Statement of

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OF THE FEDERAL TRADE COMMISSION

Before the

INTERSTATE AND FOREIGN COMMERCE COMMITTEE,

HOUSE OF REPRESENTATIVES

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You have asked us to appear before your Committee to report on the activities of the Federal Trade Commission and to discuss current legislative problems.

The past year has been one of great progress for the Commission. Measurable strides have been taken towards our long-range objective of reviving and revitalizing the work of the Commission:

We have made a concerted effort to return to those first principles which were the legislative rationale for creation of the Federal Trade Commission.

We have launched a full-fledged attack on "delay" -- probably the worst enemy of administrative law -- and on the allied evils of confusion and obscureness in the Commission's decisional processes.

We have emphasized the consultative function of the Commission and established a program of positive guidance for small business.

We have set into motion a program for strengthening the enforcement procedures of the Commission and for insuring a larger measure of compliance with Commission orders.

We have established effective liaison procedures with other government agencies to eliminate agency overlap and duplication of effort.

RETURN TO FIRST PRINCIPLES

In creating the Federal Trade Commission the Congress had two principle ideas in mind: first, to create a body of experts competent to investigate and to understand complex competitive practices "by reason of information, experience and careful study of business and economic conditions," and to advise the Congress and the President with respect thereto; and second, to authorize this body of experts to deal effectively with unfair methods of competition, with emphasis on prevention of such methods.

I think that it will surprise no one if I say that, though the bold purposes which Congress intended have always remained firmly a part of the credo of the Federal Trade Commission, the performance of the Commission has sometimes fallen short of the ideal. Thus, though the Supreme Court has often endorsed the character of the Federal Trade Commission as "a body specially competent to deal with [complex business situations] by reason of information, experience and careful study" it has sometimes found the need to overrule its specialized judgment.

To counter this state of affairs and to reaffirm its status as a body of experts the Commission has adopted the view that it should proceed against the "hard-core" type of violation and forego peripheral test cases of doubtful validity and questionable economic consequence. We feel we should not deplete our limited resources on fringe issues having no practical benefit. In this connection, we feel that the Sherman Act, the Federal Trade Commission Act and the Clayton Act, with its Robinson-Patman amendment, can be successfully administered as interrelated expressions of national antitrust policy -- not as separate and conflicting statutes.

While the Commission is concentrating its big guns on the serious cases and is able to dispose of many more of the less serious matters through

voluntary agreements to cease and desist, it should not be inferred that the Commission is reluctant to initiate litigation where required by the public interest. The following figures show that there has been no letdown in the litigation program:

ANTIMONOPOLY COMPLAINTS ISSUED DURING LAST FOUR FISCAL YEARS

Fiscal Year 1951:	29
Fiscal Year 1952:	29
Fiscal Year 1953:	29
Fiscal Year 1954:	30

ANTIMONOPOLY ORDERS ISSUED DURING LAST FOUR FISCAL YEARS

Fiscal Year 1951:	23
Fiscal Year 1952:	24
Fiscal Year 1953:	24
Fiscal Year 1954:	25

DECEPTIVE PRACTICE COMPLAINTS ISSUED DURING LAST FOUR FISCAL YEARS

Fiscal Year 1951:	80
Fiscal Year 1952:	75
Fiscal Year 1953:	72
Fiscal Year 1954:	93

DECEPTIVE PRACTICE ORDERS ISSUED DURING LAST FOUR FISCAL YEARS

Fiscal Year 1951:	98
Fiscal Year 1952:	108
Fiscal Year 1953:	82
Fiscal Year 1954:	80

The magnitude of some of the orders is indicated by one cease and desist order that terminated a restraint of trade combination among 350 distributors of electronic equipment. Another involved the entire salmon industry of Alaska and brought to an end a long standing price-fixing combination among canners and fisherman unions. Two orders required the discontinuation of exclusive dealing arrangements in the hearing aid and hog serum industries. These orders were contested and recently affirmed in U. S. Courts of Appeals

for the 2nd and 7th Circuits. An order to discontinue price-fixing activities was entered against two of the Nation's largest alcoholic beverage corporations. Numerous other orders prohibited false labeling of wool and fur products, false and misleading advertising of "food plans," and misrepresentations with reference to sewing machines and other consumer appliances.

Illustrative of the antimonopoly complaints were those against members of the iron and steel scrap industry alleging restraint of trade in both domestic and foreign commerce; against price-fixing agreements among building material manufacturers and among paint and wallpaper dealers; against unlawful price discrimination in the sale of petroleum gas used by farmers and rural residents for cooking and heating; against eight major ice cream manufacturers and 55 of their subsidiaries who collectively manufacture, sell and distribute approximately one-half of the annual national volume of ice cream and related frozen dairy products, alleging unfair methods of competition in the sale and distribution of those products; against approximately 160 casket manufacturers controlling 80% of the productive capacity of the casket industry alleging combination in restraint of trade to fix prices and control production; and against an alleged conspiracy to fix prices among a number of firms including steel manufacturers engaged in the manufacture and distribution of metal rain-carrying and drainage equipment.

Illustrative of deceptive practices activity is the Commission's work in the field of insurance. Following the receipt of hundreds of complaints from American policyholders, the Commission, on December 15, 1953, authorized a nationwide investigation of the advertising practices engaged in by insurers in the promotion and sale of accident and health insurance. The enthusiastic acceptance by the American people of the idea of pre-paying medical and hospital costs by means of accident and health insurance has resulted in one

of the most spectacular growths in American industry. Rather than investigate a limited number of insurance companies, it was thought that the public interest involved in the promotion and sale of this type of contract demanded that every insurer offering this type of coverage be required to submit to an examination of the advertising practices used.

The applicability of the Federal Trade Commission Act to the business of insurance is limited by the provisions of Public Law 15, 79th Congress (Title 15, U. S. Code, Sections 1011 to 1015, inclusive), more popularly known as the McCarran Act. Therein, it is stated that the Federal Trade Commission Act "shall be applicable to the business of insurance to the extent that such business is not regulated by state law."

As a result of the investigation, the Commission has issued 23 complaints charging the named insurers with using false, misleading and deceptive statements as to the actual benefits payable under the terms of accident and health insurance policies in violation of Section 5 of the Federal Trade Commission Act, as amended. Additional complaints may be issued in the near future.

One of these cases has been settled and a consent order has been accepted by the Federal Trade Commission. That was in the matter of Commercial Travelers Insurance Company, Docket No. 6241. The remaining cases are now in litigation. Most of the respondents have filed answers challenging the jurisdiction of the Commission, as well as denying the allegations of these complaints. None of these matters have come on for initial hearing. I am advised that the first hearing going to the merits of any of these complaints is set for February 8, 1955, in Chicago. It involves the matter of Bankers Life and Casualty Company.

FTC DECISIONS

Federal Trade Commission decisions repeatedly have been criticized in the past for lack of clarity and for unduly formal and legalistic phraseology.

Thirty years ago one commentator called Commission decisions "masterpieces of ambiguity," and the intervening years have not markedly improved their character. The courts too have regularly upbraided the Commission for the quality of its decisions. In the face of this crossfire of criticism the Commission has now made a concerted attempt to disarm its critics. In every case, whether it is one resulting in an order to cease and desist or a dismissal, the Commission now issues an opinion. And all decisions, by hearing examiners and by the Commission, have abandoned formal and legalistic findings in favor of a narrative and descriptive report emphasizing clarity of thought and expression.

To assure a proper functioning of the Commission as a quasi-judicial agency, steps have been taken to increase the authority of the hearing examiners who, as the triers of fact, are of key importance in the administrative process. In the Eastman Kodak case, for instance, the Commission ruled that examiners were qualified to entertain a preliminary motion to dismiss on the ground that the complaint failed to state a cause of action.

The Commission presently is engaged in a comprehensive study of its rules of practice. On the basis of this study, it is fair to expect that the Commission will be able to revise its rules and thus to improve its administrative procedures.

COMPLIANCE

Another major step in the Commission which will be of great benefit to business of all classes and to the public in general, has been the institution of an integrated compliance program to provide a systematic review of the presently outstanding 4,500 cease and desist orders, 8,000 stipulations and 2,000 trade practice rules. It is useless, it seems to us, for the Commission to enter orders unless it sees to it that they are obeyed either

voluntarily or through appropriate enforcement proceedings against those who deliberately or willfully ignore them.

Failure to obtain compliance constitutes a waste of public money, has a demoralizing effect on competitors and members of the public who have been injured and tends to encourage a disregard of antitrust and trade regulation laws, oftentimes to the direct detriment of small businessmen trying to enter or remain in a highly competitive market.

Since August 1, 1954, more than 1,000 of the Commission's old cease and desist orders have been examined and the files reviewed. Of this number about 400 orders have been screened out as requiring no attention at this time; 366 supplemental reports of compliance have been requested, and in about 300 cases respondents are now known to be in compliance. As a result of this new survey, 24 compliance field investigations have been instituted and 2 civil penalty suits are in preparation. This is in addition to other normal compliance work which during the calendar year included certification to the Attorney General of 5 civil penalty suits. Altogether 50 compliance field investigations are pending.

In a corollary development, in November of 1955, we announced the appointment of members of the Commission's Advisory Committee on Cost Justification. The purpose of this committee, which consists of outstanding specialists in the field of distribution cost accounting, is to ascertain the feasibility of developing standards of proof and procedures for costing for adoption by the Commission as guides to businessmen desiring to comply with the Robinson-Patman Act. The work of this committee should result in a strengthening of the administration of the Act and result in wider compliance with its provision.

MERGERS

Another field in which I am sure you have great interest is that of mergers. The new antimerger law, Section 7 of the Clayton Act as amended, is an important and vital part of national antitrust policy. This Act shows a strong and continuing purpose to curb the concentration process.

The Federal Trade Commission, as most of you know, has undertaken an economic investigation of recent mergers and acquisitions. The purpose of the study is to determine facts regarding mergers for the information and guidance of the Commission, the Department of Justice, the Congress and the public.

In addition to its general economic study, the Federal Trade Commission is considering a large number of individual mergers. Competition may be injured by some mergers and revitalized by others. Each acquisition therefore must be tested in the light of relevant economic and marketing factors existing in the particular industry. This inquiry has already resulted in three current proceedings under Section 7 of the Clayton Act, significant because they represent the first governmental attacks on corporate acquisitions and mergers since the amendment of Section 7. It is our expectation that they will have the inestimable value of providing administrative criteria and guideposts to controlling factors in industrial consolidations.

ROLE OF ECONOMICS

In merger work and other antimonopoly work of the Commission, economic and marketing problems are of great concern. For this reason the Commission's Bureau of Economics has been revitalized to enable economists to work closely with our investigators and trial lawyers. We are placing primary emphasis upon those practices that have significance in the market place and that have or are likely to have some economic consequence.

The Commission recently has published two economic reports, one on Changes in Concentration in Manufacturing, and the other on Coffee Prices. I believe both to be fair, honest and objective studies, and I have expressed the opinion that the coffee report is one of the best economic studies ever published by a governmental agency.

DELAY

Looking back on the last two years, I believe one of the greatest contributions will be the result of our full-fledged attack on delay -- the greatest enemy of administrative law. Recent procedure innovations are designed to achieve elimination of undue delays, expeditious proceedings, reduction of expense, and lucid, intelligible procedures. I am happy to say that we have been able to eliminate 50% of the procedural steps within the Commission and we have cut down the backlog of our cases over five times.

An example of the progress achieved relates to the speed with which litigated matters are being decided by the Commission. On April 1, 1953, when I assumed the Chairmanship, there were 42 formal cases which had been briefed and argued and submitted to the Commission for decision and which had been assigned to individual Commissioners for thirty days or more. Of these, only 10 had been assigned in 1953, 27 in 1952, and 5 had remained unacted upon since 1951, 3 since January 5 of that year. In contrast, on December 31, 1954, only 9 cases had been unacted upon for more than 30 days and, with only two exceptions, all had been assigned during or after September 1954.

An important step contributing to the elimination of delays has been reorganization of the Commission to promote more efficient and economical use of manpower.

The new organization is far simpler than the old and, in my judgment, far more rational in its structure. Investigative and prosecutive functions

are no longer divided among several bureaus but are consolidated respectively in a new Bureau of Investigation and a new Bureau of Litigation. Responsibility for individual cases, previously shunted from one attorney to another at successive stages of the proceeding, is now centered in a single project attorney, an innovation which already has paid large dividends in time savings.

And in an allied development to achieve the dual purpose of reducing expense and delay in pending formal cases and of expediting compliance, the Commission has adopted a new rule of practice permitting more extensive use of consent orders. The new rule eliminates the previous requirement that consent settlements contain findings of fact, permits disposition by consent at any stage of the proceeding, allows settlement as to some or all of the issues and some or all of the respondents, and increases the authority of hearing examiners in accepting or rejecting consent settlements.

WOOL, FUR AND FLAMMABLE FABRICS ACTS

Within the means at our disposal every effort is being made to obtain a high measure of compliance with the Wool Products Labeling Act of 1939, the Fur Products Labeling Act of 1952 and the very recent Flammable Fabrics Act which became effective in 1954. Inasmuch as all of these bills emanated from this Committee, you of course know their purposes. The Wool and Fur Acts are designed to protect consumers, manufacturers and distributors from misbranding of wool and fur products and from false invoicing and advertising of fur products. The Flammable Fabrics Act protects the entire public from the hazards of highly inflammable apparel and fabrics.

As you are undoubtedly aware, there has been a tremendous development in synthetic fibers over the past ten years. In addition, there has been a heavy consumer demand for fabrics made from specialty fibers such as Cashmere,

Generally speaking, the Flammable Fabrics Act seems to be functioning very well. It has barred from the market place those fabrics and articles of wearing apparel of a highly dangerous nature such as the so-called torch sweaters and high pile cowboy suits of a few years back. The cooperation of local Fire Marshals in reporting casualties from burning apparel has bolstered our detection facilities. A great deal of sincere interest in the purposes of the Act has been manifested by the manufacturers of fabrics and wearing apparel throughout the country. In fact, enactment of the Law and the resulting publicity given the rules and regulations promulgated by the Commission have caused those subject to its provisions to become increasingly flammability conscious.

In view of their similarity in purpose and policing requirements, the duties incident to the enforcement of the Wool, Fur and Flammable Fabrics Acts have been integrated in every possible way in an effort to minimize administration costs. During the past year, the staff of investigators employed by the Commission in policing compliance with these Acts has been further decentralized. We now have representatives of the Division of Wool, Fur and Flammable Fabrics permanently stationed in Boston, New York, Philadelphia, Washington, Atlanta, Chicago, Cleveland, St. Louis, Dallas, Los Angeles, and San Francisco.

In passing, I might call to the Committee's attention the fact that although the Fur Products Labeling Act and the Flammable Fabrics Act became effective in 1952 and 1954 respectively, no funds or personnel have been allocated for carrying on their enforcement beyond those previously available exclusively for enforcement of the Wool Act.

ELIMINATION OF AGENCY OVERLAP

Some mention should be made of the steps taken to improve the relationships existing between the Commission and other agencies of the Government.

I have long deplored instances of overlapping and conflicting activities. It is inconceivable to me that there is justification for noncumulative remedies being sought by more than one agency against the same person, at the same time, for the same thing.

I am especially grateful for the fine arrangement that we have with Stanley N. Barnes of the Department of Justice. We discuss matters of mutual concern at frequent intervals, and I am strongly convinced that the great volume of our work is in no way inconsistent.

In the field of food, drug and cosmetics, we have been able to work with Secretary Hobby a very promising inter-agency agreement designed to correlate the work of the Commission and the Food and Drug Administration in such a way as to eliminate overlapping activities and duplication of effort. This agreement has been in effect since last July 1.

Similar liaison arrangements, although less formal, have been made with other agencies, including the Bureau of Standards, the Post Office Department and the Patent Office.

LEGISLATION

As a member of the Attorney General's National Committee to Study the Antitrust Laws, I would prefer to withhold specific legislative recommendations until after that group makes its report. This view is shared, I believe, by the other Commissioners. I do feel free, however, to discuss a proposal which is now before Congress, a proposal to raise the maximum fine that may be imposed under the Sherman Act. The Federal Trade Commission is on record as supporting such legislation. The Commission is not directly concerned with the matter of criminal penalties under the Sherman Act, but it does have duties and responsibilities under the Federal Trade Commission and Clayton Acts which are supplemental to the Sherman Act and which aid in carrying out the public policy expressed in that Act. It is apparent from the experience

of the Commission in this field that the present criminal penalties in the Sherman Act are inadequate. The Federal Trade Commission accordingly is in favor of strengthening substantially this deterrent to violation of the Sherman Act.