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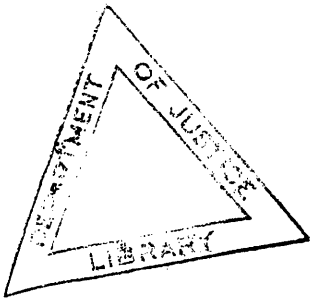

REMARKS

OF

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It is a pleasure to meet with your Association and discuss "The Distribution of Food in a Competitive Economy."

No doubt we agree that food must be readily available to all at reasonable prices. The farmer, the food processor, the wholesaler and the retailer all play vital roles in attaining this objective. We can justly be proud of our record standard of living and of being a nation of happy rather than hungry people.

As wholesalers, you have an obligation to assure the continuance of an adequate distribution of food. The Government also has an obligation to its people to assure a continued and plentiful supply of the food you distribute.

The Department of Justice, as legal representative of the Government, handles a variety of cases involving the distribution and marketing of food. Some of these cases arise out of the tremendous purchases of food for the military, and for veterans' homes and hospitals. Other problems concern the administration of Government support programs. In this connection we defend the United States when private citizens bring suit involving subsidies, marketing orders, price support agreements and the like. And, through prosecution, we affirmatively enforce such orders relating to food and food products.

The Department also enforces the Pure Food and Drug Act, which seeks the elimination of impure and adulterated food and improperly labeled food products from interstate commerce. From time to time we are called upon to represent the administrator of the Pure Food and Drug Act in cases which seek to enjoin the establishment and application of specific standards and regulations.

Although these activities are of importance, I would like to discuss with you a subject that I think is also of significance to our economy and to the consumer of the nation; that is, our antitrust activities in connection with the distribution of food.

The antitrust laws - a keystone of our free enterprise system - provide an important instrument for keeping the channels of distribution free from artificial restraints of trade. They are intended to prevent conspiratorial and monopolistic practices. They are the guardian of the competitive system which is so essential to our way of life.

The Sherman Antitrust Act is not a regulatory statute in the sense that it requires a man to operate his business in accordance with any set pattern of conduct. It seeks to provide every businessman with an opportunity to compete for markets. And, it requires that men engaged in this struggle fight fairly for the share each receives. By this process the consumer is enabled to buy goods at prices determined by competition rather than by unlawful agreement, and the success of the businessman rests on his ability and efficiency rather than on restraints of trade.

The antitrust laws hold no umbrella over inefficiency. If, as a result of better management or greater efficiency, one businessman outsells another, he is entitled to the rewards of his competence. But, if a businessman outsells his competitors because he has unreasonably restrained trade, he has fought unfairly and has violated the rules of fair combat. In such circumstances the antitrust referee steps in.

Now, let us examine briefly what the Department of Justice has done in recent years to assist in eliminating unlawful restraints of trade in the field of which you are so important a part. We have examined

each level of the industry from farm to table. We have examined the business practices of producers, or processors, of transporters, of brokers, of wholesalers, and of retailers. The objective of such inquiries has been to eliminate unlawful conduct so that consumers may have the opportunity to buy better products at the lowest possible cost and to ensure those at each level of the distributive process, including yourselves, of an opportunity to perform their respective functions in a competitive market.

At the producing level, for example, a group of cases has been brought to break up combinations among fishermen to fix the price at which they would sell their catch. Citrus fruit growers and cranberry producers have been fined for similar agreements and enjoined from continuing activities designed to control the markets in which their products were sold.

At the manufacturing and processing levels numerous suits have been brought to break up combinations of competitors formed for the purpose of fixing artificial and non-competitive prices for the raw foods which they buy, as well as for the processed foods which they sell.

For example, suit has been brought against the four major meat packers, charging that they have suppressed competition in the purchase of livestock and in the sale of meat and meat products, and have excluded other competitors from the meat industry by various means, including the abuse of monopoly power. Among the charged methods of suppressing competition are controlling the amount of livestock each purchases so that the supply of meat which each company has for sale is automatically regulated; and selling this regulated supply at substantially identical prices and terms. As a result of these practices cattlemen and farmers

have been deprived of an opportunity to secure a competitive price for their livestock and consumers have been deprived of the opportunity to purchase dressed meats in a competitive market.

These companies which we charge have operated in combination for more than a quarter of a century possess monopoly power, the systematic use of which is so deeply imbedded in their whole method of doing business that nothing less than the removal of that power can provide an opportunity for any real or effective competition in the meat packing business.

That this combination has existed for decades despite repeated attempts to eliminate it by injunctive provisions alone is an added reason for the dissipation of this monopoly power by dissolution.

At the processing level the Department has also successfully attacked numerous price-fixing agreements among manufacturers of a variety of food products. Competing bakers have been fined for agreeing to limit the size and weight of a loaf of bread and to charge fixed prices in their sales of bread; competing dairies have been convicted of conspiring to raise and fix the price at which they sell milk to consumers. Manufacturers of evaporated milk were fined for similar conduct; competing canners have been prosecuted for agreeing among themselves upon the prices they will pay growers for fruits and vegetables to be processed by them, and for agreeing upon non-competitive prices at which the canned goods will be sold by them to consumers. Such conduct protects the canners' operating margins at the expense of farmers, distributors, and consumers.

On the other hand, canners have also been the beneficiaries of the Department's antitrust program in the food field. Can manufacturers were prosecuted successfully for agreeing among themselves to fix the prices at which metal and fibre containers were sold to canners, and for

dividing territories and customers among them. A civil suit is now pending in which the Department seeks to restore competition in the important can manufacturing industry by eliminating various restrictive contract and lease arrangements by which the two major can manufacturers have foreclosed the market for metal and fibre containers to competing can manufacturers.

At the wholesale and retail levels of the food industry the Department has instituted numerous actions, both civil and criminal, aimed primarily at various schemes and devices by which wholesale and retail grocery prices have been fixed and stabilized at high and non-competitive levels.

In a series of these cases, the Department has attacked schemes by which ostensibly free and open exchanges were in fact employed merely as instrumentalities for eliminating competition and rigging prices. Among the products involved in these cases were fish, butter, cheese, poultry, and eggs.

Another series of cases at the wholesale and retail level has struck at agreements among competitors to fix prices under the guise of compliance with State legislation. Certain so-called State Unfair Practices Acts prohibit sales below the individual merchant's cost at both wholesale and retail, and in some cases provide for a fixed mark-up above individual costs at both levels. However, wholesalers and retailers in certain localities have agreed upon an average cost for all competitors in the area and then applied the statutory minimum mark-ups to such average cost. Agreements of this sort go beyond the permissive limits of the State law and constitute a violation of the Sherman Act. The direct result of such activity is to raise the price of groceries to consumers.

In still another group of cases at the wholesale and retail level, the Department has put an end to agreements among wholesalers and retailers in local areas which set up an artificial and inflexible price structure on both wholesale and retail sales, and channel all trade through the members of the conspiracy to the exclusion of independent wholesalers and retailers.

Another vital phase of the Department's program to eliminate restraints in the food industry relates to the activities of certain of the larger chain grocery stores. In this field you wholesalers have a vital stake. The emphasis has been directed both to the restraints imposed upon competitors of the chains at various levels, as well as the food consumers' interests in buying quality food at low prices.

The chain store method of distribution was able to develop in this country and to make its contribution to our society only because our economy was a free and competitive one. The chain store type of operation was introduced in the grocery field by a relatively small group of alert and aggressive independent American businessmen. They were able to build a nationwide system of mass distribution from a single grocery store unit because the channels of our trade were free. There was no entrenched monopoly to deny them access to the American food business. You will look in vain for a counterpart to the American chains of supermarkets in those European nations whose economies traditionally have been controlled by private cartels and monopolies.

It is unfortunately true that some of the concerns controlling a portion of the chain store business which is the product of our free enterprise system, in recent years, have sought to destroy the very competitive conditions which enabled them to develop this marketing method.

The chain store type of operation, in some instances, produced centralized control over a tremendous volume of business. Some of our chains have used this mass buying power and mass selling power to drive out legitimate competition. In the criminal case against A&P, for example, that chain was convicted of using its vast purchasing power to extract from suppliers systematic, discriminatory price preferences under the dual threat to withdraw its patronage or to manufacture for itself. These preferential prices took the form of secret rebates, of large advertising allowances for which A&P avoided making definite commitments as to performance, and of payments for pretended services, such as floor space rental, sign space rental, and mass displays of merchandise in A&P stores -- all of which were services which A&P itself would normally have to perform if it were to sell its merchandise at retail.

These price preferences had the effect of setting up a two-price structure within the food industry, the lower of which was available to A&P and the higher of which had to be paid by A&P's retail competitors. The supplier, in order to stay in business, had to charge A&P's retail competitors more than would have been the case had A&P bought on fair competitive terms. Hence, A&P's retail competitors, in some instances, were unable to compete with it on the basis of price.

In the produce field A&P secured the same types of discriminatory price advantages over its retail competitors as it secured in the purchase of manufactured and processed foods.

In addition, A&P's produce buying subsidiary, the Atlantic Commission Company, assumed totally inconsistent obligations which it could not possibly honor. In buying produce from the farmer the Atlantic Commission Company acted both as the agent of A&P in making the purchase, and

as agent for the farmer in selling the produce to A&P. In selling produce, the Atlantic Commission acted as A&P's agent in selling to wholesale fruit and produce dealers, and at the same time pretended to act as the broker representing these wholesalers in buying the produce from A&P. The Atlantic Commission Company was convicted of having served A&P's interest in these inconsistent roles, and of having violated its duty to the farmers and the independent purchasers of fruit and produce whom it pretended to represent. In addition, the Atlantic Commission Company collected fees from farmers and independent purchasers as payment for these pretended services to them and passed these fees on to A&P, thus giving A&P a further price advantage over its competitors.

A&P was also convicted of using its vast selling power to drive out competing retailers by selling below cost in certain selected retail areas, and by raising its prices in other less competitive areas to recoup the losses of the price war areas. As a result of these activities, the courts found that A&P could, and did, occupy any desired percentage of the total market of any retail area invaded.

Shortly after the civil case was filed against A&P, a full-page advertisement appeared in 2,000 newspapers throughout the country. This advertisement, and those that have followed, announced, in effect, that the Department of Justice had placed an entirely new and different interpretation upon the Sherman Act.

These advertisements slighted the fact that in 1942 the Department instituted the criminal case which I have mentioned and which involved the same conduct and legal theories that are now again presented in the civil suit. That criminal case was tried in 1945 and 1946 before

the United States District Court at Danville, Illinois. After six months of careful consideration of the evidence offered by A&P and by the Government, the Court found A&P guilty beyond a reasonable doubt of violating the Sherman Antitrust Act. A&P appealed to the Court of Appeals, where the evidence and the legal authorities were again subjected to intensive scrutiny. In February of 1949 that Court unanimously held that A&P had been properly convicted. A&P could also have asked the Supreme Court of the United States to review this conviction by examining the Government's proof and the Government's legal theories. They chose not to do so. Instead they paid maximum fines totalling $175,000.

The subject matter and legal theories of the pending civil suit against A&P have been studied and approved by two Federal courts. The civil suit simply asks the Court to take the necessary steps to prevent the continuance of those activities already found to violate the antitrust laws.

Past experience has demonstrated that A&P will not stop these abuses simply because a court has ordered it to do so. Therefore, the purpose of this civil suit is to ask the court to take the necessary steps to prevent the continued violations of which it has been convicted in the criminal case. This suit seeks such affirmative relief as will deprive A&P of its power to further abuse its mass buying and mass selling power.

The relief which the Department seeks in order to bring an end to A&P's power to destroy competition consists of, first, converting the seven Divisions within A&P's existing retail organization into independent retail units; second, separating A&P's manufacturing and processing business from its retail business; and, third, dissolving the Atlantic Commission Company.

From this brief summary of the Department's antitrust program in the food field, the ends which we seek to achieve by our activity in this important segment of the American economy will be apparent to you. We seek to protect the right of the American consumer to purchase his food in an open market at prices established by free competition among sellers. And we seek also to protect the right of every American businessman to enter that market and succeed or fail on his own merits, unhindered by artificial restraints and monopolies.

I am not one who believes that the days of the independent merchant are numbered.

The continued existence of healthy independent business enterprise is essential to a democratic society. Such business units have always constituted the backbone of our free enterprise system.

The membership of the United States Wholesale Grocers Association is typical of the type of independent business that has made this country prosperous. Your membership has been instrumental in keeping alive vigorous independent food manufacturers, as well as independent retailers. Many small processors and manufacturers are not equipped to sell direct to retailers. Likewise, many small retailers are unable to buy direct from manufacturers and processors. You perform the invaluable function of bringing these two groups together, thus enabling them to continue in the competitive struggle for markets. The continued existence of these two groups, in turn, affords you the same opportunity. Only by the continued efficient performance of these reciprocal functions can free enterprise survive and flourish in our food industry.

Today this system of competitive enterprise is the principal safeguard against arbitrary private action. It is our most important defense

against monopoly power which experience has shown has always been used for private ends rather than the public good.

It is the obligation of each generation of Americans to keep our democracy strong and vigorous. Today the obligation is ours. Tomorrow it will pass to our children. So long as our democracy remains strong we Americans have nothing to fear. And it will remain strong so long as it is kept free from monopolistic control. While it retains the vigor that inevitably must accompany a system of free competitive enterprise we need not fear the growth of any un-American ideology in our country.