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CLEARING THE CHANNELS OF COMPETITION

AN ADDRESS

By

HONORABLE TOM C. CLARK

Attorney General of the United States

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Mr. Chairman and members of the United States Chamber of
Commerce:

The formal title of my address seems a little bit formidable. However, I do not think when I finish you will consider it so. Clearing the channel brings up a picture of a mine-sweeper engaged about its business in war time and there is something ominous in the connotation. However, it comes to me as a suggestion, and I receive many suggestions in the office of Attorney General because I frankly seek them in all parts of the Country. I have been speaking before bar associations and various other organizations, professional and business, and everywhere I go I am inclined to ask my audience for their suggestions as to conduct of various phases of the vast business which comes before the Department each year.

I also ask for suggestions from people in my own Department. One of them recently had a very amusing result.

(TELL Ramsey story)

I appreciate this opportunity to discuss channels of competition. I believe it is of significance to business, to the average consumer, and, particularly, to the independent business man.

In studying material for this address, I came upon some figures which are very significant to my mind in the operation of our national system of free enterprise.

It seems that we are having a gradual elimination of small businesses. Big business has become bigger, and smaller independent enterprises have shrunk in size or have disappeared altogether.

I have selected at random several industries. For example:

50 years ago there were fifteen thousand tobacco manufacturers.

Now there are less than 800, with four major companies dominating the industry.

50 years ago there were 28,000 manufacturers of lumber and timber products.

Now there are less than 12,000.

50 years ago there were nearly 700 iron and steel manufacturers.

Now there are less than 350.

And so the trend goes in many other industries.

Government has contributed to this trend away from a competitive capitalism. In order to fight the war, it was necessary to impose economic controls, thus temporarily abandoning some aspects of the traditional free-enterprise system. These essential war-time controls, together with other phases of the war, played a part in accelerating the dangerous and unfortunate trend toward monopoly and the disappearance of independent enterprise.

This is not to say that controls were not vital to the winning of the war, or that the time has now arrived for their complete abandonment.

I think, for example, that business has a tremendous stake in the continuation of OPA for another year.

Other controls, such as those signed to ensure fair distribution of scarce raw materials among manufacturers, are also vital to the welfare of business during the period of reconversion.

And let me add that as long as these controls are part of the law they will be vigorously enforced.

We in the Department are using every means at our command to restrain and wipe out the black market.

As you know, some time ago the Secretary of the Treasury, the Secretary of Agriculture, the Administrator of the Office of Price Administration and I announced that we were going to conduct a vigorous program against black market operators, violators of the price law and income tax violators. The legitimate businessman need have no fear of this program, -- indeed, he will benefit, if we succeed in eliminating the black market.

This is not the time or place to discuss our program in detail but I can tell you that we are pushing our program of prosecution of black market operators.

We intend to move as rapidly as possible to prevent black markets in all essential materials and supplies, particularly those of vital interest to the small businessman.

To show you how rapidly we do move in some of these matters, let me state that a few days ago we received a report that a certain group of manufacturers, having to do with men's suits, issued a press statement which in itself might be construed as a threat to the Government to place an embargo on men's clothing unless the OPA price system could be adjusted to please these manufacturers.

We do not base our cases in the Department of Justice, ordinarily, upon such newspaper statements which might come at times from very irresponsible people, but we do believe that the American newspaper is a valuable watchdog over excesses, both in business and in Government.

Some times the watch-dog warns us of the danger at our doorstep and other times, he turns around and bites us.

It all depends on who is out on a limb.

In this case of men's suits, I immediately ordered the head of the Department's Antitrust Division to investigate this situation to see if by

this action these clothing manufacturers have revealed the presence of a trade agreement in which the Sherman Antitrust Act has been violated.

At the same time, I must emphasize that it is not the policy of this Administration to retain wartime controls any longer than absolutely necessary.

Some critics say we have relaxed some controls too quickly.

During the war, controls over business were imposed because they were vital to the winning of victory.

Now that victory is ours these controls will go as soon as possible. Nevertheless, as we abandon wartime governmental controls over industry, we must be very certain that we are not surrendering control to private monopolists. Some who now clamor the loudest for removal of Government controls do so because they desire to exercise controlling authority -- not because they desire the restoration of competition.

For example, many of those who demand removal of the controls over the building construction and related industries -- ostensibly in the name of competition -- in fact desire private monopoly to regulate that great industry.

If these lobbyists are successful, we shall have turned our housing program over to groups of monopolists whose private regulatory system is designed primarily to ensure profits for themselves.

In the process of relaxing and terminating wartime controls, the Government intends to follow the course that will encourage the restoration of free competition and strengthen independent enterprise.

Our goal is "business democracy" in which the doors of opportunity are open to all to enter any business and to sell at prices regulated by competition rather than by public or private groups.

Let me take this opportunity to re-examine basic principles,

We live in a capitalistic society.

What is "capitalism"?

Webster defines it as that economic system in which the ownership of land and the production and distribution of goods are effected by private enterprise and control under competitive conditions. I stress the phrase "under competitive conditions".

I don't need to remind you that in a healthy capitalistic society competition regulates business activity, with a minimum of help from Government people in Washington.

In a fascist society competition is suppressed and Government undertakes to regulate all business activity.

In a capitalistic economy the primary aim is to increase production, and to sell goods at prices which will bring to the great mass of the people an ever-increasing share in the fruits of the nation's material resources.

The monopolist, on the other hand, seeks to limit production and raise prices. He reduces -- for his own temporary advantage -- the volume of goods distributed to the people.

For this reason the monopolist is essentially anti-capitalistic.

In Germany, during the period prior to Hitler, the Government turned over the power to regulate business to groups of private industrialists who organized cartels to take the place of competition. These cartelists thought in terms of high prices and limited production rather than in terms of maximum production and the widest possible distribution of goods to the great mass of consumers. In part, it was the failure of this economic theory in operation that led to the rise of Hitler.

To ensure the survival of political and economic democracy in this country, we must restrain monopolistic practices and clear the way for free and fair competition.

Honest competition brings healthy, self-regulated business.

This fundamental premise of capitalism has been attacked for many years by various groups representing powerful economic interests.

For example, labor claimed that it was exempt from the operation of the antitrust laws.

And to a very large degree it was supported by the Supreme Court in its interpretation of those laws. Nevertheless, certain activities of labor unions, having nothing to do with the legitimate ends of organized labor, constitute undesirable restraints upon our economy.

Moreover, they are detrimental to the best interests of organized labor itself.

A specific instance may serve to illustrate the point. A manufacturer of fixtures operates a closed shop, pursuant to an agreement by which he contracts to employ only members of Union "A".

Union "B" desires to make a similar contract with the manufacturer but it has lost out in a fair election.

It vigorously objects to the contract with Union "A".

It attempts to destroy this contract by having its local unions of workers refuse to install fixtures when made by men affiliated with Union "A". The public and the fixture manufacturer are caught in the middle.

Such conduct should not be permitted to stall the erection of homes in times like these.

Nor does it advance the cause of labor.

Insurance companies also claim exemption from the antitrust laws.

They seem reluctant to operate in a capitalistic society where competition rules.

And when the Supreme Court of the United States declared that their activities were subject to the Sherman Act, they appealed to Congress for special legislation exempting them from the operation of the Federal antitrust laws. I am sorry to report that Congress enacted legislation removing most of their unlawful activities from the prohibitions of the Sherman Act for a period of three years.

Fortunately, the door will be open for reconsideration in 1948 when this provision expires.

Then come the railroads. They too fear to live in a capitalistic economy.

The State of Georgia, acting through Governor Arnall, filed a suit in the Supreme Court against certain railroads.

The suit charged that these railroads, acting together instead of in competition with each other, had rigged the rates to be filed with the interstate Commerce Commission.

The complaint alleged that these rate-fixing activities resulted in throttling and stunting the economic growth of the South.

And when the Supreme Court ordered that Governor Arnall's charges be heard, the railroads lobbied for passage of the so-called Bulwinkle Bill.

That Bill proposes to exempt important aspects of railroad activity from the operation of the antitrust laws. The Department of Justice vigorously opposes this legislation.

We in the Department believe in a capitalistic society where competition rules, and not in rule by private groups,

We see no reason why railroads should be treated any differently from any other great industry in this country in so far as the antitrust laws are concerned.

I have sketched some of the major attacks that have been made by monopoly against American capitalism in the past few years.

If we are to preserve our system of free enterprise in America, the people must ever be on guard against private monopolists.

And I want to say a special word to returning veterans.

Many of you are determined to have your own independently-operated businesses; to be your own bosses.

This is understandable enough; the veteran is tired of being ordered around by a sergeant, however necessary that may have been to win the war. Veterans must not be kicked around by private monopolists standing athwart the road of opportunity.

The Department of Justice is doing and will do everything it can to prevent this.

We are especially interested in new businesses started by veterans.

We have two units, one in the Antitrust Division and one in the Claims Division of the Department of Justice, dedicated to rendering every assistance to veterans consistent with our statutory duties.

Under section 20 of the Surplus Property Act I am required to advise Government disposal agencies whether certain proposed dispositions of surplus property will violate the antitrust laws.

Some months ago, we informed the Surplus Property Administration that disposals of Government-owned plants to the Aluminum Company would contravene the antitrust laws.

As a result, a number of Government-owned aluminum plants have been disposed of to two other companies which, it is hoped, with this capacity will be able to compete with the Aluminum Company in the open market.

In cooperation with the War Assets Administration and other Government agencies directly responsible for disposition of surplus property, we are trying to broaden the basis for distribution of our vast surpluses and to make it possible for businessmen, regardless of the size of their business, to bid on surplus property.

I want those of you who have just founded a new business, or are expanding your existing businesses, to write to me if you have any difficulty in getting established.

Particularly, I am interested in hearing from you if you find that entrenched monopolists have closed the avenues of opportunity and thus prevented you from operating your own business.

A great judge has said that Congress, in passing the Sherman Act, was actuated by a desire to preserve a system of small producers, each dependent for his success upon his own skill and character, rather than a system in which the great mass of those engaged must accept the direction of a few.

This does not mean the Sherman Act condemns bigness as such.

Size in itself is not an evil, but it does give power to do evil to those who possess it.

To the extent that organized power achieved through size can be shown to contribute to greater efficiency of production and distribution, and that the power has not been used for the purpose of suppressing the competition of others, size alone will not be subject to attack. Properly construed, the Sherman Act is a bill of rights for both industry and consumers.

The spirit of the antitrust laws is the spirit of an age of enterprise, and the spirit of enterprise is the proper means of supporting a free and progressive economy.

We propose to allow the small independent businessman — particularly the new businessman — to have his chance to live and prosper in a capitalistic society in which competition — not Government or private groups — shall act as the prime regulator.

But in enforcing the antitrust laws we shall not do so in a spirit of vengeance.

Far from it!

Criminal indictments will be sought only where the violation indicates a clear intent to break the law.

In these cases exercise of the power to punish is necessary in order to secure respect for the will of the people.

Our main emphasis will be upon civil suits to prevent and restrain attacks upon our capitalistic economy; suits to correct the trend accelerated during the war toward concentration of economic power; suits designed to give an impetus in our economic life toward the return to competitive capitalism.

In deciding to emphasize civil suits rather than criminal indictments, we are not unmindful of the complaints of some businessmen that the Sherman Act is so broad and general in its language that it is impossible to predict whether any given conduct violates its terms. It is true that there are border-line cases, but during the past seven years the Supreme Court has handed down a number of opinions which have pretty well staked out the bounds of legitimate business activity.

Nevertheless, if any of you in the course of planning for the future desires to know whether a specific program for your business will violate the law, or will come so close to violating the law that it had best be abandoned, we are prepared in Washington to discuss it with you.

We are willing to state, providing a full disclosure of the facts is made, whether we will waive criminal prosecution if your plan is effectuated.

You have a vital interest in our efforts to preserve competition and protect and defend American capitalism from attack by private monopolists.

If allowed to go unchecked, these attacks will have the same disastrous consequences here that the cartels had upon the peoples of Europe.

Your future as independent businessmen depends upon the continued active, vigorous and careful enforcement of the antitrust laws.

It is just such a policy of realistic and aggressive antitrust action that I mean to have enforced by the Department of Justice, so that each and every independent and honest business enterprise in America may have a fair chance to survive.

With your cooperation, I am sure that such a policy can be enforced.