

D. H. ...
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THE FEDERAL TRADE COMMISSION AND THE LITTLE MAN.

The Federal Trade Commission is an 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.

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.

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 charges of unfair practices covering almost every conceivable character of commodities.

The Federal Trade Commission has been especially concerned in the protection of the little man - the little man in industry and the little man as a consumer in the mass.

Most of our applications for relief come from little men unable to bear the burden of individual litigation.

In these days, when so much of our economic life has been absorbed and directed by corporations, there is a natural and somewhat logical tendency to treat the little corporation as the economic equivalent of the little man. The logic of such a treatment appears from the fact that corporations, as distinguished from individually owned and conducted enterprises, now control about 95% of the production of manufactured goods, whereas in 1899 they controlled only about 66% and in 1919 only 87%. In 1929, 92% of the wage earners employed in manufacturing were employed by corporations, while 30 years before the proportion so employed was only 65%. And in retail distribution we have seen the rise of the great chain store corporations, forcing thousands of independent merchants out of business. Accordingly, we observe, not only that little remains of the little man in industrial production but that both big and little men have been almost wholly displaced by big and little corporations. Even in the field of distribution the corporation seems to be superseding the individual, and is reaching out even into the so called service trades. We now have chain restaurants, chain cleaning and dyeing plants, and chain shoe repair shops, owned and operated by corporations. So if one wishes to consider the little man as an actual competitive force it can't be done without substituting the little corporation for the little individual.

Making that substitution, what do we find to be the status of the little corporation? According to Berle and Means in their

notable book "The Modern Corporation and Private Property", 200 giant corporations now control nearly 50% of all corporate enterprise in this country. If they continue to grow as they did from 1909 to 1929, those two hundred corporations will completely absorb American industry in forty years. And that result would be accomplished in thirty years if they were to grow as fast as they did between 1924 and 1929.

These 200 corporations are managed and controlled by about 2000 individuals. Their assets are growing nearly three times as fast as other corporations and over three times as fast as the national wealth as a whole. The pathway of the development of these corporate giants is generally strewn with the wrecks of small competitors.

By contrast with these few and rapidly growing giants there are still over three hundred thousand corporations struggling to maintain themselves in steadily narrowing markets. It is obvious that if the proportion of business done by the few continues to increase, the proportion done by the many must decrease. And what warrant is there for the hope that the steady trend in that direction from 1909 to 1929 has been halted and will not continue, perhaps with accelerating speed? Nor can we ignore the probability that the result of the depression has been to increase concentration of ownership and economic power.

A noteworthy fact is that all of these corporations exist and operate by virtue of authority from the State, endowed by law with

powers and privileges which no single individual is permitted, or would be able, to possess or exercise.

There are not only big and little men among investors but the great mass of the population is composed almost wholly of little men, economically speaking. Yet these little men constitute the social and economic fabric of the nation.

Excluding for the moment anything other than the economic function of the little man as an individual, it is no exaggeration to say that the little man is the very flesh and blood of any economic system. Without him production ceases, consumption fails, and business stagnates. The inescapable problem faced by any economic system is how to provide for the needs of the little man. If it fails in that, the system itself is doomed to early decay and final dissolution. This is only another way of saying that the ultimate consumer is the little man in the mass and that consumption is the real economic foundation for the whole economic structure.

The Commission was established by Congress primarily for the protection of the little man. His preservation as an economic unit was considered the alternative to private monopoly. It was thought that monopoly had developed largely, if not entirely, through the use of unfair methods of competition, through price discrimination and through stock acquisitions. Hence the Commission was empowered to prevent the use of such practices by remedial processes directed against particular offenders. While proceeding against many comparatively small concerns for unfair methods (and all little competitors

are by no means innocent of all guile) it was inevitable that many of the Commission's most important cases should have been brought against the larger competitive units. The Commission has had to blaze new trails, break new ground, and be a pioneer in the making of new law, subject to affirmance by the courts. That was what was intended under the law creating the Commission.

As before indicated, another important function of the Commission, under Section 6 of its organic law, is to conduct general investigations. Upward of one hundred such investigations have been conducted and reports made thereon, during the life of the Commission. The greater portion of these investigations were conducted under the direction of Congressional Resolutions, although many of them were pursuant to Executive Order, and a few upon request of the Attorney General.

In this work the Commission has been serving the little man by providing him with facts, without which he is helpless and with which he may do much if proper use is made of them.

One of the most outstanding instances of such service is the Commission's utility investigation. It disclosed fraud, deception, breaches of trust, and discriminations against the little investor. It disclosed the existence of an inflated financial structure which bore heavily on the little consumer of electric light, power, and gas. This resulted in substantial rate reductions. It disclosed one of the most amazing schemes of organized propaganda to keep the vast number of little investors and little consumers in ignorance

of what was being done to them. To this function of the Commission may be applied the scriptural saying, "Ye shall know the truth and the truth shall make you free."

The Utility Investigation and the reports thereon contributed materially toward the enactment of the Securities Act and the Holding Company Act. Other investigations resulted in other important legislation, both Federal and State.

The Federal Trade Commission has accomplished much for the little man. It could have accomplished more but for lack of adequate funds and personnel and restrictive court decisions.

For instance, Section 7 of the Clayton Act provides in substance that no corporation engaged in interstate commerce shall acquire the stock of a competing corporation, where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly. At the time of the enactment of this law nobody thought of ownership in a corporation except through the instrumentality of certificates of stock. However, those desiring to avoid the application of this law conceived and adopted the scheme of acquiring assets instead of the stock of a competing corporation. This the courts held could be done. The only time the Commission has been reversed by the United States Supreme Court within the past seven years was in a Section 7 case in which the respondent after the Commission had laid its hand on it, for acquiring stock in a competing corporation, took a second hold and acquired the assets. By a five to four decision the court held that the respondent had a right to do this and set aside the order of the Commission directing the divestiture of the stock in the competing corporation which had been originally acquired by the respondent. Every corporation and lawyer in the country knows how to evade Section 7, with the result that it is a dead letter.

The Commission has repeatedly called this situation to the attention of Congress and the public. The trend toward monopoly through corporate acquisitions and mergers has gone on without any

fault on the part of the Commission.

Much remains to be done. This is especially true with respect to monopoly.

In his address at the laying of the cornerstone of the new building to house the Federal Trade Commission, after generously complimenting the Commission upon its achievements, President Roosevelt continued:

"But the dangers to the country growing out of monopoly and out of unfair methods of competition still exist and still call for action. They make the work of the Federal Trade Commission of vital importance in our economic life. We must not be lulled by any sense of false security. Eternal vigilance is the price of opportunity for honest business. It is the price we must pay if business is to be allowed to remain honest and to carry on under fair competitive conditions, protected from the sharp or shady practices of the unscrupulous."

Our Experience on the Robinson-Patman Act.

Advantages of Bigness.

If the little man still remaining in industry is to survive, if the consumer is not to become an economic serf - yea, if our democratic institutions are to endure, the problem of bigness in our industrial life must be met. I refer to bigness in corporate wealth, in ramifications, in economic strength, and in political power. These things generally go hand in hand.

The familiar argument in favor of "individual initiative" is generally without point. Individual initiative is most desirable,

but it plays but little part in our modern industrial life.

Much is said about the large number of far-flung stockholders in this or that corporation, and the specious statement is made that it is owned by tens of thousands of citizens in all walks of life distributed throughout the Republic, et cetera. With the exception of a very small number of men in control, these stockholders have no part in the management, in the determination of the policies, of such corporation - they have no "individual initiative".

Berle and Means sum up the situation in these words:

"* * * The concentration of economic power separate from ownership has, in fact, created economic empires, and has delivered these empires into the hands of a new form of absolutism, relegating 'owners' to the position of those who supply the means whereby the new princes may exercise their power."

The desire to possess, a generally prevalent human instinct, has resulted in the employment of unfair and predatory practices throughout the life of mankind.

As aptly express by Kipling:

We are very slightly changed
From the semi-apes who ranged
India's prehistoric clay;
Whoso drew the longest bow
Ran his brother down, you know,
As we run men down toeday.

"Dowb", the first of all his race,
Met the Mammoth face to face
On the lake or in the cave,
Stole the steadiest canoe,
Ate the quarry others slew,
Died - and took the finest grave.

When they scratched the reindeer-bone,
Some one made the sketch his own,
Filched it from the artist - then,
Even in those early days,
Won a simple Viceroy's praise
Through the toil of other men.

The little man has had to fight a continuous battle from the beginning. It has often been not a question of the "survival of the fittest", but the survival of the strongest.

Government can not ensure equality to all men, but it should ensure equality of opportunity. It should see to it that the game is played fairly.

The aim of democratic institutions is to provide the greatest good to the greatest number. And that means looking out for the little man. The protection of the weak against the strong is the proper function and essence of law. When law is perverted so that it becomes a weapon in the hands of the strong against the weak, the big man against the little man, then the end of democratic institutions is at hand.