

REMARKS OF EARL W. KINTNER, GENERAL COUNSEL,
FEDERAL TRADE COMMISSION, BEFORE
FEDERAL WHOLESAL DRUGGISTS' ASSOCIATION,
WHITE SULPHUR SPRINGS, SEPTEMBER 19, 1956

I

It is a real pleasure--and a challenge--to appear before you today.*

Your industry is not just a vigorous and enterprising one. It is a dynamic

well-being. Moreover, from Government's vantage point, you represent a dynamic and aggressive industry whose influence and ideas pervade the whole field of trade regulation. The voice of the drug industry is strong and articulate and no man can purport to be informed in this often-confused, always complex field unless he listens with care to your conscientious views.

Without pausing to inquire into which of these categories you fit us, let me say briefly that the Commission is an independent administrative agency similar in status to the FCC, EPC, CAR, SEC, ICG, although unlike

the particularized authority of those agencies, the FTC's jurisdiction extends to commercial activities common to many industries. By Big Government standards we are physically one of the smallest agencies in Government (we have approximately 600 employees and an annual budget of less than six million dollars). The Commission administers all or portions of a number of antitrust and regulatory statutes: the Federal Trade Commission Act, the Clayton Act, the Webb-Pomerene Act, the McCarran Insurance Act, the Wool Products Labeling Act, the Fur Products Labeling Act, the Flammable

Refrigerator Act, and the Lanham Trade Mark Act. Violations of these Acts are

investigated by a Bureau of Investigation, tried by a separate Bureau of Litigation, and ultimately decided by the Federal Trade Commission itself, a five-man bipartisan commission, members of which are appointed by the President for seven-year terms. Proven violations are subject to Commission cease and desist orders which may be appealed by respondents to the courts, or, when final, enforced by the Commission in the courts. Violators, depending on the statute violated, are subject to civil penalties up to \$5,000 a day or to contempt of court citations.

But antitrust and competition are partners in progress. Hostility between Government and business, no less than restraints of trade, is a

history precisely that sort of unnatural tension between public and private forces has inhibited the fullest expression of our competitive potential.

And so I would say that the dissipation of any vestige of this hostile state of mind in favor of a genuine, yet never naive, respect for business, has been the benchmark and inspiration of recent developments in trade regulation.

At the Federal Trade Commission, this new state of mind

of time to try their cases to the bitter end once they had decided to con-
tinue. ~~Further changes in procedure in the trial at this point and offer to~~

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ing obvious saving in time and expense both to the respondent and to the
Government.

Over all, I believe, this new state of mind in Washington--the healthy
balance, of hard-hitting enforcement with sincere encouragement of voluntary
law compliance--has raised the Federal Trade Commission and its mission of
trade regulation to a new high in public acceptance and in effective regula-

or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other."

And so, although we say as a general rule that fair trading is exempt under the antitrust laws, it is fairly evident that in certain competitive contexts, for instance where it amounts to horizontal price fixing, it may and

This is precisely what happened in the McKesson & Robbins case last June.

the wholesale level. The Court's bar was on fair trade contracts with independent wholesalers in competition with the manufacturer.

In practice, I suppose, this will knock out much if not most of the wholesale fair trade by such manufacturers in your industry. (Indeed the
[REDACTED]

[REDACTED]

in doing this.) Yet I submit that a manufacturer wholesaling only in so
[REDACTED]

[REDACTED]

lected markets or on a selected regional basis, may still enter into whole-
sale fair trade contracts in other areas competitively insulated from his own
wholesale operations. This was frankly conceded by the Department of Justice
in its brief to the Supreme Court where it stated, "the only manufacturers
that would be affected by a decision invalidating such agreements are those
who distribute their products both through their own selling organization and
through independent outlets, and even then only to the extent that the manu-

With all of this, there may be some direct selling manufacturers who...

In other proceedings, again involving some drug companies, we have sought to equalize the bargaining power of large purchasers as against small purchasers by insuring that quantity discounts were justified by reduced costs and not offered simply as a premium for an accumulation of purchases unrelated to costs.

In another area of interest to you, we are probing deeply into the high cost of antibiotics to the consumer. Here, too, we proceed rather methodically

Perhaps what I have said comes down to this:

The channels of legitimate business conduct are infinite. m. . . .