

ADDRESS BY
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BEFORE THE
THIRTEENTH ANNUAL CONVENTION OF THE TENNESSEE FARM BUREAU FEDERATION
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THE FEDERAL TRADE COMMISSION AND ITS RELATION TO AGRICULTURE.

I esteem it a privilege to respond to the invitation, extended by your able President and my good friend, to talk to you about the Federal Trade Commission and its relation to agriculture. Because of the exacting requirements of our official duties, I have been compelled to decline invitations to deliver addresses before important bodies in various cities and sections of the country, but I could not resist the temptation to accept the invitation to address the Farm Bureau Federation of my home State.

The Federal Trade Commission is an independent, bi-partisan, administrative and quasi-judicial tribunal, created by Act of Congress in 1914, upon the recommendation of President Woodrow Wilson. The Commission is composed of five members appointed by the President, by and with the aid and consent of the Senate, for terms of seven years. To aid the Commission in its labors, it has a staff of trained, efficient lawyers, economists, accountants, statisticians and clerical personnel.

FUNCTIONS OF THE COMMISSION

While the Commission has certain other powers and duties, its chief functions are:

- (1) To prevent unfair methods of competition in commerce;
- (2) To make investigations upon the direction of the President, the Congress, upon the request of the Attorney General, or upon its own initiative.
- (3) To enforce certain sections of the Clayton Antitrust Act, including an amendment to Section 2 of that Act recently enacted and generally referred to as the Robinson-Patman Act.

The processes of the Commission are injunctive or preventive, not punitive. The success of this procedure has been indicated by the fact that during the nearly twenty-two years since the Commission was established, it has seldom had to appeal to the courts to discipline respondents for disregarding its cease and desist orders.

UNFAIR METHODS OF COMPETITION

The Federal Trade Commission Act declares "unfair methods of competition in commerce" to be unlawful and directs the Commission to prevent same whenever "it shall appear to the Commission that proceedings by it in respect thereof will be to the interest of the public." The purpose of preventing unfair

methods of competition is two-fold, namely, the protection of members of industry from the harmful effects of unfair practices by competitors, and the protection of the public interest.

Congress very wisely did not undertake to enumerate the various unfair methods against which the Act was directed; unfair competition is as infinite as human ingenuity, and constantly appears in new forms and guises. The Supreme Court interpreting the Act declared:

"In the nature of things it is impossible to describe and define in advance just what constituted unfair competition, and in the final analysis, it became a question of law after the facts were ascertained."

Unfair methods of competition generally fall within two broad classes:

First, those which involve an element of fraud and dishonesty, and,

Secondly, those not inherently dishonest, but which are restrictive of fair competition.

In defining the words "unfair methods of competition" as used in the Federal Trade Commission Act, the Supreme Court in the Gratz case (253 U.S. 421) referred to them as practices "opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly."

The Federal Trade Commission handles thousands of cases annually involving a charge of misrepresentation, deception or fraud in the sale of products and various other unfair practices covering almost every conceivable character of commodities.

RELATION TO AGRICULTURE

Those engaged in agriculture and their dependents constitute the largest single class of consumers of these commodities. Consequently, farmers are generally protected by the prevention of such unfair trade practices. It is a matter of concern to them as to whether truthful representations are made and honest methods employed in the sale of the innumerable articles which the farmers and their families must buy.

Furthermore, the Commission has taken corrective action in numerous cases against unfair practices employed with respect to commodities principally sold to farmers. These cases involve misrepresentations of various field seeds, poultry medicine, feed and text books, baby chicks, dairy and stock feeds, nursery stock, cream separators, incubators, and numerous farm implements and tools, fertilizer, salt and other articles too numerous to mention.

The Commission has many times taken corrective action against manufacturers for false representations and deception in the sale of substitutes for and imitations of genuine farm products, such as leather substitutes, misrepresentation of the wool content of fabrics, and so forth.

The Commission also has issued cease and desist orders against certain manufacturers who sought to capitalize public good will to farmers by falsely leading consumers to believe that they were trading with farmers' organizations when such was not a fact.

The Commission has also put an end to oppressive and illegal tactics which limited competition in the purchase of farm products. It has likewise stopped conspiracies in price fixing which unduly raised the prices of products purchased principally by farmers.

In one case the Commission prevented the destruction of a large Farmers' Cooperative Association. One of the largest Grain Exchanges in the country set out to suppress and destroy the Farmers' Cooperative Association by circulating false and misleading statements and advertising concerning the financial standing, business and methods of the Cooperative, by instituting vexatious and unfounded suits against it, and by combining and conspiring to boycott members of the Association and prohibiting their dealing on the Board of Trade. On appeal to the Circuit Court of Appeals of the United States the substance of the order issued by the Commission to end these practices was upheld.

COMMISSION PROCEDURE

The procedure of the Commission in all such cases is simple and effective. A case may originate in several ways, although most generally it is through complaint of an unfair practice made by a competitor or consumer. This requires no formality. The complaint may be made by letter setting forth the facts. The identity of the complainant is kept confidential.

Whenever a matter is brought to the attention of the Commission indicating a probable law violation, the Commission directs an investigation by its own staff. If from the facts developed by such investigation it has reason to believe that the law is being violated, the Commission orders the preparation and service of a complaint. Such service is ordinarily made by sending a copy of the complaint by registered mail to the alleged offender, who is called the respondent, and who is granted twenty days within which to make answer, after which hearings are conducted, evidence taken, briefs filed and the case argued, if either side makes request to be heard before the Commission in oral argument. The Commission then takes the case under advisement and renders its decision. If the Commission finds that the evidence sustains the allegations in the complaint, it issues an order requiring the respondent to cease and desist from the unlawful practices in question.

If the respondent feels that the Commission's order is not justified, he has the right of appeal to the Circuit Court of Appeals of his own jurisdiction. The findings of fact by the Commission, if supported by evidence, are final, but the Court passes upon the validity of the legal conclusions applicable thereto. If the Court affirms the Commission, it directs the respondent to obey the Commission's order. Should he then fail to do so, the Court may proceed as in any other contempt of Court.

The statute provides that Federal Trade Commission cases "in the Circuit Court of Appeals shall be given precedence over other cases pending therein, and shall be in every way expedited."

There is, too, the right of petition for certiorari by either the Commission or the respondent to the United States Supreme Court, and during its history, a considerable number of the Commission's cases have been carried to that tribunal.

A reversal of the Commission's orders by the Courts is a rare occurrence. The Commission has been reversed by the United States Supreme Court but once in the last seven years, and that was by a five to four decision in a Section 7 Clayton Act case; during the last eighteen months the Commission's orders have been affirmed by various Circuit Courts of Appeals in thirty cases and reversed in none.

STIPULATIONS

I have described the Commission's formal case procedure. We have an informal procedure by which the Commission has been able to expedite its work and save much time and expense both to the Commission and to persons charged with violations of Section 5 of the Federal Trade Commission Act. This is known as our stipulation procedure. A large percentage of our cases are satisfactorily adjusted in this manner. It often happens that a member of industry commits an offense against the Federal Trade Commission Act through ignorance of the law, or that such practices have been indulged in by advertising agents or employes of the manufacturer or merchant without the knowledge of the executive. When such complaints are brought to his attention, it frequently happens that the violator expresses a desire to refrain from any violation, advises that he does not wish to resist the proceeding, but wishes to adjust the matter in the simplest manner possible. Ordinarily he is given the opportunity to sign a written stipulation of the facts and an agreement to cease and desist from the practices involved. If the respondent observes his agreement, no further procedure is had. Violations of these stipulations are extremely rare.

As indicated, the stipulation procedure is a privilege and not a right. Whether an offender is permitted to sign a stipulation is a matter within the discretion of the Commission. Such privilege is not accorded where the Commission is convinced that the practices in question are fraudulent or of a serious nature.

ROBINSON-PATMAN ACT

There has been widespread interest in and much discussion of the Robinson-Patman Act recently enacted. Time forbids any detailed discussion of this Act, which amended Section 2 of the Clayton Act. Suffice it to say that the Robinson-Patman Act seeks, generally, to place competing purchasers upon a parity by making unlawful unjust discriminations in purchase price, discounts, rebates, allowances, brokerage and service charges. It also makes unlawful "fake" brokerage charges, by which farmers have been frequently victimized.

ANTITRUST LAWS NOT APPLICABLE
TO AGRICULTURAL ORGANIZATIONS

You will doubtless be interested to know that Section 6 of the Clayton Act provides as follows:

"The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (Oct. 15, 1914, c.323, 6; 38 Stat. 731; 15 USCA, Sec. 17)"

TRADE PRACTICE CONFERENCES

After several years experience under its organic Act, the Commission developed still a third method of eliminating unfair trade practices. I refer to the Commission's trade practice conference procedure. The purpose of the trade practice conference procedure is to afford industries a means whereby they may more effectively cooperate under Government supervision in the elimination of practices which are unfair and harmful. It mobilizes and implements the forces for good to elevate the standards of fair dealing with the consuming and purchasing public.

Under this procedure, if a representative and substantial number of the members of an industry propose a trade practice conference and the proposal appears feasible to the Commission, a conference is arranged for the consideration of the problems of the industry. With the aid and counsel of members of the Commission's staff, trade practice conference rules covering the problems are formulated, considered, and such as may be adopted are submitted to the Commission for its consideration. The Commission frequently suggests revisions in the proposed rules, in which event the revised rules are referred back to the industry for further consideration. The rules are entirely voluntary, so that no member of industry is under any compulsion to agree thereto. If the Commission finds that the rules as finally proposed are in conformity with the law, it gives its approval. Upon such approval, the rules are submitted by the Commission to each member of the industry who is afforded an opportunity to signify his agreement to abide by the rules in the conduct of his business. It is also customary for the industry to appoint a trade practice committee to cooperate with the Commission in effectuating a proper compliance with the rules.

In passing upon trade practice rules which an industry submits, the Commission applies the test of law. To receive approval, the rules must be such as will not permit a practice contrary to the law or public interest. For example, approval of the Commission would not be given to a rule which establishes a monopolistic practice or which tends to fix prices or otherwise

illegally restrain trade or bring about the suppression of fair competitive opportunity for all. The public interest requires that no rule be approved by the Commission which would work undue hardship on the public or any member of the industry.

Trade practice conference rules approved by the Commission fall into two groups. In Group I are placed such provisions as proscribe practices which are illegal as constituting unfair methods of competition or other violations of law over which the Commission has corrective jurisdiction. In Group II are placed such rules as the industry deems desirable to foster and promote in the interest of fair and equitable conduct, but which do not involve practices necessarily illegal.

The Commission has sponsored upward of two hundred trade practice conference agreements, and now has under consideration a substantial number and inquiries with regard to many more. Many of these conference agreements have been adopted by large industries, with investments running into hundreds of millions of dollars, and employing large numbers of workers. By this conference method, the unfair and dishonest practices, which are frequently the result of economic and competitive forces rather than deliberate design, are often corrected by wholesale, where otherwise it might be necessary to take action against each individual offender, with the effort, time and expense incident thereto.

Generally speaking an overwhelming majority of the members of an industry are honest and are desirous of employing only fair and honorable methods. These conference agreements usually lead to prompt abandonment of unfair practices by the entire industry.

I think it may be asserted with accuracy that the farmers of the country constitute the largest single body of consumers of industrial products. Therefore the Commission in making the protection of the consumer its prime concern has in reality the interest and the protection of the farm population of our country as among its primary objectives. The effort of any manufacturer, distributor or producer to palm off his products in interstate commerce upon the farmer or other purchasers by unfair or fraudulent means is reprehensible and illegal. The prevention of such conduct is the basis of much of the Commission's activities in the trade practice conference work as well as in its investigating and prosecuting divisions.

While, as indicated, farmers as consumers have an interest in all the trade practice conference agreements approved by the Commission, yet the Commission has sponsored and approved trade practice agreements in some instances which bear a direct relation to and afford protection for those engaged in agricultural pursuits.

PRESERVE MANUFACTURING INDUSTRY

The trade practice conference rules established for this industry afford a concrete illustration of such activities in the interest of agriculture. Members of this industry constitute the manufacturers of fruit preserves, jams, jellies and apple butter. They produce annually in excess of \$30,000,000 of such products. They purchase fruit from the farmers direct or from cooperative marketing organizations and other marketers of fruit. Agriculture's market for

fruit is found largely in this industry. In the great fruit-producing districts of the Northwest and some parts of the South, the preserve industry constitutes almost the whole outlet of the berry-producing farmers.

The principal problem involved was the sale of so-called preserves, jams and jellies in which a large part of the fruit had been displaced by synthetic products such as pectinous jelly, commonly thought of as solidified sugar and water. The practice of displacing fruit with synthetic materials had become so prevalent as to threaten the existence of the honest manufacturer who desired to market pure preserves. The effect of lessening the market for pure preserves had serious repercussions in lessening the demand for the farmer's fruit. By reason of this lessened demand, acres upon acres of fine berries have been allowed at times to rot in the fields, the price being so low as not even to warrant incurring the cost of picking, to say nothing of the expense of growing the fruit.

Substitution of the synthetic products for fruit renders the product less palatable and satisfying to the taste, and when this inferior product is passed off as pure, it tends to build up a consumer dissatisfaction and reluctance to purchase any preserves, thus further lessening the market for the full-fruited product.

The Commission, through its trade practice conference procedure, took up the problem and has promulgated rules prohibiting the sale of products as genuine preserves, jams and jellies and apple butter when the full amount of fruit has not been used in its manufacture, and requiring that the synthetic product shall not be allowed to masquerade as genuine or pure, but must be labeled or described as an imitation which in fact it is.

In the course of the hearings on these trade practice rules, farm organizations and other organizations of producers and packers of fruit appeared in support of the Commission's undertaking and supplied valuable evidence which was of great help in this constructive work of such vital importance to agriculture, as well as to consumers.

The trade practice rules for the preserve industry provide against all forms of misrepresentations, misbranding and adulteration of fruit preserves, jams, jellies and apple butter.

BABY CHICK INDUSTRY

A trade practice conference was held for the baby chick industry under the auspices of the Commission, and rules were promulgated in November, 1933. The industry is engaged in the business of hatching baby chicks for sale to poultry raisers.

The commercial hatcheries of this industry produce 750,000,000 baby chicks annually. Practically all of them are sold to farmers. These sales total annually many millions of dollars; and it is quite obvious that an industry which collects these amounts from our farm population has a vital effect upon agriculture.

The farmer was being exploited in this field through misrepresentations, and his protection required that the claims upon which baby chicks are sold and upon which the farmer relies in making his purchases be kept truthful and fair.

The Commission undertook in cooperation with the members of the industry to supply these safeguards, to stamp out prevalent misrepresentations, and to prevent other misrepresentations from gaining a foothold.

It will be interesting to note some of the things these trade practice conference rules provide against. In the first place, provision is made against the use of any false, misleading or deceptive advertisement or representation as to the grade, quality, quantity, character, nature, origin, or size of the chicks. In addition, some of the particularly reprehensible schemes for fleecing the farmer are singled out for special attention.

GENERAL INVESTIGATIONS

Perhaps the work of the Federal Trade Commission most widely publicized and that to which the mind of the average citizen turns in connection with mention of the Commission is the function performed under Section 6 of the Commission's organic law which authorizes the Commission to make investigations upon the direction of the President or the Congress, or upon request of the Attorney General or upon the initiative of the Commission.

Approximately 100 investigations have been made under that authority, the greater portion of them pursuant to Congressional resolutions. A large number of these investigations directly concern the farmer, either, on the one hand, as the producer and seller of a commodity as to which he was often prejudiced by the combinations and practices of the purchasers of his commodity, or, on the other hand, as the principal purchaser of goods, the prices of which were fixed at unreasonably high levels by large corporations, trusts or combinations.

Among such investigations may be mentioned those in relation to Cooperative Marketing, the Cooperative Movement in Foreign Countries, Commercial Feeds, Fertilizer, Calcium Arsenate, Farm Implements, Gasoline, Sisal Hemp, Cotton Trade, Cotton Merchandising Prices, Cottonseed Industry, Empire Cotton Growing Corporation, Export Grain, Food Canning, Packers and Stock Yards, Leather and Shoe Industry, Peanut Prices, Southern Live Stock Prices, Sugar, Tobacco, Tobacco Prices, Tobacco Marketing and Wheat Prices.

The Commission's reports on most of these investigations were printed as government documents.

Practically all of these investigations were designed to promote and protect the interest of the farmer.

Most of these investigations related to the low price received by the farmer compared to the high price paid by the consumer for farm products, and were intended to ascertain the cause of such a large spread, for the guidance of Congress in considering remedial legislation. Many of these investigations were designed to ascertain whether there were any illegal combinations of and

agreements between buyers of farm products, by which prices paid the farmer were beaten down. Many of the investigations were designed to ascertain the reason for the high prices charged farmers for manufactured articles and whether such prices were maintained by unlawful means.

The mere publicity of the facts developed in these inquiries generally proved beneficial, and often resulted in reforms forced by public sentiment or voluntarily adopted by those who were shown to have been engaged in unlawful or unfair practices. Some of these investigations also resulted in prosecutions by the Department of Justice and a number of them resulted in the issuance of complaints by the Federal Trade Commission.

Investigations by the Commission have several times resulted in the enactment of important Congressional measures, including the Packers and Stockyards Act, the Securities Act of 1933, the Holding Company Act and various others. Facts developed by these investigations have been used by members of Congress in the consideration of various problems and measures too numerous to mention.

But for lack of time I would be glad to give a more detailed explanation of many of these investigations and show the very vital manner in which they related to and were beneficial to agriculture. Most of these reports were printed as public documents and are available to those interested, unless they have been exhausted, which is true with respect to some of the earlier reports in particular.

MILK INVESTIGATION

The Commission has just concluded an investigation of Milk and Milk Products, pursuant to joint Congressional Resolution. The basis and purpose of this investigational resolution was for the Commission to ascertain and report the cause of the spread between the price paid the producer (dairyman or farmer) for milk and cream and the price charged the consuming public therefor, and Commission was directed to recommend any remedial measures. The Commission has filed with Congress several factual reports on this investigation, and will shortly file its final report embracing the Commission's conclusions and recommendations.

GENERAL AGRICULTURAL INVESTIGATION

The recent Congress also passed a joint resolution, which was approved by President Roosevelt August 27, 1935, "authorizing the Federal Trade Commission to make an investigation with respect to agricultural income and the financial and economic condition of agricultural producers generally." As disclosed by both the preamble and body of the resolution, it was predicated upon the premise that farmers are not receiving their just share of the price paid by the consuming public for farm products. Although handicapped by delayed and inadequate appropriations for such an important investigation, the Commission proceeded to make an investigation of seven principal farm products, to-wit, cotton, wheat, cattle, hogs, dairy products, tobacco and potatoes. The Commission will soon file its report thereon.

FRESH FRUITS AND VEGETABLES

On the eve of the adjournment of the recent Congress, another joint resolution was enacted directing the Commission to broaden the scope of the inquiry to include fresh fruits and vegetables, and directing report thereon next January.

FARM MACHINERY

Likewise, the recent Congress enacted a joint resolution, approved by the President June 24, 1936, directing the Federal Trade Commission "to investigate corporations engaged in the manufacture, sale or distribution of agricultural implements and machinery."

The three last mentioned resolutions were advocated by various agricultural organizations and interests, including the American Farm Bureau Federation.

CONCLUSION

Agriculture is our basic, most essential and largest industry. Those engaged in or dependent upon agriculture for their livelihood embrace nearly half our population. All of our people depend upon agriculture for sustenance.

The farmers perhaps have been victimized by monopoly more than any other class of our citizens. Agriculture has made little progress toward organized control of its own production or prices. Generally speaking the farmer neither fixes the price at which he sells nor the price at which he buys. He sells in a market free and uncontrolled so far as he is concerned, but frequently controlled by a combination of those who buy his products. He must frequently buy in a market controlled by monopolistic combinations. Without the ability to effectively control its own production and prices, agriculture has had to bear the full impact of monopoly both in buying and selling. For years prior to the 1929 crash, agriculture was not prosperous, although many other industries were enjoying a species of prosperity, achieved largely at the expense of agriculture. What then passed for prosperity was perhaps only the manifestation of monopolistic enterprise, reckless financing and wild speculation. It was fully demonstrated that with agriculture prostrate, even this make-believe prosperity could not continue. When agriculture is prosperous, we will have genuine, nation-wide prosperity, but not otherwise.

More receipt of greater income by our agricultural population does not in itself necessarily assure prosperity. When 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 -- in fact, may grow worse.

Wherefore, of all our citizens the farmers should be most concerned in the strengthening and strict enforcement of our anti-trust laws.