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Monday, May 20, 1963

COMMISSIONER, FEDERAL TRADE COMMISSION  
BEFORE A MEETING OF THE  
SOCIETY OF BUSINESS ADVISORY PROFESSIONS, INC.  
NEW YORK, N.Y.  
MAY 20, 1963  
ON

RECENT FEDERAL TRADE COMMISSION DEVELOPMENTS

Introduction

I have been requested to discuss with you today recent developments at the Federal Trade Commission. Included are such matters as the adoption of procedures for industry-wide trade regulation rules and advisory opinions. Also, I have been asked to discuss proposals for voluntary compliance programs and other proposed changes in the Commission's rules. It is helpful to an understanding of a discussion of these matters to have some information

These answers vary widely. Of course all who have any information about the Federal Trade Commission could

answer the question with the statement that the Federal

Trade Commission is a Federal agency of five Commissioners appointed by the President of the United States, by and with

the consent of the Senate. From there, even the views of those who have some information about the Federal Trade

Commission vary widely about it and what it does. The



good understanding of what it means to us in our everyday affairs, we are not likely either to understand or to accept the Federal Trade Commission or what it is doing. Indeed, we will suffer confusion and become confounded as that confusion becomes compounded.

A story coming out of the happenings of World War I will serve to illustrate that point. The story is to the effect that a salesman of war bonds had covered the territory and prospects assigned to him except for a cabin and its occupants located upon a high hill at the \_\_\_\_\_

of his assignment he found it necessary to park his auto

fella by the name of Hitler went with some girl by the name of Pearl Harbor to some place called Churchill and got into a mess of trouble. This fella now wants us to go their bond."

in that case. It is my hope that the few remarks I make here today will help you avoid such gross misunderstanding about the Federal Trade Commission and the recent developments there.

When the Sherman Antitrust Act was passed in 1890 it was thought that the language of its provisions was quite definite and sufficiently broad for appropriate

and, on conviction thereof, shall be punished by fine

one year, or by both said punishments, in the discretion of the court."

First, proposals were made that the Sherman Act be amended to provide for some exemptions from its application to certain conditions and practices. Those proposals were rejected. Then proposals were made to make the application of the Sherman Act more flexible by,

making it effective only where trade restraints and monopolistic conditions were found to be unreasonable.

At first the Supreme Court rejected proposals that it make the Sherman Antitrust Act indefinite by reading

of reason" was read into the Sherman Act and that law was, thereby, made to apply only to unreasonable restraints of trade.

The uncertainties inherent in such a situation were aptly described in the opinion of Justice Harlan

[REDACTED]  
a member of the Supreme Court, who participated in the decision in the Standard Oil Case.

Justice Harlan pointed out that now the Sherman Act, even though it is a criminal or penal statute, is indefinite and uncertain in its application. He observed that businessmen and others made subject to the Act are without guide lines regarding its application to particular situations.

The Federal Trade Commission Act is couched in terms almost as general as those of the Sherman Act and with greater breadth. The Supreme Court has

ruled that the words "unfair methods of competition"





have relieved businessmen of unfounded fears and set them upon the road of hopeful and confident enterprise." 5/

". . . .We have created, in the Federal Trade Commission, a means of inquiry and of accomodation in the field of commerce which ought both to co-ordinate the enterprises of our traders and manufacturers and to remove the barriers of misunderstanding and of a too technical interpretation of the law. . . . The Trade Commission substitutes counsel and accomodation for the harsher processes of legal restraint. . . ." 6/

From existing circumstances and our experience, it is clear that public policy will continue to dictate that our antimonopoly laws continue with their broad sweep covering a multitude of unspecified trade practices and conditions. It cannot be expected that the Congress will

leading to violations.

For a substantial period of time the Commission has utilized a trade practice conference procedure for the

alleged to be unfair. It has proceeded to utilize that information in formulating statements of what the Commission believed to be applicable as law to the trade practices in question. These statements were designated as Trade Practice Rules and were designed to afford

guidance to industries and enable them to voluntarily operate

have been continued despite publicity given to the Commission's Trade Practice Rules and Guides.

The Trade Regulation Rule Procedure

It is gratifying to report to you that on May 15, 1962 the Federal Trade Commission announced that it had

approved and would put into effect on June 1, 1962 a new procedure providing for the establishment of Trade Regulation Rule proceedings.

Under this new procedure the Commission will promulgate rules expressing its experience and judgment

based upon facts of which it has knowledge derived from studies reports investigations hearings and other

been given a fair hearing on the legality and propriety of applying the rule to the issue in his particular case. That is to say that the effective rule would be to take it as the basis for the establishment of a prima facie case with opportunity for the respondent charged with the violation of the rule to defend on the contention and showing that the rule should not be regarded as legally

~~being and was not to be applied to the respondent which~~

[REDACTED]

[REDACTED]

process will serve the needs of the public interest and

national basis. Industry members have indicated that  
the most appropriate and effective application appeared to  
be ~~in the form of a rule limited to one or at least~~

are of concern to the entire industry. The rule would be

than a dozen industries. At this time I am able to report to you that the Commission has announced two hearings on the first proposed rules under this new Trade Regulation Rule Procedure which became effective in June 1962.

guidance than before the law is violated? Previously,  
advice in the form of opinions was offered only by the  
Commission's staff and such advice was not binding on the  
Commission. This made the advice of such limited value

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to businessmen that few bothered to ask for it. Under  
our new system, advisory opinions do bind the Commission.  
And, in the unlikely event that such opinions would have  
to be changed, sufficient notice would be given before any  
adversary action would be taken.

Perhaps it is of interest to you to know that more  
than one hundred requests have been made to the Commission  
for advisory opinions as provided for under this new pro-  
cedure. These requests have involved proposed courses of  
action presenting many questions about the application of  
laws entrusted to the Commission. In each instance where  
the Commission found it practicable to do so, it rendered  
an advisory opinion binding on the Commission regarding

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provide greater opportunity for firms whose practices are questioned to act promptly and voluntarily in bringing themselves into compliance with the law without being made the subject of investigation and litigation. Proposals along this line have been made from time to time over the

years. Many of the proposals as made in the past were severely criticized in Congress and elsewhere because they smacked of suggestions that cases which had been developed against law violators be dropped on the promise that the violators would "go and sin no more." Some of the more recent proposals advanced by representatives of leading manufacturing firms have avoided much of the basis for this criticism. Therefore, they were given careful consideration by a number of us at the Federal Trade Commission.

It has been argued that many of the inequities arising

In view of these circumstances it is believed that we should act to improve our procedures to assist us more effectively in our efforts to persuade businessmen into

with the law. For the purpose of identification  
at this time I would describe this suggested procedure

It is believed that if the Federal Trade Commission

should convene and put into effect a proceeding such as I

Recently proposals were advanced that the Commission delegate to the heads of its enforcement Bureaus the authority to determine "whether there is reason to believe that a violation has been committed" and to issue Complaints

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it is suggested, could be effected pursuant to the provisions of Reorganization Plan No. 4 of 1961. In that

These proposals that the Commission delegate the

Commission to issue Complaints and Orders to Cease

and eliminating troublesome problems. If businessmen cooperate willingly in such undertakings, the opportunities are for you to become partners, rather than antagonists,

between Government and business. In this way you are provided a voice in the development of sound trade regulation policies. If businessmen and their representatives evidence statesmanship in taking advantage of these opportunities, pitfalls may be avoided and you may escape the interminable legal processes inherent in the case-by-case approach of adversary litigation in the resolution of trade regulation problems.

I deeply appreciate the opportunity you have provided for me to visit and discuss these problems with you today. I say that because I sincerely believe that the better we