

THE ROLE OF SMALL BUSINESS IN PRESERVING A STRONG AND FREE AMERICA

*Maury Gladman*

*met me at airport*

An Address  
by

Senator Hubert H. Humphrey, Chairman  
Subcommittee on Retailing, Distribution, and Fair Trade  
Practices of the Senate Small Business Committee  
before

The 38th Annual Convention of the National Tire Dealers and  
Retreaders Association

Shrine Exposition Hall  
Los Angeles, California

October 15, 1958

*Pres. Larry Stone*  
*Ernest Martin*

*Bill Marsh Exec Sec*  
*Lytle Remick*

*Commissioner Kern*

*Phil Jelle*

Frankly, fellows, you could not have chosen anyone who would enjoy

more than I do this visit with you this afternoon in Los Angeles. Not only

am I pleased to be here, enjoying your hospitality and being warmed by

your kind words of friendship, but I feel greatly honored as well to be with

you at your organization's 38th Annual Convention. I have long wanted to

spend some unhurried hours with the rugged and tough - minded members of

what is rapidly becoming known as the pride of the small business community,

the National Tire Dealers and Retreaders Association.

On this happy occasion, the 38th Anniversary of the founding of the

NTDRA, let me extend to each and everyone of you and to your Association, too,

*Sen Henry  
Sen Sparkman*

*Advertising  
FHC Enforcement*

*38th Annual*

my heartiest and sincerest congratulations. Your record, as individuals and as an organization, of almost four decades of progress and service is indeed outstanding. May your individual futures as well as that of your fine Association always be both prosperous and enduring.

*Small Business  
Record  
of  
Congress*

This afternoon, I shall talk to you about the small business record of the 85th Congress. I shall also tell you about the hopeful plans now being made to improve that record in the upcoming session of the next Congress, the 86th. I plan no oration -- just a simple and direct report on these important matters, "straight from the shoulder."

But, before proceeding to examine the nature and scope of the action which Congress has taken or will take for independent businessmen, I must set a frame of reference for my remarks here this afternoon. This means offering my views on the large and vital role to be played by the small business community in keeping our national economy strong and prosperous during the current period of international tension and crisis. Please bear with me on this even though you may feel that I have lapsed back into my college lecturing days.

To understand the role of the independent <sup>Businessman</sup> ~~entrepreneur~~ in both war and peace requires first an appreciation of the public policy which has determined the historical course of our Nation's economy. This public policy holds that, through the maintenance of free and fair competition, an orderly development of a vital and dynamic economy will be assured. Or, in other words, our economic creed is that the public well-being is best served by free competition of free men in free markets. Under this system, business success is to depend upon an individual's judgment and ability, by his relative efficiency, and not by his size or power or prestige in his field of enterprise.

By virtue of this <sup>declared</sup> policy, every citizen, ~~no matter how small~~, every business, no matter how small, is entitled to enter freely any market and, once within, to compete on <sup>fair</sup> ~~just~~ and equal terms with those already there. Every interference with or potential encroachment upon the <sup>established</sup> competitive principle ~~thus established~~ must be resisted. Only by such measures can the market place remain free and accessible and, consequently, beneficial to the Nation, consumers, producers, and merchants alike.

It is in this light that the function being performed by independent small-business men in our country's economic affairs should be studied. By doing so, the independent businessman is at once revealed as a prime cause and not merely as a product of America's economic greatness and strength. It is the energy, ingenuity, and competitive challenge of our nation's  $4\frac{1}{2}$  million small-business men which stimulates the timely arrival of a variety of new and better products at prices which everyone can afford. Moreover, small entrepreneurs, by their numbers and diversity and independence of action constitute our most effective safeguard against the creation of corporate giantism and monopoly. So long as small-business men remain numerous, healthy, and prosperous, our economy will continue free and competitive and, thus, a fourth of opportunity for all.

*Cold War  
Economic  
Contest*

Bearing in mind that the well-being of the small business community is the agency by which the economy as a whole is kept healthy and prosperous and ever-expanding, let us turn briefly to the current "cold war" existing between the free and the slave countries, that is, between the Nations within the American sphere of influence and those dominated by the Communists. Bluntly speaking, this is a war for survival, not just of ourselves and our allies, but also of our common liberties and institutions, our entire heritage. It is a war in which the Soviet Union plans to gain political supremacy over all mankind by using its economic system of totalitarian collectivism to defeat us by destroying our free and competitive system of

private enterprise. It is a conflict in which the communist bosses are

pitting tyranny and <sup>collectivism</sup> ~~slavery~~ against individual freedom and fair competition

with the world as the stakes. It is a war <sup>hearts</sup> for the minds of man in which

regimentation and control by the state is offered as the alternative to our

citizens' personal rights to "life, liberty, and the pursuit of happiness."

Even though this conflict is "cold" and not "hot" and does have a

novel economic character, we must not ignore the fact that the Communists

are pursuing war's traditional objective -- annihilation of the enemy.

Rather than "blow us to pieces," the Soviet Union <sup>may</sup> intends to take us over

<sup>operation Noble</sup> piece by piece. In either event, whether defeat should come by force of

arms or from Soviet economic might, our disaster would be complete.

L The waging of this new kind of war promises to be a long, drawn-  
out affair -- and an exceedingly costly one. Great expense is to be incurred

in the continued manufacture of the military weapons and in the maintenance

of the armed forces essential to our national defense. We must also be pre-

pared for increasing expenditures in our efforts to bolster the economies

of our allies abroad and of our potential allies in the underdeveloped

countries. Yet, notwithstanding the mounting financial burdens ahead, we must not falter in meeting our obligations, either at home or abroad. Each of our failures will be a communist victory.

In a very real sense, the outcome of this fierce economic struggle is ~~balanced by~~ <sup>to be determined by</sup> the natural resources, the productive capacities, and the moral fibre of the peoples of the Soviet Union and the United States, respectively.

The accuracy of this proposition the Soviet Commissars fully understand --

in fact, they rely upon it as their strongest asset. They are convinced

that an America which allows itself the luxury of individual liberty and

free enterprise must eventually go bankrupt. In their view, it is much more

efficient and, therefore, more conducive to victory to regiment human automatons <sup>into</sup>

*Collectives,*

than it is to inspire a group of small, independent businessmen.

Winning this war will require the intelligent and determined cooperation of all of our 180 million American citizens. Our objective will necessitate boldness and imagination in our economic planning and execution for this new type of war. The development of our national resources and the build-up of our national productive capacity must be carried out with the same <sup>determination</sup> ~~willingness~~

*and ingenuity*  
to ~~survive~~ as now motivates our military development. In addition, every

citizen must recognize and dedicate himself to those principles which make

for a healthy and growing economy. This means the ~~general public~~ recognition *and*

*acceptance* of the interdependence of our political and economic freedoms. So inextricably

bound together are the political and economic aspects of our age that

the removal or arbitrary impairment of individual freedom in either tends

to produce the same characteristics in the other. We must demonstrate that

our ultimate victory does not require sacrificing political and economic

freedoms in the process.

*These considerations demand in turn making our economy appealing*

to young people by offering them broad opportunities for business success.

Accordingly, there must be relative ease of entry into both new and old

fields of enterprise. Industrial progress is conditioned upon fresh ideas,

new techniques, and the steady competitive pressures which only newcomers

can infuse into the stream of business life. Established small businesses,

too, must be assured of the fair conditions and equal opportunity needed

for continuing successful operations. Anything less will deny us the vital,



prosperous, and expanding economy essential for meeting victoriously the threat posed by the Communist world.

Regrettably, our Government's efforts to meet the <sup>Serious</sup> ~~grave~~ economic challenge raised by the Soviet Union and her satellites has not been impressive in terms of protection for American small business, the keystone of our whole economy. There has been considerable evidence in recent years that ~~the~~ <sup>the</sup> business climate contains many elements hostile to the well-being of the average independently-owned and operated small business concern.

Many of these smaller enterprises, as you know from your own observations, are fighting a rear-guard action for economic survival. Looming particularly large as a handicap for small firms has been the constantly climbing costs of doing business.

Inflation has exacted a heavy toll from small business. We can see this in the rising rate of small business failures since 1952. Last year alone, small business fatalities reached 13,739, the highest level in any year since 1939. This rate continued upward in the first seven months of this year. There is no doubt in my mind that if business mortalities



continue at the present level, more small firms will close down in 1958

than in any 12-month period since the great depression year of 1933!

*Let recent*  
In the ~~last~~ annual report of the Senate Small Business Committee,  
*observed and commented upon*  
~~the members of the Committee had recognized~~ of one important side-effect

of our economic development since 1952. "Nowhere during the past few years," ~~the report stated~~, "have adverse competitive conditions hammered with greater force than on the ranks of small manufacturers. High taxes, tight money, ballooning costs of material and labor, plus the increasing domination of markets by the largest producers, have all contributed to the plight of small manufacturers."

The vital statistics of the manufacturing community bear out this conclusion. In June of 1952, a record number of manufacturing companies were in operation, namely 329,600. By the end of last year, this total had fallen off to 308,600. *yes* ~~Is it not alarming that~~ during a period marked by great economic expansion, 21,000 manufacturing concerns -- most of them small businesses -- were forced to close their doors! One of the grim facts of the business world seems to be that while the big are getting bigger,

the small are becoming smaller, many even to the vanishing point.

The outlook for the small, independent retailer seems equally dim. This is almost universally acknowledged. The National Industrial

Conference Board has labeled the small grocery store a "vanishing institution." ~~Elsewhere~~ in the retailing scene we find that the phenomenal growth

of chain stores, discount houses, and other mass merchandising media ~~have~~ <sup>has</sup>

made deep inroads into the ranks of our smaller retail units.

At the present time, the retailer exists in what has been described as "an atmosphere of catastrophe." According to Mr. Victor Lebow, a marketing consultant, who recently testified before my Subcommittee during its study of "Discount House Operations," only 74 out of every 100 retail stores opening today will survive beyond the first half year of existence.

Only 49 have a chance of living  $2\frac{1}{2}$  years. And just 17 out of the original 100 will still be in business 10 years from now. Mr. Lebow also pointed out that "in the years 1949-52, it required a turnover of 25 stores to provide a single additional retailer. But in the 1953-56 period it took a turnover of 50 stores to produce a single addition to the total." This trend toward

*Double the # of stores to produce  
a single addition to the total*

*reduction + elimination*

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the ~~oblivion~~ of the small retailer, of course, is not news to tire dealers who have seen it developing in your own communities.

✓ An objective summary of current economic affairs leads me to list these general disadvantages under which small business has been laboring:

✓ First, inflated costs of doing business which are draining off the independent merchant's profits and frequently are producing deficits.

✓ Second, a ruthless competitive atmosphere is stacking the cards against smaller companies.

✓ Third, there is an increasing concentration of economic power in the hands of fewer and fewer giant companies to the decided disadvantage of smaller competitors.

✓ Fourth, our existing corporate tax structure places a heavier burden on small concerns than on giant corporations, and

Fifth, many qualified small companies are unable to obtain sufficient capital to permit them to finance their growth and expansion at rates of interest and on terms they can afford.

— Tight credit —  
High Interest  
literally Starves Small Business  
Capital.

(X) *However*

Through this depressing competitive situation a strong ray of  
hope shines for American small business today. It is in the new and growing  
conviction throughout the country that without a sound and thriving community  
of small and independent business units, our free enterprise system cannot  
function along its traditional lines. The realization is spreading that  
our particular form of capitalist society is based on a balanced economy.  
All elements of our industrial and commercial life are interdependent. Big  
business needs small business and small business, in turn, cannot operate  
without big business. It is the old principle of one hand washing the other.

*SLOW*

What makes this economic philosophy of great importance to us today  
is that where, as a nation we have always believed this, we have now, seeing  
this ideal threatened, taken at least limited action to preserve our economic  
heritage. We have left behind, I hope, the period when we were content to  
give only lip service to small business. We have entered, I believe, a  
period characterized by a new awareness of the needs of small business  
coupled with the determination to take necessary steps to preserve this  
vital segment of our national life.

For proof of this assertion let us examine the ledger which I understand that the small business community maintains for Congress. On the credit side a number of major legislative achievements must be listed:

Initially, of course, there is the Small Business Tax Revision Act of 1958. This measure, authored by Senator John Sparkman, and co-sponsored by other Committee members as well as some 40 additional Senators, had as its prime purpose the elimination of certain basic tax inequities which were working to the disadvantage of our smaller concerns. Over the next year, the Act will mean tax savings to small business of over \$260 million in the first year. These tax benefits, stripped of their technical language are:

A. Small, closely-held corporations may elect to be taxed as a partnership, if they deem it advantageous for them to do so.

B. Any individual or corporation buying depreciable, tangible property having a useful life of at least six years and costing no more than \$10,000 may take for the first year an additional depreciation deduction of 25% of the cost of such property. In the case of a joint return by husband

and wife, a 25% depreciation allowance may be taken on property costing up to \$20,000. This provision applies to used as well as to new equipment,  
a sound and desirable change from former law.

L C. Estate taxes arising from the death of an owner of a closely-held or family business now may be paid in 10 annual installments rather

than a lump sum as before. ~~This should help to ease the problem of paying~~

~~estate taxes upon death of a small corporation's owner.~~ No longer should

such taxes necessitate liquidation of the business to raise the money. (as often the case in the past)

L D. Individual investors who lose money in small-business ventures are allowed to write off annually against ordinary income as much as \$25,000 of their losses and in the case of a husband and wife, up to \$50,000.

E. Loss carry-back privileges are extended from two years, as at present, to three years with a limit of \$50,000 in the third year. This could mean a tax saving of as much as \$26,000 to some small firms at current corporate tax rates.

L F. The minimum accumulated earnings credit provided in determining the special surtax penalty on accumulated earnings is increased from \$60,000 to \$100,000.

G. Small businesses winning treble damages in private antitrust  
actions may now pay taxes on such awards as if the money were received over  
the entire period in which their competitive injury was suffered. Formerly,  
such treble damage awards were taxed as income for the year in which they  
were won. This provision results from a recommendation made by my Sub-  
committee after its study of the factors responsible for the ineffectiveness  
of private antitrust actions. ~~HH~~

~~HH~~ These are the provisions of the new tax law for small business.

Although the Act is good insofar as it goes, it should give greater and  
broader relief to all segments of small business and, particularly so, to  
retailers, wholesalers, and service firms. Therefore, next year, I shall  
introduce a new tax <sup>relief</sup> bill with just such purposes in mind. In particular,

I shall strive for a reduction in business tax rates which will be similar  
to the graduated formula now applicable to personal income.

I shall also renew my efforts to obtain a provision permitting  
a tax reduction on reinvestments in depreciable property and inventories  
up to \$10,000 a year. As many of you know, I tried to have such a



provision adopted this year as an amendment to the small business tax bill which was enacted. In my view, the proposal would have meant a tax saving in the first year of \$500 million to small business, and most important of all, it would have benefited all segments of small business -- not only manufacturers -- because it applied to both real and personal depreciable property and also to inventories. It, therefore, would have been far more beneficial to small business as a whole than the additional depreciation allowance as contained in the Act which was limited to tangible personal property with a useful life of six years or more.

The reinvestment allowance proposal has the wide support of business groups throughout the country. It is a sound proposal and one that is sorely needed. Unfortunately, it was turned down on the grounds that the Government cannot afford \$500 million in revenue loss at a time when there is such a large deficit. While I fully agree that the deficit is a cause of <sup>great</sup> concern, I nevertheless believe that the needs of small business for adequate tax relief outweigh the budgetary considerations. Also, my proposal would not have involved an actual tax loss, but only a tax deferral;

by the assistance it would have given small business in making investments, in the long run it would actually mean greater revenue for the Government.

Tax legislation of this scope and purpose, I am confident, will benefit, not only small firms, but the economy as a whole. Therefore, I shall do my best to see it become law in the 86th Congress.

2 The second major accomplishment of Congress this past year has been in making the Small Business Administration a permanent watchdog for protecting small business interests. Through this action, Congress clearly expressed its awareness of the small business community as an essential natural resource and at the same time assured SBA a larger and more effective role in the conduct of governmental affairs. From now on, the agency promises to be a more vigilant guardian of/a more aggressive spokesman for our 4½ million American independent businessmen.

In addition to gaining permanence, the lending functions of the Small Business Administration were also liberalized. Under the new law, SBA interest rates were lowered from 6% to 5½%, while the amount which the agency may lend to any single firm was raised from \$250,000 to \$350,000.

③ Third, you should know of the passage this year of the Small Business Investment Act, a measure of vital interest to all small-business men. Under this statute, local small business investment companies will be set up all over the country for the express purpose of granting financial assistance to small firms. Such investment companies may invest risk capital directly in a small business, that is, actually arrange to buy stock in the firm, or it may make a long-term loan running up to 20 years at reasonable interest rates.

*investment*  
These companies are intended to fill the long-admitted gap in our financing structure which makes it so difficult for small and medium-sized companies to obtain the long-term debt and equity capital needed for adequate growth and development. Such investment companies will be chartered by the States, or in the absence of ability of States to charter, then by the Small Business Administration. The Act provides a \$250 million revolving fund to be used by the SBA in making loans to the investment companies and to State and local development companies -- such as we have in my own State of Minnesota. Of course, the success of this new small business investment

(no dumping ground for Pol. Hack)

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program will depend in large measure on the manner in which it is administered.

Those of us in Congress who fathered the program are well aware of this fact.

Therefore, we shall keep close watch over <sup>THE</sup> administration of the Small Business

Investment Company Act to insure that independent businesses are properly

provided with capital for growth and expansion. Moreover, we will not hesitate

to amend the Act, should any shortcomings be revealed in its operation.

The Small Business Investment Act promises to be very helpful to

~~businesses~~ <sup>FIRE DEALERS</sup>

wishing to expand or modernize their facilities or to purchase

their stores. Considered in conjunction with the financial program of SBA,

the new investment companies can do much to improve the competitive position

of the Nation's tire dealers by easing credit and capital financing problems.

It also occurs to me that, as self-help is after all the best help,

members of the NTDR might well give serious consideration to forming small

business investment companies among yourselves or with other independent

merchants in your own communities. I have heard that small-business men

in other fields of enterprise are working out such a program for their

mutual benefit, and I am certain that they will be happy to keep you informed

of their efforts in this regard. I am also certain that SBA officials would give all tire dealers interested in a self-financing project every possible

cooperation. *if not see the Sen-Smal Business Comm.*

I shall not at this time go into other small business enactments of Congress except to say that action was taken (1) to increase the share of small producers in prime contract awards by government agencies, and (2) to give the Federal Trade Commission jurisdiction over the antitrust violations of grocery chains which own or have an interest in meat packing concerns. #

To be perfectly honest, I must point out that the other side of the small business ledger also contains a few entries, those items on which Congress should have acted but, for one reason or another did not.

High in the debit column is the failure of Congress to enact S. 11, the "Equality of Opportunity" bill. This failure means that discriminatory pricing practices can continue without truly effective controls until Congress can take appropriate action in its next session.

As you will recall, S. 11 this past year was again voted out of the Senate Judiciary Committee and then placed on the Senate calendar in

the closing days of the session. But, it was not shortness of time so much as it was the form in which the bill was reported out of committee that doomed the measure.

As reported, S. 11 contained a number of debilitating amendments, the most significant of which limited the scope of the bill to sales of food, drugs, and cosmetics. Still without adequate protection against discriminatory pricing practices would have been small-business men in all other fields, such as petroleum, rubber tires, chemicals, and paper. [ You should understand, however, that many members of the Senate Judiciary Committee voted to report out S. 11 with the crippling amendments solely to get the measure before the Senate in some form. ]

✓ In studying S. 11 as it was reported, I was reminded of an anecdote with which I know many of you are familiar. It seems that some college boys decided to play a trick on their entomology professor. They gathered together various specimens of bugs and bees, took the legs of one and the wings of another, likewise the eyes and various other parts of different species, and put these together so as to form an extraordinary but rather artistic specimen.

but

Keep

Then they took it to their professor, who, by the way, was extremely near-sighted, and asked him to tell them what kind of bug it was. He put it under the microscope, examined it with great care, and then he said, "Boys, this is a humbug."

✓ S. 11 with its limiting features is precisely that kind of "humbug." At first blush, the bill may have a certain appealing quality, but, upon closer examination, it is recognized as a legislative monstrosity deserving only of a place in the ashcan.

✓ Although fully aware that all of you have followed the great debate on S. 11 with close attention, I intend to state here as briefly as possible the arguments favoring the measure. I want to be certain that all of you are <sup>FACTUALLY</sup> ~~practically~~ prepared to enlist the support of other small-business men in your community in the fight to get S. 11 enacted into law.

✓ Briefly stated, S. 11 has as its sole purpose the prevention of price discriminations that may produce monopolistic effects. Toward this end, S. 11 limits the "meeting competition" proviso of section 2 of the Robinson-Patman Act to the extent that the good-faith defense would be



made unavailable in cases of price discrimination where the effect of the  
discrimination tends to lessen competition substantially or toward monopoly  
in any line of commerce. In effect, S. 11 would make the defense of meeting  
competition in good faith inoperative in all cases of price discrimination  
where the reasonably probable effect of the discrimination is to lessen  
competition substantially.

With the scope of S. 11 thus limited, it is evident that the good-faith defense would still be available wherever the effect of the discrimination might be to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. <sup>S 11</sup> Nor would ~~the proposed amendment~~ in any way prevent a seller from establishing price differentials based upon differences  
in costs of manufacturing, selling, delivery, and certain auxiliary services. Accordingly, enactment of the legislation could not frustrate the lowering of prices based upon economies resulting from efficiency. Also, still lawful would be the granting of earned discounts, although the offering of "unearned" price concessions would be substantially restricted.

You should also know how the bill accords with the policy and purpose of the Clayton Act. As I proceed, bear in mind that Congress intended the Clayton Act as a supplement to the Sherman Act's general prohibitions on monopolies and restraints of trade. The Clayton Act was to outlaw specific business practices deemed steps in achieving those monopolistic ends. <sup>prohibited</sup> ~~prescribed~~ by the Sherman Act. In other words, business practices having monopolistic tendencies would be <sup>checked early</sup> ~~suppressed in their incipency~~ and well before they had attained such effects as would justify a Sherman Act proceeding.

h So measured, S. 11 is consistent with the Clayton Act since it is intended to prohibit a business practice, namely, price discrimination having a monopolistic tendency, before the practice grows into a violation of the Sherman Act. Frankly, I cannot understand why any person in sympathy with the policy and purposes of the antitrust laws should hesitate in endorsing a proposal prohibiting a business practice producing monopolistic effects.

h Yet, the fact remains that S. 11 has run into formidable opposition and, therefore, has not yet become law. To you tire dealers who have been in the vanguard of those small-business men pressing for enactment of the

measure, this situation, I know, is disappointing. There is a strong

tendency for you to feel that the great amount of time and energy you have

expended in supporting the bill has been wasted. But, ~~is~~ such a feeling *is not*

~~AT~~ justified under the circumstances. For two reasons, I say emphatically

"no."

In the first place, you must realize that your dedicated work

these past few years in behalf of S. 11 is just now reaching the point

where the reward is in sight. ~~Much as the missionary striving to save souls,~~

*You* must understand that the process of education is always slow and laborious.

However good and just may be ~~the missionary's~~ *your* cause, however sound and con-

structive S. 11 may be, a little forbearance and much patience is a condition

necessary to success. Moreover, you should keep in mind that a new Equality

of Opportunity bill will be re-introduced early in the forthcoming session

of Congress. As public hearings on the measure have been completed in both

the House and the Senate, there should be no great obstacle to early con-

sideration of the measure by the Congress. Thus, success in your fight for

the revitalization of the Robinson-Patman Act seems to be much closer than

many of you may realize.

S 721 enforcement

Special mention of Congressional inaction on S. 721 must also be made. S. 721, you will recall, was a bill designed to enable the Federal Trade Commission to achieve speedy and effective compliance with cease and desist orders issued under the Clayton Act. Senator Sparkman first introduced the bill several years ago with the sponsorship of many Senators, including myself.

As you know, the effectiveness of the Clayton Act, ~~as amended by~~ <sup>and</sup> the Robinson-Patman Act, has long been handicapped by the lack of adequate enforcement machinery. Existing enforcement procedures are laborious, time-consuming, and very expensive. In a case where a Clayton Act order is being flouted <sup>or ignored</sup> ~~by the defendant~~, the Commission may informally attempt to obtain voluntary compliance. That course failing, the Commission is obliged to proceed to a U. S. Court of Appeals to prove that its order is being violated. Even after such proof is made, court enforcement of the order does not necessarily commence forthwith. Instead, the court may decide to undertake what amounts to a de novo consideration of the antitrust issues in the case. Then the court may issue a formal decree adopting the Commission's order as

its own. Thereafter, enforcement requires the use of contempt proceedings for violation of the court's decree. In other words, the antitrust violator can break the law three times before meaningful sanctions are applied.

*Federal Trade*  
Bearing in mind that Commission orders ~~present~~ *under* to the Clayton

Act are intended to remedy such grievous antitrust wrongs as monopolistic

mergers, exclusive dealing arrangements, and unjustified price discrimina-

tions, efforts to obtain full compliance with such *Commission* orders ought not to be

~~frayed with~~ and delayed by such legalistic difficulties. After all, delayed

justice in antitrust matters can only mean no justice at all to the *Independent*

business men who are so often the victims of the prohibited practices.

S. 721 would put sharp teeth into the Clayton Act orders by filling an enforcement ~~void~~ *vacuum* which has existed for many years. The bill would also

encourage private treble damage suits by small-business men injured by

Clayton Act violations. Under S. 721, Clayton Act orders would be final

orders admissible in private antitrust suits and, I am hopeful, would often  
be used for such purposes.

Although S. 721 passed the Senate in this past session by unanimous vote, it was not acted on in the House. When it is reintroduced next year, I

believe it will be ~~speedily~~ enacted into law, if the small business community ~~as a whole~~ can give it determined assistance. Let me encourage you to write to your Congressmen on this measure.


Thus far, I have reviewed for you the legislative record of the 85th Congress, calling attention to both its accomplishments and its shortcomings. Additionally, I have indicated how that record is to be improved during the 86th Congress. Now, I would like to turn to a less-publicized, ~~perhaps~~, but nevertheless no less important phase of congressional activity in behalf of the small business community. I refer to the public hearings and investigations made this past year by the Senate Small Business Committee.

# As many of you know, my Subcommittee on Retailing, Distribution and Fair Trade Practices held many days of public hearings ~~on many subjects~~ in the past session of Congress. Because of time limitations, I shall discuss only those inquiries which have a direct impact upon your operations as independent tire dealers and retreaders. One such study was that of the role played by private antitrust enforcement in protecting small business. Our purpose in that inquiry was to find out how effective the private

antitrust suit was as a weapon with which small-business men could defend themselves against specific illegal competitive practices and monopolistic pressures in general.

During extensive public hearings on the subject, testimony was received from businessmen and experts in the field of antitrust litigation. In our report, the Committee ~~reviewed the testimony taken and~~ offered a total of ten recommendations for increasing the effectiveness of antitrust enforcement by private citizens.

Instead of discussing those 10 recommendations, I am going to give each of you a copy of the report and urge you to read it when convenient for you to do so. I would like to see each and every one of you become a "private attorney general" in the field of antitrust enforcement. You must understand that, until the profit is taken out of antitrust violations, monopolies and restraints of trade will continue and small business will be deprived of its rightful competitive opportunity.

 You should also know of the plans now being made by my Subcommittee for an investigation of the competitive problems of independent rubber tire

TIRE Industry Investigation



dealers. Particular attention in this inquiry will be brought to bear upon the practice followed by some rubber tire <sup>manufactures</sup> ~~dealers~~ of competing directly at the resale level with their tire dealer's customers. We want to find out how the big rubber tire companies are able to sell their products to large commercial buyers at prices less than the independent tire distributor's invoice cost. We also want to know more about those instances in which a manufacturer sells its tires through its company stores at prices below those charged independent dealers. We shall also inquire into the extent to which "direct selling" by tire manufacturers is used to control resale prices and other aspects of the channels of distribution. Certainly, it is a basic principle in our free enterprise system that no manufacturer should possess what seemingly amounts to an unlimited power to fix his customers' resale prices or to drive such customers out of business by underselling them.

7  
1  
Fair  
Trade  
different

Of course, our inquiry into the competitive problems of independent tire dealers will also extend to the Federal Trade Commission's rather undistinguished record in its prosecution of the celebrated "quantity-limits"

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case. I feel that Congress should know whether the failure in that proceeding stemmed from a statutory deficiency or, rather, from a lack of enforcement determination on the part of Commission officials.

L I can guarantee you that our proposed study of "direct selling" in the rubber tire industry will be conducted impartially and objectively -- but quite comprehensively. Your full cooperation in this undertaking will be required for success. I am confident that my Subcommittee will receive such support.

L It has indeed been a pleasure to speak to you this afternoon about Congressional action, past and future, for small business. You have been a remarkably patient and warmly responsive audience, and I deeply appreciate such kindness. I do hope that I have given you a better understanding of what Congress is doing for you. If I have, I feel that you will be happier and more secure in your economic life. I apologize if, in doing so, I have imposed excessively upon your time and good nature.

While, as I have tried to show, much has already been done for small business, there can be no doubt that much also remains to be done. It is

my constant hope that the defects which exist in our small business legislative program will be speedily corrected in the next session of Congress. I can assure you that our Senate Small Business Committee will do everything possible to make it easier for the nation's  $4\frac{1}{2}$  million small businesses to meet the challenge of today's highly competitive business climate and to perform their crucial role in preserving a free and strong America.

Our chances of success in this vital undertaking are better today than they have ever been in the past. Now working for us and with us is a new and busy partner. This partner is the newly-awakened public awareness, the virtually unquestioned premise, that a healthy small business community in our economy is indispensable to our nation's security and to our continued prosperity.



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