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STATEMENT OF CHAIRMAN EWIN L. DAVIS,
OF FEDERAL TRADE COMMISSION
ON H. R. 2357

This bill may very well be considered the acid test of our faith in the feasibility and desirability of maintaining a free and competitive system of private enterprise. It proposes a definite legislative reaffirmation and revitalization of the philosophy which Congress incorporated in Section 7 of the Clayton Act when it was passed in 1914. The Clayton Act itself was a reaffirmation and intended implementation of the philosophy of the Sherman Act which in turn was a declaration of national economic policy rooted in the traditions of the common law. As our late President stated in his message to the Congress urging the formation of the Temporary National Economic Committee and making various recommendations for strengthening the antitrust laws, "No man of good faith will misinterpret these proposals. They derive from the oldest American tradition" (T.N.E.C. Final Report, p. 19). Among the recommendations submitted in that same Presidential message was one for "more rigid scrutiny" of corporate mergers, consolidations, and acquisitions "than that now provided by the Clayton Act to prevent their consummation when not clearly in the public interest" (Ibid. p. 19).

After a careful comprehensive study of the condition of our economic system the Temporary National Economic Committee also recommended legislation such as is provided for by this bill. The bill therefore cannot be said to reflect merely the opinion of the Federal Trade Commission. However, the failure of Section 7 as originally drawn to cover acquisition of assets and its failure to prevent even stock acquisitions when utilized to acquire assets had been pointed out in the annual reports of the Commission to Congress beginning as far back as 1927, and from year to year thereafter.

In its Annual Report for the year ending June 30, 1929, the Commission referred to the contemporary period as "a day when mergers and consolidations are forming with a rapidity hardly foreseen even by the authors of the present antitrust laws" .. It pointed out that the statute had no application to the acquisition of assets and that Court decisions had made it inapplicable even to unlawful stock acquisitions when followed by acquisition of assets. The report also showed that during that one year the Commission had been unable to act on 99 cases involving acquisition or consolidation of assets and that about 10% of these had been preceded by stock acquisitions. It was not just a coincidence that the loopholes in the statute which became manifest through Court decisions after the Commission attempted to enforce it were followed by a wave of corporate acquisitions and consolidations and of speculation in their securities that became a substantial factor in the crash of 1929 and the onset of the great depression. The public fails to realize that the capitalization of prospective earning power based upon the elimination of competition involves speculation in the decline and ultimate denial of the economic validity of our institutions. More and more the field of investment becomes narrowed to industries under monopolistic control and to the relatively few individuals whose income provides the bulk of the country's savings. Concentration of wealth is the alter ego of monopoly. Economic depression merely tends to accelerate the trend as weaker units of industry are absorbed by the stronger. To the extent the capacity of the strong is adequate for purposes

of war production, war itself naturally tends to concentrate production in the hands of those already representing the greatest existing capacity to produce with a consequent disproportionate strengthening of their monopolistic power.

One of the ideas that has confused the public mind and even the minds of public officials and administrators is that competition results in inefficiency and that concentrated economic power is inevitably efficient. Our late President paid his respects to this idea in his message to Congress urging the establishment of the Temporary National Economic Committee. He said:

"We all want efficient industrial growth and the advantages of mass production. No one suggests that we return to the hand loom or hand forge. A series of processes involved in turning out a given manufactured product may well require one or more huge mass-production plants. Modern efficiency may call for this. But modern efficient mass production is not furthered by a central control which destroys competition between industrial plants each capable of efficient mass production while operating as separate units. Industrial efficiency does not have to mean industrial empire building." (Final Report T.N.E.C. p. 13)

The Temporary National Economic Committee took account of the problem of passing on the technological gains in connection with technological displacement of workers and their consequent unemployment. It reached the conclusion that "maintenance of a competitive productive system and a free market place should have a salutary effect in passing on the gains of technology to all who participate in our economic life" and that "a free competitive system offers the best opportunity for the widest participation in such gains achieved through reduction in prices of goods, in the stimulation of new industries and the extension of existing ones, fuller employment, reduction of working hours, increase in consumers' purchasing power, and a more equitable distribution of the value added by manufacture." (Ibid. p. 22)

Now among the things which the bill requires must be found before approval can be given to any acquisition of stock or assets above a value to be fixed by Congress is "that the acquisition will not be incompatible with greater efficiency and economy of production, distribution, and management." Thus the bill will not interfere with acquisitions which are consistent with greater efficiency and economy so long as they do not promote monopoly. To permit acquisitions which are consistent with greater efficiency and economy and yet which promote monopoly would be a frustration of the basic thesis on which the bill and the conclusions of the Temporary National Economic Committee were founded. Without the pressure of competition any added efficiency and economy in the internal operations of a corporate consolidation simply means that such benefits are monopolized and withheld from the public. If and when such withheld benefits are capitalized they become a fixed charge upon the public, making for a rigid and inelastic price structure which does not yield readily to the necessities of reduced purchasing power in times of depression.

The Temporary National Economic Committee in its final report stated that its recommendations were not "designed to turn the economic clock back," but were "calculated to restrain the continued progress of concentration which so obviously is undermining the foundations of both free enterprise and free government" (T.N.E.C. Final Report, p. 10). The Temporary National Economic Committee pointed out that all its recommendations were based on the premise

that the public policy evidenced by the Sherman Act, Clayton Act, and Federal Trade Commission Act "holds as good today as it did when this legislation was enacted." The Committee also stated that "in all the hearings held before this Committee no witness so much as suggested any substantive change in the basic philosophy of those laws" (T.N.E.C. Final Report, p. 35).

Unless the principles of this bill are adopted and unless we deal more directly with the problem of monopoly and concentration of economic power it may well be doubted that the other recommendations of the Temporary National Economic Committee for less direct reinforcement of the antitrust laws are entitled to receive any more favorable consideration. In any event, the adoption of the other recommendations and the rejection of the principles of this bill would be to continue our mistaken policy of attacking only the looser and less permanent forms of monopolistic control and to temporize with the more effective and more permanent forms of concentrated economic power.

The question to be faced is whether the government will require economic events to conform to its basic economic philosophy or whether it will permit that philosophy to be warped by events until the contrast between fact and theory becomes still more grotesque. Unless that philosophy is made vital by controlling economic development, it will become more and more an abstraction that is farther and farther removed from reality. Stripped to its bare essentials the basic question posed by this bill is whether we care enough about maintaining the institutions to which we have given such abundant lip service, to act with the skill, vigor, and decisiveness that the diagnosis demands. It is a time for surgery and as in all such cases time is the essence.