

Minnesota
Food Brokers

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December 13, 1958

" CONGRESSIONAL ACTION FOR THE SMALL BUSINESS COMMUNITY "

An Address

By

SENATOR HUBERT H. HUMPHREY

CHAIRMAN

Bill Dutrich
Green Giant

SUBCOMMITTEE ON RETAILING, DISTRIBUTION, AND FAIR TRADE

PRACTICES OF THE SENATE SMALL BUSINESS COMMITTEE

BEFORE THE

55TH ANNUAL CONVENTION OF THE NATIONAL FOOD BROKERS ASSOCIATION

PALMER HOUSE

CHICAGO, ILLINOIS

Opportunity

My visit with you this afternoon here in Chicago at your Association's

55th Annual Convention is indeed a happy and stimulating experience. On such

occasions as this, I find a pleasant reminder that my Small Business Committee

membership ranks as the most enjoyable as well as one of my most important

Senate responsibilities.

Through my Committee activities, I have gained a broad and healthy

understanding of the vital role played by independent businessmen in preserving

Small
Business
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our nation's free and competitive private enterprise system. At the same time, my Committee service has afforded me an opportunity to study at first hand, the wide range and almost infinite variety of economic problems which beset small business. Moreover, I have always found the Committee to be an effective instrument for doing something constructive about such problems. And, of course, my Committee assignment has been the key to many warm and lasting friendships with members of such outstanding business groups as the National Food Brokers Association.

My emphasis upon the great work of the Senate Small Business Committee is not to suggest, however, any feeling that our Committee is sufficient unto itself. On the contrary, I know that every major accomplishment of the Committee is the product of efforts made by many conscientious individuals and organizations. As I see it, success in legislative affairs as in almost all human activities requires a unique kind of concerted action, the intelligent and determined cooperation of many sincerely interested parties -- team play, if you wish.

Small Bus. Comm.

Even when the right solution to a particular small business problem has been decided upon by our Committee after full consideration, its adoption is not thereby assured. Rather, success still depends upon acceptance of the proposal by other Committees, by a majority of the House and Senate, by the President, and by the small business community generally.

[Of especial help in enlisting the necessary support for worthy small business legislation are trade groups such as the National Food Brokers. ~~the~~

~~On this regard, I wish to say that, during my 10 years in the Senate,~~ ^F the food brokers have always been in the vanguard of those fighting for sound and constructive small business enactments. In many instances that I can recall, your Association worked wholeheartedly for legislation it deemed meritorious

in principle and purpose, even though food brokers themselves were only indirect beneficiaries of the legislative proposals being supported. Such ~~conduct~~ ^{unselfish} ~~in~~

~~my opinion, represents the type of unselfish devotion to the cause of small business and to the public interest which deserves the warmest commendation.~~ ^{devotion to cause of Small Business}

That the National Food Brokers Association has consistently endorsed worth-while small business legislation is in large part attributable, I believe,

Nat. Food Brokers Assoc

to the energies, enthusiasm, and good judgment of your President, Watson Rogers,
and his able Washington staff. Gentlemen, you are indeed fortunate to have
such an outstanding group of men and women representing your interests in the
many legislative battles which so decisively affect your business lives.

Let us turn now to the main purpose for my being here with you this
afternoon -- to assess the small business record of the 85th Congress and to
outline the hopeful plans being made to improve that record in the upcoming
session of the next Congress, the 86th. This effort shall not be oratorical --
just a simple and direct report, straight from the shoulder.

My starting point in this undertaking will be a discussion of the
food industry investigation being conducted by the Federal Trade Commission.
This inquiry, as you know, is an outgrowth of public hearings held in the
early spring of my ¹⁹⁵⁸ Subcommittee on Retailing, Distribution, and Fair Trade
Practices.

Somewhat paradoxically, I suppose, our Subcommittee hearings at that
time were not centered on the food industry as such but, rather on the
effectiveness of private antitrust suits. Our primary purpose was to find

Report

FTE
Food Investigation

out whether the private antitrust action was a truly helpful weapon which small-business men could use to defend themselves against specific illegal competitive practices and monopolistic pressures in general.

As the hearings proceeded, we learned that the private antitrust suit was a weak and indecisive force in the task of maintaining competitive opportunity. This, of course, answered the basic question involved in our study. But, collaterally, the testimony also disclosed the extent to which monopoly and economic concentration appear to have developed ^{or is developing} in the food industry.

Among the large number of witnesses coming before our Subcommittee were representatives of many responsible food industry organizations, including Watson Rogers of your Food Brokers Association. While explaining the need for more aggressive antitrust enforcement, particularly, by private parties, these witnesses referred in some detail to the anticompetitive trends and practices existing in the food industry.

One small business spokesman, Mr. Henry Bison, General Counsel of the National Association of Retail Grocers described the situation in these words:

"The trend toward larger and fewer stores is not by itself something to fear. Efficiency leading to lower food prices can be promoted by such a development. But what is to be feared is a heavy concentration in the ownership and control of food stores in the hands of a few large organizations. What is of concern is the preservation of economic opportunity for small and medium size food retailers to grow, and for new retailers to enter the market. These two conditions are essential elements in any truly competitive market.

"The maintenance of such opportunity in food distribution is getting increasingly difficult and will continue so as present trends continue. It is for this reason that stronger antitrust laws and enforcement are more needed today in retail food distribution than ever before in history.

If monopolistic control is to be prevented in this industry
10 or 15 years from now, it is necessary that preventive
action be taken now.

"The structure of the retail food distribution industry
in 1970 and thereafter is being formed right now. It will
not do much good to let matters take their course and deal
with the problem of monopoly when the Nation's food distri-
bution system becomes controlled by a few tremendously
large integrated firms. I would be a great national
tragedy to allow the same pattern of concentration to
develop in food distribution that has taken place in the
manufacture of automobiles. But who among us can look at
what is happening in retail food distribution today and
relax with assurance that it cannot happen?"

✓ | At this point, I asked Mr. Bison if he had given any thought to having
the Congress ask the Federal Trade Commission to make an exhaustive economic
study of the entire retail food distribution system? His reply was very
impressive to me then and it is today. He said, "All we would ask is that,
sometime soon, an economic inquiry be undertaken by the Commission not for
the purpose of proving anything but rather for uncovering the facts."

Mr. Bison's answer was right on the mark. First, get the facts concerning competitive conditions in the food industry. Once armed with the relevant facts, Congress can then decide what course of action, if any, would best protect the public interest. ~~Moreover, by speedily obtaining whatever information is required, Congress can be prepared to act, if necessary, before economic disaster should befall the food industry. Trying to find a remedy after disaster strikes would be futile.~~

Judge
When Mr. John W. Gwynne, Federal Trade Commission Chairman, appeared later before the Committee, I *called* ~~referred~~ his attention to the testimony of Mr. Rogers, Mr. Bison and others. Mr Gwynne testified that he, too, was concerned over signs of increasing concentration of economic power in the food industry. He pointed out that a very substantial share of the Commission's resources were currently being used for investigations in the food industry. In addition, Mr. Gwynne noted that over 40% of the Commission's pending antimonopoly cases are concerned with food distribution practices.

Under such circumstances, I was encouraged to ask Mr. Gwynne for his views regarding the advisability of a full-scale investigation by the

Commission of economic concentration in the food industry. ~~After careful~~
deliberation, Mr. Gwynne replied that such an investigation would indeed be
in the public interest and even promised to assist in drafting a formal
resolution authorizing the appropriation of funds for such an investigation.

~~Plans for introducing the resolution were later dropped when the~~
~~rush for Congressional adjournment made it unlikely that final action could~~
~~be taken in time.~~ Shortly thereafter, the Commission announced plans to
undertake, within its budgetary limitations, an investigation and study of
competitive methods and practices used in the food industry.

Through this inquiry, the Commission ~~intends~~ ^{hopes} to discover the degree
to which economic power has been concentrated in food retailing and also to
find out the means by which such concentration has been achieved. Not since
the Commission's celebrated "Chain Store Study" of 1931-34, which resulted in
passage of the Robinson-Patman Act, has so serious an effort been made to
explore competitive problems in the nation's largest and most important industry.

The broad public interest in preserving free and competitive enterprise
in our food industry stands unchallenged. Integration and economic concentration
in the industry pose a direct competitive threat extending far beyond small

grocers and other food independents. ~~The nation's farmers~~ also have a vital stake in the maintenance of unrigged markets in which a great many buyers are competing vigorously for their products. ~~Consumers~~, too, understand the benefits in terms of price, quality, and variety which only free competition can bring them.

Nor should it be overlooked that food, the most basic necessity of life, is the principal factor in the cost of living for every American family.

To what extent, it may be asked, does inflation or, more simply stated, the rising costs of living, result from economic concentration and monopolistic practices in the food industry? At a time when growing inflation constitutes a serious ~~our country's most dangerous~~ economic problem, steps to provide an answer need to be fully explored. ~~cannot much longer be delayed.~~

In the light of these basic considerations, the Federal Trade Commission's investigation deserves and, I believe, will receive the full support of all interested parties, industry members, large and small, government agencies, farmers, and the general public, alike. At the same time, I wish to make equally clear that no one has anything to fear from the fair and objective study which the Commission has undertaken.

reasonable + fair

Fact finding now and, perhaps sometime later, ~~the~~ legislative remedies
consistent with the public interest, can do much to prevent competitive
opportunity from being destroyed in the food industry. By ^{*+ reasonable*} fair remedies, I have
in mind the kind of sensible regulatory guides which promote growth and
prosperity for all industry members, at all levels, and regardless of size.

Such remedies may mean strengthening of the Robinson-Patman Act or of
the Clayton Act's Section 7, the basic antimerger law, or even the enactment
of new legislation designed to protect the legitimate business interests of
food independents. In any event, the purpose of whatever new legislation is
proposed would not be to penalize any particular group but, rather, to assure
equality of competitive opportunity throughout the food industry.

Retail grocers, of course, are particularly heartened by the Commission's
investigation of economic concentration and monopolistic practices found at
their level of the industry. No group better understands the full significance
of the Federal Trade Commission's figures showing that, in the last three years,
more than 2,000 independent food stores with annual sales of over \$2 billion have

been absorbed by the chains. With Chairman Gwynne, they want to know "why [their]
industry is getting so tough for the smaller operators..., why the trend seems
to be to eliminate the small man entirely."

I am confident that food processors generally will welcome the
Commission's food industry study. Surely, ~~no segment of the industry has more~~
~~reason to be concerned about economic concentration in food retailing than the~~
~~processor.~~ According to reports I receive, ~~more and more chain food distributors~~
~~are putting in their own processing plants.~~ Should this trend toward a shrinking
~~retail market continue unchecked, the future of independent food processors is~~
~~indeed bleak.~~

Our large grocery chain organizations, too, should recognize the
benefits which the FTC inquiry holds for them, from the long range point of
view. Actually, the greatest disservice that Congress could inflict on the
chain grocers would be to let the competitive situation deteriorate to a level
where the government would have to step in and impose back-breaking restrictions.
~~Such government controls would be much more severe than any regulation American~~
~~industry has ever experienced in the past. In fact, I fear such restrictions~~
~~would probably be as undesirable as the conditions being eliminated.~~

Food brokers, too, have a major economic interest at stake in this
investigation. In your unique position in the industry, serving the sellers
on the one hand and the buyers on the other, you can be victimized by

monopolistic developments at either end of the distribution system. From your
business standpoint, large losses in the ranks of food manufacturers and
processors can be as fatal as would the widespread disappearance of independent
grocers. Certainly, you food brokers, individually and as a group should
support the Federal Trade Commission's investigation with all of your energies
and resources.

Get the Facts
L Again, I say, let's get the facts -- before it is too late. Remember
that once economic freedom and competitive opportunity should be destroyed in
the food industry, there is little that the survivors or, for that matter,
even the government itself, could do to restore the "good old days" which
existed before monopoly.

Through my Subcommittee, I plan to keep a vigilant eye on the course of
the Commission's investigation of economic concentration in food retailing.
When the initial phase of the Commission's inquiry is finished, a date which
I understand will be early next Spring, I intend to invite Chairman Gwynne and
his staff to appear before the Subcommittee. By such means, we will be able
to review thoroughly the Commission's preliminary report, evaluate its findings,

then decide upon the desirability of having the Commission undertake a much broader and more intensive study of food industry concentration. Should our Subcommittee members be convinced of the value of continuing the Commission's study and enlarging its scope, we will then introduce a formal resolution calling for appropriation of the funds necessary to do the job.

With only a modest amount of additional funds, the Commission would be enabled to up-date its famous "Chain Store Study" in very impressive fashion. An appropriate starting point, I should think, would be with the enactment in 1936 of the Robinson-Patman Act. Aided by the light of experience since then, the Commission might profitably explore such matters as: In what respects and, for what reasons, has the Act failed to reverse the anticompetitive trends which threatened the food industry in 1936 and before? How can the statute be strengthened to make it an effective instrument for controlling such monopoly-breeding price discrimination as exists in the food industry? Has the time arrived in the food industry when Congress must judge the possible need for legislation uniquely designed to insure economic freedom and competitive opportunity for all members, large and small. These as well as many other promising avenues of inquiry deserve the Commission's most serious consideration.

FROZEN
FOODS

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I would also like to see the Commission address itself to the competitive problems which have arisen in the food industry's newest and fastest-growing segment, frozen foods. As you know, the advent of frozen foods has brought with it a host of new and varied problems at the distribution level. The most troublesome of these arise from the always vigorous and sometimes unscrupulous competition for the limited freezer space in retail grocery stores. As I understand the situation, smaller frozen foods producers are finding it progressively more difficult to obtain display space for their products. Aggressive Commission action now can help eliminate the bad marketing practices which seem to be spreading in this field.

Before turning from the Commission's study of economic concentration in the food industry, I have one last observation to leave with you. While the thought is not profound, I feel that you will enjoy hearing it. On my recent assignment abroad for the Senate Foreign Relations Committee, I visited many countries, one of which was the Soviet Union. There, I met and exchanged views with many prominent men, including Premier Nikita Khrushchev. However, I had no chance to talk to any Russian small-business men. In that country,

as you know, there are no small-business men -- no big businessmen, either.

Keep in mind, gentlemen, that private monopoly is only one short step away
from state monopoly.

Now to offer 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.

↳ To understand the role of the independent 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 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, his relative efficiency, and not solely on
his size or power or prestige in his field of enterprise.

↳ By virtue of this policy, every citizen, no matter how small, every
business, no matter how small, is entitled to enter freely any market and, once

my VISIT to Soviet - Kruschov
7yr Plan!!

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Now, let us take a look at the 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 ^{state monopoly} slavery against individual freedom and fair competition with the world as the stakes. It is a war for the minds of man in which regimentation and control by the state is offered as the alternative to our citizen's 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 intends to take us over "piece by piece." In either event, whether defeat should come by force of arms or from Soviet economic might, our disaster would be complete.

∟ 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 prepared for increasing expenditures in our efforts to bolster the economies of our allies abroad and of our potential allies in the ^{NEW & RISING} ~~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 in 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 than it is to inspire free individuals to work together in a common cause.

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 willingness to sacrifice 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 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

Young
People

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 effort to meet the 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 our business climate contains many elements hostile to the well-being of the average independently-owned and operated small business concerns. 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 13,729, 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.

In the last annual report of the Senate Small Business Committee, the members of the Committee took cognizance 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. 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 on the retailing scene we find that the phenomenal growth of chain stores, discount houses, and other mass merchandising media have 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 2½ 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 the oblivion of the small retailer, of course, is not news to food brokers who have seen it developing in your own communities.

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.

~~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:

(1) ~~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.

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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 money.

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.

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 Subcommittee after its study of the factors responsible for the ineffectiveness of private antitrust actions.

~~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 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 to 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 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 and a more aggressive spokesman for our 4½ million American independent
businessmen.

In addition to gaining permanence, the lending functions of the SBA
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.

out

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 business investment 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 the 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 food independents wishing to expand or modernize their facilities or to purchase their stores. Considered in conjunction with the financial program of SBA, the

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new investment companies can do much to improve the competitive position of the Nation's small-business man 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 NFBA 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 food independents interested in a self-financing project every possible cooperation.

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. The latter subject I know has been extensively treated by other speakers.

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.

511
High in the debit column is the failure of Congress to **enact** S. 11, the

"Equality of Opportunity" bill. This failure means that discriminatory 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. Then they took it to their professor, who, by the way, was extremely nearsighted, 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 factually 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. 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 proscribed by the Sherman Act. In other words, business practices having monopolistic tendencies would be suppressed in their incipiency and well before they had attained such effects as would justify a Sherman Act proceeding.

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.

Yet, the fact remains that S. 11 has run into formidable opposition and therefore, has not yet become law. To you food brokers 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 justified under the circumstances? For two reasons, I say emphatically "no."

~~In the first place,~~ ^{ly} 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 cause, however sound and constructive 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 consideration 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 realize.

S 721 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 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 by the respondent, 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.

Bearing in mind that Commission orders pursuant to the Clayton Act are intended to remedy such grievous antitrust wrongs as monopolistic mergers, exclusive dealing arrangements, and unjustified price discriminations, efforts to obtain full compliance with such orders ought not to be fraught with and delayed by such legalistic difficulties. After all, delayed justice in antitrust matters can only mean no justice at all to the small-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 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.

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 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 4½ 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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