

STATEMENT BY
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COMMISSIONER, FEDERAL TRADE COMMISSION
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
WASHINGTON, D. C.
FRIDAY, MAY 3, 1963
ON

FEDERAL TRADE COMMISSION ADVISORY OPINION CONCERNING

Mr. Chairman and Members of the Committee:

It is a distinct privilege to present this statement to you on this occasion for inclusion in your record of this hearing.

In your announcement you made it clear that the subject of this hearing would be the formal advisory opinion of the

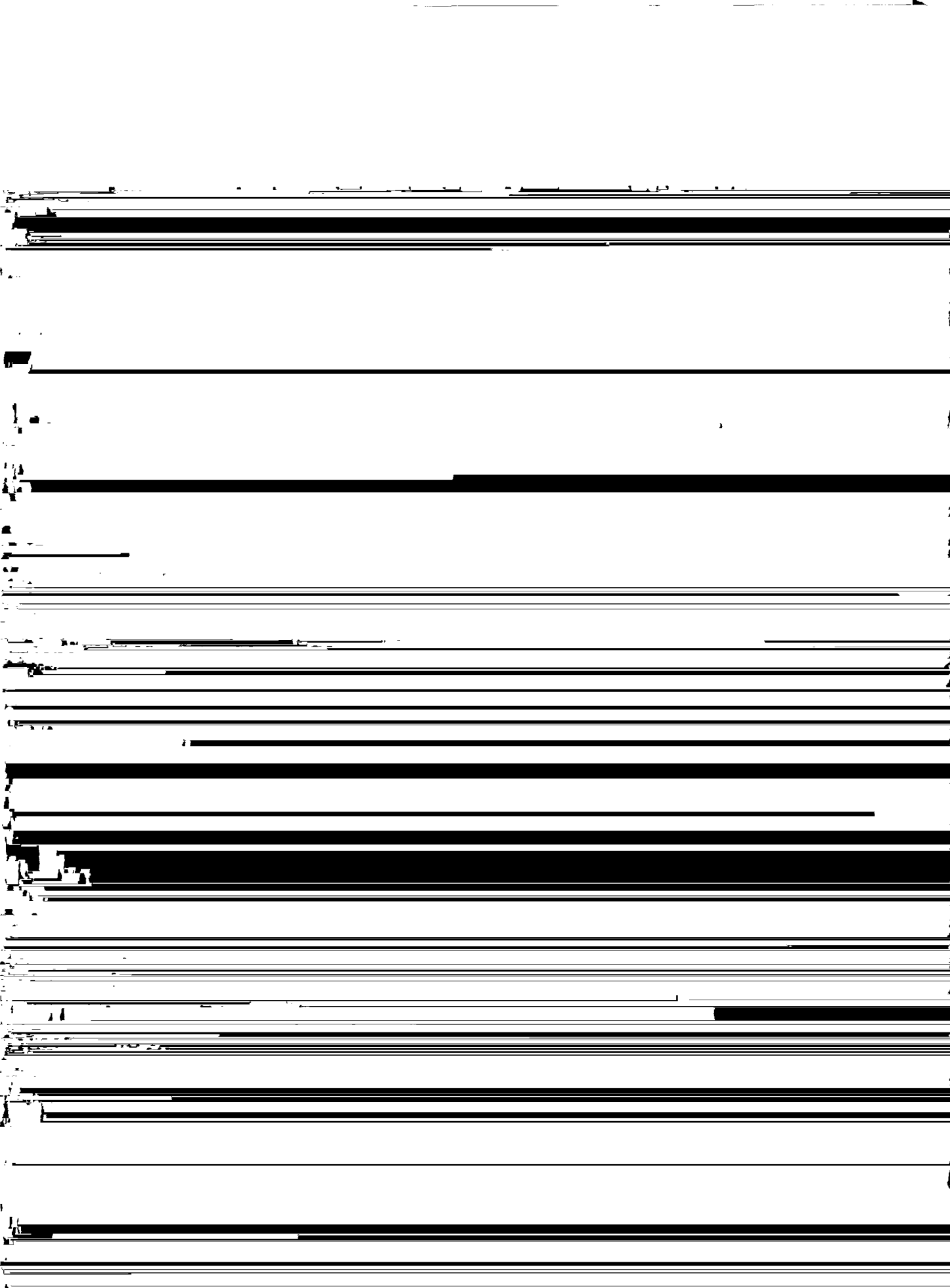
its formal advisory opinion on this subject March 29, 1963.

~~First. Let us consider the significance of the act of~~

the Commission in the issuance of the advisory opinion. A number of statements have appeared in one or two newspapers commenting on the significance of the Federal Trade Commission advisory opinion. One was to the effect that

list prices and "FTC Aims Blow at Cooperative Advertising." Another described the advisory opinion as "pesky interference." A third news item relating to the subject was headlined with the words "Justice Denies Backing FTC on Co-Op Ad Prices."

What are the facts about the significance of the Federal Trade Commission advisory opinion? First, it is nothing



- (1) What is the legal status of price-fixing agreements between and among competitors under existing Federal law, and
- (2) Could the proposed course of action to which the Commission directed its advisory opinion of March 29, 1963 seriously be questioned as involving a price-fixing arrangement between and among competitors?

The first of these two questions is one of law; the second is one of fact.

On the question of law, few among the many who have any knowledge of Federal antitrust law would disagree with the proposition that price-fixing agreements among competitors are illegal, per se. (See U.S. v. Socony-Vacuum

would put into question the course of action under

consideration here. The Federal Trade Commission was

requested to so speculate. In responding it draw on its

in expressing an honest opinion regarding the dangers possible
for small businessmen to encounter should they follow the

they would in the future decide to proceed against the proposed plan of action on charges that it would be in

violation of Section 1 of the Sherman Act and in that

violation brings charges of a criminal nature the Commission

It must be kept in mind that the Commission's total evaluation of this matter as stated in its advisory opinion was based upon and directed to the information submitted to the Department of Justice and to the Commission by those who requested the Commission's advisory opinion in this matter.