisions. The early Federal cases trace the principle to a passage in Coke on Littleton dealing with restraints on alienation. Courts in attempting to apply these ancient principles have fallen into hopeless confusion. Orders of the Commission, issued under its organic act, have been upheld in some circuits and set aside in others, on almost undistinguishable states of fact.

Until the Commission's inquiry no comprehensive effort had been made in this country to develop the essential facts in reference to resale price maintenance. Such inquiries have been made in Canada and New Zealand, and certain of the Scandinavian countries have given attention to the subject and have laws legalizing resale price fixing with provision for seasonal sales, bona fide competition based on superior efficiency and sustained over a considerable period of time, etc.

It is evident that legislation will be required to cure the present unsatisfactory conditions; and it seems unlikely that Congress will enact such legislation without definite information as to the probable effect thereof on competition and prices.

(2) Bases on which prices are made.

(a) Preamble. The purposes of this inquiry are summarized in the preamble to the Commission's resolution, as follows:

"WHEREAS the economical distribution of commodities is one of the chief problems of the day; and

"WHEREAS the method of determining the prices (or the total cost to the purchaser) of commodities sold in the same or in different localities is an important factor in a sound system of distribution; and

"WHEREAS there are various systems and theories on which such prices are made and marked differences of opinion as to their expediency and fairness; and

"WHEREAS some distributors are employing the policy of national distribution with prices, particularly in different consuming territories, that make no allowance for difference in transportation costs, while others allege that there should be a delimitation of markets having respect to transportation expense:"

(b) Summary of freight basing methods now in use. Three years ago the commission, after taking 18,000 pages of testimony, completed its famous "Pittsburgh Plus" case, which illustrates concretely certain methods in price fixing. The large steel corporation involved was ordered to cease and desist from its "Pittsburgh Plus" arrangement in quoting prices. Its Pittsburgh mill sold its products to fabricators and manufacturers in the Pittsburgh district at factory prices but the same class of customers outside that district was charged, in addition to the Pittsburgh price at the factory, the freight charges from Pittsburgh to the outside point. But fabricators or manufacturers located in Chicago, who bought products from the same steel corporation's Chicago factory had to pay just the same price, that is, the Pittsburgh factory price plus the freight from Pittsburgh to Chicago. This illustrates the basing point method.

The factory base method may be illustrated by the practice of automobile concerns of selling their cars f.o.b. the factory, in other words, at the factory price plus the freight from factory to locality of the purchaser.

The delivered price method, in which a corporation delivers its products to customers in any part of the country at a given price without basing the price on the cost of transportation, may also be pictured by an example. The factory may be in Baltimore but a customer in Washington, forty miles away, will pay the same price for goods delivered as will a consumer in Los Angeles, three thousand miles distant. In such instances the company maintains its delivered price by charging each customer enough to remunerate itself in the total receipts for losses sustained through long freight shipments such as the one from Baltimore to Los Angeles. In effect, broadly speaking, the Washington man pays the freight for the Los Angeles customer.

(c) Effect on distribution of manufacture. The practice of certain Eastern manufacturers in quoting delivered prices on their output has caused considerable apprehension in the West and South, it being regarded as a part of an effort to centralize all manufacture in the so-called industrial states.

In May, 1927, the Commission issued a complaint against certain manufacturers of range boilers charging them with concurrently establishing and maintaining a delivered price policy with intent and purpose to destroy local producers and competitors in the Pacific Coast market.

It is plain that the Commission should not undertake to act with respect to the sales policy of any concern or industry without full knowledge of the prevalence and economic effect of the practice in question, having regard to the situation and necessities of all parties who might be affected by such action.

(3) Blue Sky securities.

(a) Resolution. This inquiry is merely designed to bring down to date an earlier inquiry on the same subject. Its scope is defined in the resolution adopted by the Commission, as follows:

"WHEREAS this Commission has had frequent occasion to proceed against unfair methods of competition with respect to the sale of so-called "blue-sky" securities and has found in that respect that present legislative remedies are inadequate; and

"WHEREAS this Commission formerly initiated a general inquiry into this subject with a view to constructive remedial proposals, but no report was published; and

"WHEREAS the practice of fraudulently selling worthless securities is a great economic evil which should be remedied promptly if practicable,"

"NOW, therefore, be it

"RESOLVED, That the Chief Economist of this Commission is hereby directed to inquire further into, (1) the practice of selling blue sky securities, (2) the legislative, administrative and other methods employed to abate the evil and the results thereof and (3) other matters covered by the previous inquiry, in order to bring the same up to date, and to report thereon to the Commission without formulating conclusions of legislative policy but, instead, stating succinctly the arguments both for state and for federal regulation and the forms which such regulation should take."

(4) du Pont inquiry.

(a) Reason for inquiry. Published reports of the E. I. du Pont de Nemours Company showed that in addition to its known holdings in the General Motors Company it had acquired a large investment in the stock of the United States Steel Corporation.

This announcement gave rise to much agitation in the newspapers and elsewhere as to the purpose and effect of such acquisition, the suggestion being frequently made that it was in itself, or would result in, a violation of the antitrust laws.

(b) Resolution. To ascertain the facts with reference to a matter of such great public importance the Commission, on July 29, 1927, adopted the following resolution directing an investigation by the Chief Economist:

"WHEREAS, it appears from published financial reports of the E. I. du Pont de Nemours Company that it has a large investment in the stock of the General Motors Corporation, and,

"WHEREAS, it is currently reported in the press that the said du Pont Company has recently acquired a large holding in the capital stock of the United States Steel Corporation, that it expects to have a number of directors representing its interests elected to the board of the latter company and in other ways to develop a close corporate connection among them, and

"WHEREAS, the establishment of a community of interest among these three corporations which are reputed to be among the largest industrial corporations in this country is a matter of public concern, and

"WHEREAS, the act creating this Commission authorizes it to inquire into the organization, business, conduct, practices and management of the said corporations; Now, therefore, be it,

"RESOLVED, that the Chief Economist of this Commission be directed to cause an inquiry to be made into the relationships, direct or indirect, among the United States Steel Corporation, the General Motors Corporation and the E. I. du Pont de Nemours Company, tending to bring them or any other important industrial corporations under a common ownership, control or management, with information as to the probable economic consequences of such community of interest, and to report the facts to this Commission."

(c) This stop was generally approved by the press of the country, as shown by the following article taken from the Washington Star:

"PRESS APPROVES INVESTIGATION OF
BIG INDUSTRIAL ALLIANCES.

Interest and general approval are evident in comment on the Federal Trade Commission's decision to inquire into any relationship of the United States Steel Corporation, the General Motors and the Du Pont interests. The purchase of steel shares by the Du Pont Co., which already had bought largely of General Motors stock, gives rise to a feeling that the Government ought to be fully informed even though the public nowadays is not disposed to condemn out of hand all big business mergers and combinations.

'It is just as well to know what is going on when, with the mutual attraction of great bodies for each other, such concerns as these show symptoms of growing together,' says the Duluth Herald, as it quotes 'rumor' to the effect that 'it means a sort of marriage of the octopi is going on, and that these three large concerns are growing so closely united through common ownership of stock that presently they may be functioning virtually as one.' The point of view of the Richmond News-Leader is that 'if there be in prospect a merger or even an understanding that will affect the du Ponts, General Motors and the Allied Chemical and Dye Corporation, then obviously the Department of Justice should be on the alert. But if the matter is simply one of acquiring a minority stock interest,' the Virginia paper asks, 'what can the Government do about it, and why should it do anything?'

'The nature of any linking of the capital of two great corporations such as the Du Pont and the Steel Corporation does not by any means solely concern these companies and their owners,' argues the Brooklyn Daily Eagle, which further declares that 'these concerns have much to do with the course of the steel industry and, through Du Pont interest in General Motors, with the motor-vehicle industry as well. In both respects they touch the welfare of a very large body of consumers, direct and indirect.' Stating that 'the policy of the United States has been for upward of 40 years to prevent monopoly' for the good of the people, the Fort Wayne Journal-Gazette says: 'It may not be beside the point to observe again that the sole end of this big experiment in democracy is not to foster business. There were in the beginning some political objects. It might be well to keep them in mind.'

The Providence Evening Bulletin considers that 'the necessity for intelligent and reasonable public regulation is becoming greater with the years' and that it is 'as important that public regulatory laws shall keep pace with the expansion of American industry as it is that abundant capital and an adequate supply of raw materials be always at hand.'

In the opinion of the Atlanta Constitution, 'any notion that these three great combinations might amalgamate to form a supercombination is a product of ill-informed imagination. Mergers are necessary. They comport to the fundamental principles of progress, but this particular apprehension is out of reason.' The fact is, continues the Constitution, 'such an amalgamation would be contrary to the laws of present-day corporate power and interest.'

Although such expansion as has taken place in the activities of the Du Pont interests does not seem to 'result in any immediate tendency toward monopoly, nor does it, so far as one can see, conflict with the law,' the New York Journal of Commerce thinks 'it does, nevertheless, suggest the possibility of a sort of financial dominance that, if permitted to progress unchecked, might some day produce a type of superbusiness control, of which the present leaders of big business have enjoyed only a vague foretaste.'

The Durham Sun, which sees the United States heading into an era of 'industrial feudalism,' the most 'menacing' feature of which is the fact that 'the public at large has been lulled into acquiescence by a relative prosperity,' pictures the day when 'eventually, the industries of the United States will center in even fewer hands than today, control will be completely interlocking, policies, methods and the destiny of all involved dictated from a central command and even the Government over-shadowed.'

That 'the public is in a state of uncertainty in reference to our anti-trust laws,' is the statement of the Baltimore Sun, which says of the public, 'It is not wholly convinced that the economies brought about by well conducted combinations are a complete answer to elimination of competition, but it seems willing to be shown.' As the Memphis Commercial Appeal sees the situation, 'We are in a day when mergers are put to the necessity of showing only that their objects and methods will be good for the people as a whole. In other words, it is now established that there can be good trusts as well as bad trusts, a thing that was hardly possible to conceive 20 years ago and less.'

'As the Du Ponts, manufacturers of chemicals, the General Motors and the Steel Corporation are engaged in non-competitive business, the alliance does not appear to be one of monopoly,' according to the Utica Observer-Dispatch, while the Canton Daily News calls it a 'vertical trust,' explaining that such a trust 'isn't necessarily in the monopoly sense a trust at all,' but is 'an organization which aims, not necessarily at control of any product, but at the production of all the main articles entering into its final product.'

Speaking also on this point, the Miami Daily News remarks: 'Henry Ford is all by himself a 'vertical trust.' He has made himself, in short, a self-contained economic unit. Such an arrangement is apparently the aim of Mr. Ford's great competitor, the group of industries clustering about General Motors and the Du Pont company,' concludes the News."

III. THE QUESTIONNAIRES.

(1) Resale price maintenance inquiry.

(a) Facts to be developed. Of the four inquiries in question only the one relating to resale price maintenance involves the use of comprehensive questionnaires.

The controversy regarding the propriety of the practice of resale price maintenance, from the standpoint of the public, hinges largely upon whether it results in increasing the price of goods to the ultimate consumer. No one can fairly take a position in reference to the practice without accurate information as to the actual effect thereof on the purchasing public.

Other mooted questions are the causes and motives for price cutting; the justification for such price cutting, if any; the effect of price cutting on manufacturers, distributors and consumers; how far price cutting increases the volume of business for the distributors and offsets the decreased profit per unit; how far price cutting has eliminated manufacturers and distributors from business; and, finally, the effect of price cutting by distributors on prices, profits, and margins of manufacturers.

(b) Manufacturers schedule - how framed. So far only one questionnaire has been approved by the Commission, the so-called manufacturers questionnaire. The method employed in framing this questionnaire is described in a memorandum by the Assistant Chief Economist, Col. Wm. H. England, as follows:

"A tentative financial report schedule for manufacturers for the resale price maintenance inquiry was first prepared by the Chief Accountant and his assistants, and reviewed by the Chief Economist. Later, the Chief Accountant and other accountants were sent to the field to ascertain whether the information called for in the tentative schedule could be easily secured from representative manufacturers in different industries. Two accountants were sent to Baltimore, two to Philadelphia and two to New York City. About 20 manufacturers in the drug, shoe, hardware, wire products, and food products industries were called upon. The unanimous report of the accountants was that most of the companies could supply all the information called for without any difficulty. Some not having accurate cost systems could not supply all of the cost details called for, but could furnish reasonably accurate estimates."

(c) Analysis of the questionnaire. Page 1 of the schedule calls for condensed balance sheets, from which information showing the amount of investment in the direct business can be ascertained. The items called for are those customarily shown by corporations in their balance sheets furnished annually to their stockholders and for the larger corporations generally published in financial manuals, such as Poor's, Moody's, and by other corporation service organizations.

Pages 2 and 3 call for a statement of the results of operations and profit and loss. Such information is required by all corporations in connection with the Federal income tax.

The data called for in this part of the schedule are required in order to compare investment and profits of manufacturers producing price maintained and non-price maintained commodities.

Page 4 calls for an analysis of advertising expenditures, which is required in order to ascertain the relation of advertising expenses to "costs, profits, margins, and prices".

The last page, page 5, calls for cost data which is required under paragraph 2 of the resolution. It is only on the basis of this data that the Commission can resolve the highly important question as to the effect of resale price maintenance on the public.

(d) Other questionnaires will be framed and sent to jobbers and retailers, but at a conference with representatives of these branches it was agreed that the questionnaires would not be sent out until after the trade had recovered from the holiday rush period.

There will be a further questionnaire for the manufacturers in the nature of a general invitation to state their views and relate their experiences in the matter of resale price maintenance.

(2) Price bases inquiry. The questionnaire in this inquiry is being sent only to trade associations and the questions have to do only with the methods employed by the industries represented in billing goods, the reasons therefor, and the results obtained.

(3) Blue Sky and du Pont inquiries. No general questionnaires have been sent out or are proposed in these inquiries. They are of limited scope and will require only a limited number of interviews with persons having special knowledge of the subjects involved together with a few letters of inquiry. The du Pont inquiry will be completed shortly.

Abram F. Myers,
Commissioner.

P. S. Since compiling the foregoing it has come to my attention that the Commission on December 2, 1918, took the following formal action:

"The following direction was issued by the Commission:

"Directed that the Commission undertake in a comprehensive way the duties imposed by paragraph (a) Section 6 (to gather and compile, etc., etc.), paragraph (g) Section 6 (from time to time, etc., etc.), and paragraph (h) Section 6 (to investigate from time to time, etc.), and that plans to that end be prepared at once for the approval of the Commission."

A.F.M.