For Release on Delivery at 10 a.m., E.S.T., Tuesday, October 5, 1937.

ADDRESS BY
HON. ROBERT E. FREER, MEMBER OF THE FEDERAL TRADE COMMISSION,
OPENING THE TRADE PRACTICE CONFERENCE OF
THE METAL CLAD DOOR & ACCESSORIES INDUSTRY,
HOTEL NETHERLANDS PLAZA, CINCINNATI,
TUESDAY, OCTOBER 5, 1937, 10 a.m., E.S.T.

Ladies and Gentlemen:

First let me say that the Federal Trade Commission was very pleased to authorize this conference looking toward the advancement of the Metal Clad Door & Accessories Industry. While your industry is not one of the largest, it is, nevertheless, one of real importance. Fire-proof doors fill a very definite need in preventing the spread of fires.

I presume that the delegation of your industry, who held an informal conference with the Director and Assistant Director of the Commission's Trade Practice Conference Division, have reported to you the information they obtained and that you are, therefore, already somewhat familiar with the Commission's trade practice conference procedure. Before proceeding with the consideration of specific rules, however, I wish to make just a brief recapitulation, with special reference to the limitations upon the Commission's jurisdiction in these matters.

The Commission's trade practice conference procedure does not possess the flexibility in scope exercised by National Recovery Administration. The N.R.A. was granted by Statute plenary code-making powers, while the Federal Trade Commission is strictly bound by the limitations in its organic Act and by the antitrust policies of the Federal Statutes.

Our trade practice conference procedure is derived from our general power and duty to prevent "unfair methods of competition". It was devised as a method of carrying out this statutory duty in a wholesale manner. The general idea is that where "unfair methods of competition" are being used by various members of an industry, the best and fairest way to call a halt to them and restore ethical competition is to meet together with members of the industry for the adoption of a set of fair trade rules. Thus, the principal function of the trade practice conference procedure is to eliminate "unfair methods of competition".

It frequently occurs that some practices, which are not "unfair methods of competition", within the terms of the Act, are prevalent in an industry. In other words, certain abuses exist, although these abuses do not amount to infractions of positive law. Also, there is, frequently a need for cooperative endeavor; for example, to promote the wider dissemination of knowledge, the more careful branding of goods, etc. Therefore, in line with, and as sort of a corollary to, the principal purpose of the trade practice conference procedure, the Commission has gone one step further in aid of better business conditions. It receives and accepts expressions of the industry condemning

business practices which, while not "unfair methods of competition", are, nevertheless, detrimental to the best interests of the industry or the public; and expressions of the industry, looking toward the inauguration cooperatively of practices considered beneficial to the industry, provided always that these expressions of policy are deemed to be in the public interest.

Accordingly, trade practice provisions are classified into two groups. Into Group I are placed the rules describing and banning practices falling within the legal scope of the term, "unfair methods of competition"; into Group II are placed the "expressions of policy". Group I rules paraphrase the law and will be enforced by the Commission when violations of them are brought to its attention. Group II rules must stand on their own bottom.

Since the enforceable Group I rules must deal with an "unfair method of competition", it is important to know what that term embraces. It is not limited to a specific set of practices but is a flexible term purposely chosen by the Congress because adaptable to changing conditions. A general idea of its meaning can be gathered by glancing at the history and philosophy of the Federal Trade Commission Act. In studying the growth of monopoly, Congress came to the conclusion that the use of a certain type of practice constituted the principal tool of the monopolists in building their monopolies. Certain companies had used destructive price cutting and rebates. Others had used misrepresentation and commercial bribery. Some had engaged in inducing breach of contract. The use of these practices led inevitably to the suppression of competition and the fostering of monopolies.

It was logical for the Congress to believe that if such unfair practices were prohibited, monopolies would be stopped in their incipiency. The intent of Congress to protect, promote and perpetuate wholesome competition is plain. The theory behind the intent is that by preventing the use of "unfair methods of competition", the honest, ethical competitors -- the limitless number of whom generate the aggregate competition in our national economy -- would be afforded a fair chance to make headway unmolested and without feeling themselves impelled to indulge in the unethical practices adopted by a certain irresponsible few. The idea was to lift the plane of competition to a higher level and that has been the result.

Knowing that new practices of a similar character came into existence from time to time, Congress in writing the Act, chose a generic phrase which would prove adaptable to changing conditions. Naturally, being generic, the phrase is incapable of exact definition. Beyond the outlining of a broad concept, it can only, in a measure, be defined by reciting the limitations that have been placed upon it by the courts. By the organic Act, the Commission and the courts are to determine what the phrase means.

In Federal Trade Commission vs. Gratz, the Supreme Court placed at least one very definite limitation upon the meaning of the term. It said:

> "The words 'unfair methods of competition' are not defined by the statute, and their exact meaning is in dispute. It is for the courts, not the commission, ultimately to determine as matter of law what they

include. They are clearly inapplicable to practices never heretofore regarded as 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 act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade."

Accordingly, the Commission is estopped from making the subject of a Group I rule any practice which is not specifically proscribed by some statute or which is neither "opposed to good morals because characterized by deception, bad faith, fraud or oppression", nor "against public policy because of * * * dangerous tendency unduly to hinder competition or create monopoly."

Price fixing devices and agreements to eliminate fair competitive practices have been held by the courts to constitute restraint of trade and therefore fall within the category, "unfair methods of competition". Frequently, industries propose to the Commission for its acceptance rules tending toward price fixing or the elimination of competition. These must be denied. Price fixing and suppression of competition are to be prohibited in Group I rules rather than encouraged by them.

The Commission has observed from its experience with trade practice conferences that a great deal of the job of eradicating unethical business practices has been done when a meeting such as this has been held, and cooperation established between the Commission and the industry. In addition, it has also found that the expressions of policy placed in Group II generally have received the whole-hearted support of the industry, notwithstanding the fact that only mutual agreement and good faith require the industry to abide by them.

In view of the past record of this industry, I feel confident that this conference will be highly successful.

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