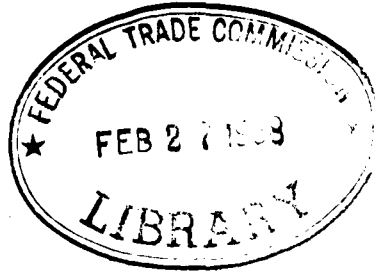


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Statement of

EDWARD F. HOWREY, CHAIRMAN
OF THE FEDERAL TRADE COMMISSION

Before the

SELECT COMMITTEE ON SMALL BUSINESS,
HOUSE OF REPRESENTATIVES

Wednesday, July 14, 1954

STATEMENT OF EDWARD F. HOWREY, CHAIRMAN OF THE FEDERAL TRADE COMMISSION
BEFORE THE SELECT COMMITTEE ON SMALL BUSINESS, HOUSE OF REPRESENTATIVES,
WEDNESDAY, JULY 14, 1954

You have asked us to appear before your Committee to discuss the general subject of "Small Business and the Federal Trade Commission."

While it may be stating the obvious, it should, perhaps, be made clear at the outset that our job, as we see it, is to administer the trade regulation laws vigorously, fairly and independently, with due regard for all segments of our economy, including the consumer, the small businessman, the medium-sized and the large. In one sense, therefore, the Federal Trade Commission is not primarily a small business agency. Our job as a law enforcement agency is to be distinguished, for example, from that of an executive agency such as the Small Business Administration.

To the extent, however, that there is a well established public policy of protecting and encouraging small independent business and to the extent that vigorous enforcement of the antitrust and trade regulation laws contribute to that policy, we are - or should be - a vital small business agency.

So it is that while the Commission supervises the competitive practices of both small and big business, we are fully aware of our duty to make a special effort to protect small business from predatory practices. We have concluded, in fact, that the Commission should have its own small business program.

In my first public statement as Chairman of the Federal Trade Commission a little over a year ago, I stated:

"Small business has an essential, economic and human role in American life. All inequitable handicaps should be eliminated so that small firms may grow in a healthy way and compete more effectively with their bigger competitors."

I proposed at that time that the Commission should establish a division to be concerned exclusively with the problems of small business. As you know, we have now established a Division of Small Business within our new Bureau of Consultation. This strikes us as an appropriate step for an agency like the Commission to take in recognition of the important role of small business in American life. From this Division, small businessmen may seek advice and information regarding legal matters under the jurisdiction of the Commission.

The establishment of this Division makes the facilities of the Commission readily accessible to small business. One of the complaints of small business has been the mystery and delay which seem to surround their applications for complaint; they say they drop their complaints in the hopper and never hear from them again unless and until a formal complaint issues or the case is dropped. One of the duties of the small business division is to advise small businessmen of the status of investigations in which they are interested. In addition, this new Division will explain to small businessmen the method of initiating complaints they wish to make regarding the practices of their competitors and, as I have stated, it will provide special facilities for advising small businessmen on the laws administered by the Commission.

The Division of Small Business is a relatively small division but by using the facilities of other units within the Commission we think that it can perform a useful function.

Beyond that, however, there have been numerous other developments during my term as Chairman of the Commission which should be of special interest to this Committee. These include:

(1) We have recently put into effect a reorganization of the Commission designed to increase greatly our capacity and output and to eliminate delays in our procedures. It represents a strengthening of our organization and a streamlining of our procedures so that we can do more effective work. One of its principal effects should be to cut down delays in the disposition of cases. Certainly the complaining party - who may well be a small businessman - and the respondent, as well as the public, are entitled to decisions in cases without undue delays.

Under this revised organization a new concept, that of the project attorney, is being put into effect. The result will be that responsibility for the progress of a case, from start to finish, will be centralized in one attorney. Also, in order to make better use of our investigative and trial personnel, bureaus of investigation and litigation have been established. An agency of our size, with about 600 employees, cannot afford the luxury of two separate investigative and two separate trial staffs.

(2) We have now initiated an integrated compliance program, including as a first step a systematic and selective review of more than 4,000 cease and desist orders, 8,000 stipulation-agreements to cease and desist, and numerous trade practice rules. This program will be administered under our basic policy of encouraging voluntary compliance with the law, backed by vigorous enforcement measures when necessary.

Our integrated compliance program is an effort to correct a grave deficiency in our operation. We found that with respect to most of its orders, the Commission did not know with any degree of certainty whether or not the respondents have continued to be in substantial compliance. It is an effort to answer the complaints of small business representatives who found that the promise of relief from unfair competitive acts given by an order to cease and desist has too often proved illusory because of inadequate follow-up. This past softness of the Commission in its program of compliance is contrary to our purpose of bringing about a vigorous and fair enforcement of antitrust and related statutes. The correction of this situation has a high priority in the Commission's current program.

(3) The Commission has undertaken a program to improve both the initial decisions of our hearing examiners and those of the Commission itself. We have promised to write an opinion in every case to provide more clear-cut guidance to businessmen and their lawyers. Small businessmen, in particular, should welcome informative and readable opinions in which legalistic phraseology will be conspicuous by its absence, - opinions which tell them what they may do, as well as what they may not do.

(4) We recently revised our Rules of Practice to encourage more widespread use of our consent settlement procedure. This procedure, when utilized,

results in the issuance of a cease and desist order which is just as enforceable as one obtained after protracted litigation. At the same time, the procedure results in considerable saving of time and expense to all concerned with much prompter realization of the relief desired.

(5) We recently executed a joint agreement with Secretary of Health, Education and Welfare Hobby, defining the respective areas of activity of the Commission and the Food and Drug Administration in the field of food, drug and cosmetic advertising and labeling. This agreement will avoid needless duplication of effort and expense on the part of the two agencies, and serve to prevent businessmen from being harassed simultaneously by two agencies over the same subject matter.

(6) An advisory committee on cost justification, consisting of accountants, economists, and lawyers representing all viewpoints has been appointed and is now working to determine the feasibility of developing standards of proof and procedures for distribution costing, for adoption by the Commission as guides to businessmen desirous of complying with the Robinson-Patman Act.

In our reorganization we have established a Bureau of Consultation. It is within this Bureau that the Division of Small Business will function. Broadly stated, the purpose of this Bureau is threefold:

1. To act in a cooperative and consultative capacity to business, particularly small business.
2. To give informal advice (but not written advisory opinions) in all kinds of matters involving the laws administered by the Commission.
3. To seek voluntary compliance with such laws by means of conferences, stipulations, trade practice rules and other types of informal procedures.

As I have already stated, we are committed to vigorous administration and enforcement of all the laws within our jurisdiction, including the Robinson-Patman Act. But it is important that the Sherman Act, the Federal Trade Commission Act and the Clayton Act, with its Robinson-Patman amendment, be administered as inter-related expressions of the national antitrust policy - not as separate and conflicting statutes. And the Commission should proceed against "hard core" violations instead of depleting its limited resources by pursuing peripheral or borderline test cases. We are not in business to test the limits to which the antitrust laws might be applied or extended. We do not propose to concern ourselves with "fringe" theories such as conscious price parallelism, the mill net theory and similar matters. In this connection, the Commission should not seek to nullify the McGuire Act which has the strong support of small business, by the application of unrealistic legalisms or strained statutory interpretation. This Act, as you know, exempts from the operation of the Federal antitrust laws, vertical resale price maintenance contracts which are legal under State fair trade acts.

As I recently told the Texas State Bar Association, we are not so much concerned with whether we are being "harder" or "softer" than previous Commissions as with whether we are being stable, clear-cut and effective.

We propose to concentrate our efforts on activities which actually mean something to the public, including that vast segment known as small business.

The Commission recently launched a nationwide investigation of the advertising claims being made by concerns in the health, accident and hospitalization insurance field. This is the first investigation of its kind that has ever been conducted by a law enforcement agency. The public interest in the project is almost staggering. Hundreds of letters complaining of the practices employed have been received daily by my office.

Another Commission investigation which has recently received considerable comment relates to the iron and steel scrap industry. The charges here involve restriction of channels of distribution in a basic industry in both domestic and foreign commerce, the effect of restrictions upon the amount, sources and price of scrap available for the production of steel, exclusive dealing and mergers.

Several months ago the Commission's Bureau of Economics completed its survey of changes in concentration of manufacturing since 1935. This careful, objective job is described in a 153-page report entitled "Changes in Concentration in Manufacturing, 1935 to 1947 and 1950." It points out that while the number of manufacturing companies increased from 200,000 in 1935 to 300,000 in 1950, the 200 largest companies in 1950 accounted for a larger proportion of the value of product of manufacturing industries in that year than did the 200 largest companies in 1935. At every level, beginning with the top five companies, the largest companies in 1950 were ahead of their counterparts in 1935. A greater gain was made by the second 100 largest companies than the first 100. In individual industries the Commission found increases in some instances, decreases in others, as well as numerous industries in which the level of concentration was substantially unchanged.

These investigations, their nature and scope, fairly well indicate the type of activity I feel the Commission should engage in.

I have stated that the Commission should not extend or formulate new per se doctrines under which certain practices are automatically and conclusively presumed to be violations of law, no proof being needed that competition was or might be unfairly injured.

To the extent, however, that Congress or the courts have defined per se violations, we will, of course, enforce the law. But outside of these areas we feel that it is our job to look at all phases, economic and legal, of each case and ascertain the amount of public interest and injury to competition from a variety of comparative factors. These factors would include such things as economic usefulness, the degree of competition, the degree of market control, the degree of vertical integration, customer freedom of choice of goods and service, opportunities for small competitors to engage in business and prices and profits.

In the approach that I have outlined here, I think that we are reverting to the role that Congress intended us to perform. It must be kept in mind that the Commission was established to supplement the work of the Department of

Justice and the courts under the Sherman Act. It was meant to practice preventive law through administrative and regulatory activities as well as by the initiation and conduct of adversary proceedings. The job of prosecutor was vested primarily in the Department of Justice.

Recently I listed at least three characteristics that are needed if the FTC is to work in the manner Congress intended:

"1. There must be sound administration, with strong but fair administrators who are in general sympathy with the objectives and policies expressed in the legislation which they administer.

"2. The Commission should arrive at a decision only after thorough exploration of all factors bearing upon the particular problem.

"3. The heart of the Commission's work, as an expert body, is its fact finding."

As I have indicated, we are undertaking to improve our fact finding methods. This is being done on two fronts. First, the investigative work of the Commission should be improved and expanded. All the Commission's work - its successes or its failures - depend primarily upon the facts which are developed by examiners in the field. In the past, the attorneys in charge of this work have received neither the recognition nor the support necessary for a successful administration of the laws over which we have jurisdiction. We are now taking steps to raise the investigative work to a status equal with that of our other work. The other phase of our fact finding activities, I've already touched upon. That has to do with the issuance of informative and readable findings and opinions with a minimum of legalistic phraseology.

As we see it, therefore, a vigorous application of the antimonopoly and antidiscrimination statutes is an important part of any policy relating to small business. So long as the vigor and fairness of competition is maintained, small businessmen will have a fair chance to perform their economic functions and prosper accordingly. They should not want more and they do not need more to preserve their place in the sun. In a sentence, our objective is to help keep small business strong and aggressive - to protect it from unfair competition and to eliminate all inequitable handicaps.

Perhaps a special word should be said about the Robinson-Patman Act. This is a statute concerning which there has been considerable discussion as to its relative merits and demerits. I don't need to tell this Committee that small business groups, primarily retailers and wholesalers, strongly support it. At the same time, there are many who contend that the Robinson-Patman Act is inconsistent with the antitrust laws and is not in the public interest.

Certainly we at the Commission believe in its philosophy and fully recognize our obligation to enforce it.

I have discussed in some detail a number of the changes which have occurred at the Federal Trade Commission since I became Chairman, and have also attempted to outline my views regarding some of the problems which we face. I believe you will also be interested in our record regarding cases formally litigated before the Commission. We have attached to this statement

a summary of the Commission's record with respect to antimonopoly cases over the past four fiscal years. From this statement, it will be noted that during the fiscal year just concluded, the Federal Trade Commission issued a total of 25 antimonopoly cease and desist orders (including 14 orders under the Robinson-Patman Act) which is the highest number of antimonopoly orders issued by the Commission in any of the four years in question. Similarly, it will be noted that in the last fiscal year, the Commission issued 30 antimonopoly complaints, the most complaints in this field issued during any of the four years in question. In addition, during much of the recent fiscal year, the Commission had 100 fewer employees than the high point reached during the period under comparison. I might add that the increased output was not confined to the antimonopoly field - the Commission having issued complaints in 93 antideceptive cases, or 13 more than the highest number issued in any of the three preceding years.

In conclusion, let me state that we have had a year of real progress. I would be the first to concede that we have not accomplished all our objectives but certainly we have made long strides in what I consider to be the right direction. With the reorganization plan now in full effect, I can predict with confidence that the year ahead will see even greater accomplishments in the interest of the public. And when we are serving the public interest, I am sure you will agree we are also serving the cause of small business.

Complaints Issued During Fiscal Year 1951:

Sec. 2	17 (7 also Sec. 5)
Sec. 3	4
Sec. 5	<u>8</u>
	29

Complaints Issued During Fiscal Year 1952:

Sec. 2	16 (1 also Sec. 5)
Sec. 3	1
Sec. 5	11
Sec. 7	<u>1</u>
	29

Complaints Issued During Fiscal Year 1953:

Sec. 2	12
Sec. 3	1
Sec. 5	11
Sec. 8	<u>5</u>
	29

Complaints Issued During Fiscal Year 1954:

Sec. 2	12 (1 also Sec. 5)
Sec. 5	17
Sec. 7	<u>1</u>
	30

Complaints Issued from Apr. 1, 1953 (when the present Chairman took office)
to June 30, 1954:

Sec. 2	14
Sec. 5	19
Sec. 7	<u>1</u>
	34

Orders Issued During Fiscal Year 1951:

Sec. 2	10 (1 also Sec. 5)
Sec..5	<u>13</u>
	23

Orders Issued During Fiscal Year 1952:

Sec. 2	15 (1 also Sec. 5)	4 Consent Settlements
Sec. 5	<u>9</u>	
	24	

Orders Issued During Fiscal Year 1953:

Sec. 2	13 (2 also Sec. 5)	7 Consent Settlements
Sec. 3	1	1 Consent Settlement
Sec. 5	<u>10</u>	<u>4</u> Consent Settlements
	24	12

Orders Issued During Fiscal Year 1954:

Sec. 2	14 (3 also Sec. 5)	7 Consent Settlements
Sec. 3	3	
Sec. 5	<u>8</u>	<u>7</u> Consent Settlements
	25	14

Orders Issued from Apr. 1, 1953 (when the present Chairman took office)
to June 30, 1954:

Sec. 2	16	9 Consent Settlements
Sec. 3	3	
Sec. 5	<u>10</u>	<u>8</u> Consent Settlements
	29	17