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REMARKS OF
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FEDERAL TRADE COMMISSION

Before the

NATIONAL CONGRESS OF
PETROLEUM RETAILERS, INC.

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As early as 1915, the Commission made its first general investigation of gasoline prices and of competition in the marketing of gasoline. From that time, over the years, there have been no fewer than twelve general investigations of various aspects of petroleum distribution and a number of other investigations on related subjects. In addition to such general inquiries, there have been a great many specific investigations of

these have ended in formal Commission proceedings. There has never been a time when matters involving some aspect of your industry were not pending before

I am sure that you are just as familiar as I am with the situation out of which these problems arise. The major oil companies are competing more-or-less vigorously among themselves for shares of the branded

charges of price discrimination and price fixing --
practices which do violate these laws

The Standard Oil*/ case was one of the Commission's most frustrating experiences. The essential facts are that in the Detroit market the Standard Oil Company sold gasoline to so-called "jobber" customers, who resold both at wholesale and also at retail. These "jobber" customers were charged 1-1/2¢ a gallon less than regular service stations which competed directly with the so-called "jobbers" for retail business. The Commission's complaint charged that this price difference violated the Robinson-Patman Act. After long litigation, however, the Supreme Court decided that this was a price discrimination but did not violate the Act because Standard Oil's lower price fell within an exception to the Act that permits a seller to

avored new legislation to close this loophole and supported the bill known as S. 11 or the "equality of opportunity" bill. In supporting that bill before the Senate Committee on the Judiciary I stated:

"It would be folly to permit a zeal for preserving an abstract 'meeting competition' concept to overshadow the main purpose of the Clayton Act, which was to outlaw practices leading to unlawful trade monopolies or con-

turing monopoly. That legislation of this kind should contain an exemption which, in the name of 'meeting competition in good faith,' actually lessens competition on the small-business level is an inexcusable anomaly calling for the correction offered by S.11, which would permit the absolute defense except where the effect may be substantially to lessen competition or tend to create a monopoly in any line of commerce. In my opinion, a complete defense should not be granted to discriminatory practices that will suppress competition or foster monopoly."

However, I would be less than frank if I did not tell you that a well organized opposition to this bill has made it so controversial that in my judgment its chance of favorable consideration by the Congress is not very bright.

Meanwhile, the Commission continues its efforts to halt illegal pricing practices in the petroleum industry.

The Sun Oil*/ case, which we decided this year,

From all the evidence and the circumstances surrounding the transaction, the Commission concluded that the dealer in return agreed to reduce his price by 3¢. On these facts, the Commission found that Sun's price discrimination

of "good faith meeting" of a competitor's price was not available to a supplier who discriminated to permit its customer to meet the price of the customer's competitor. We also held that the agreement between Sun and its dealer to fix and maintain the 3¢ lower price was a price fixing conspiracy in violation of the Federal Trade Commission Act.

The Sun case presented some of the typical problems of the price war. I think that it is a significant

~~contract between the supplier and dealers for the purchase~~

of their "full requirements" of gasoline and TBA items violated Section 3 of the Clayton Act when the effect was to foreclose a substantial part of the market to

Commission became very active in preventing such contractual arrangements and I, as a trial attorney, tried a number of the more important cases in this field. As a result of this litigation, suppliers are no longer very apt to put full requirements, exclusive dealing or tying arrangements into written contracts.

Evidence is now being taken by Commission examiners in three important matters known as the "TBA cases" etc.

considers to be deceptive about tire labeling and advertising. We hope that they will eliminate much of the deception caused by these claims. For those who persist in deceptive advertising, of course, the Commission's mandatory procedure will still be available

the great American middle class may well be the principal victims caught between high taxes on the one hand and a cheapened dollar on the other. Of course, many factors contributing to this problem do not come within the purview of the Federal Trade Commission. Nevertheless as a citizen and, I hope, a patriotic one, and as a member with you of that great middle class, and as an official close to the Washington scene, I am disturbed -- and I feel that if I can alert intelligent groups like yours to the problem, perhaps your influence and the influence of others like you may be brought to bear on the power centers in Washington. This is not or should not be a partisan matter and both great parties might not only take heed but even join forces to combat the evil. For if foreign policy is traditionally considered bi-partisan, why should not the preservation of our free enterprise system be viewed with a similar bi-partisan approach? The leadership of both our great political parties might well join in a blueprint plan for a victorious solution of this problem of keeping our economy strong. Now what might that blueprint consist of? The overriding public interest in controlling threatened inflation, strengthening the dollar, balancing the budget and eventually reducing the tax burden on our people must be given paramount priority. Special handouts, subsidies (both domestic and foreign) must be eliminated in all

Small business and its sponsors can play a vital part. I believe you should have the right to a competitive position

affected and determine what his profit margin should be. This would put the Government in the price fixing business and eliminate price competition at the wholesale level in the businesses affected. Such proposals are inconsistent with the free enterprise system and with the basic

principles of antitrust law.

Other bills introduced seek to give auto dealers a virtual monopoly to sell cars at probably higher prices in territories assigned to them by the manufacturers, and any dealer selling outside his own territory would

be required to pay a commission to the dealer in whose territory the sale was made. It seems clear to me that such special privilege legislation providing for built-in territorial monopolies would not be in the best interests of the consumer nor does it foster the principle of vigorous competition at the retail level. Other bills of like character have been introduced and of course we

have as always a fair trade bill with us in some form or other. Yet let us not ignore so-called big business, or the farmer, or the unions from a consideration of this legislative search "to get theirs". Subsidies to the air lines, subsidies to the shipping lines, oil and gas

schemes which may well be described as "executive feather bedding" such as overly liberal executive retirement and pension plans, stock option agreements, executive incentive plans and the like.

Nor are our state governments beyond blame for another tremendous drain upon the public treasury. Increasingly vast sums are going out as grants in aid to the states. Even the most ardent states righters are agreeable, and indeed receptive to federal largesse to the states.

to free lunches may seem desirable, certainly these expenditures should be weighed against the old-fashioned question "where do you find the money"? In my judgment only when disaster or emergency creates a situation beyond the control of local communities or the states should the powers of the federal government be brought

that special purpose and special privilege legislation must be abandoned, a conscience which recognizes that there should never be allowed to exist peculiar favorites of the Government at the expense of the general public.

I firmly believe that what this fine group and other

lation to protect them and insulate them from competition
on free enterprise. Needed, instead, is the will to