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SOCIAL SCIENCES

THE ANTITRUST LAWS

A BASIS FOR ECONOMIC FREEDOM

H2448

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INTRODUCTION

The Subcommittee on Study of Monopoly Power has felt that any inquiry which anticipates as its result tangible legislative recommendations must be thoroughly prefaced by a study of existing antitrust laws. Accordingly, the subcommittee staff has prepared a collation of all statutes dealing directly with the preservation of the American competitive economy. While this compilation was designed, originally, only for the use of the subcommittee, I have deemed it so significant that it is being included in the publication of our hearings and it will be published separately as a committee print for its permanent value.

A casual reading of the statutes which appear herein will reveal with singular clarity why the Sherman Act has so often been called a "Charter of Freedom." Such auxiliary legislation as the Clayton Act and the Federal Trade Commission Act have only served to reinforce the basic premise laid down so clearly in 1890 by the Sherman Act itself—that economic freedom can coexist with political freedom only in an atmosphere free from monopolistic restraints.

This thesis is brought home with emphasis when legislative policy, directed at ends other than the preservation of competition, is considered. Thus part II of this collection of laws contains statutes which demonstrate how pervasive throughout our statutory scheme of things is the fundamental notion that, whatever legislative policy Congress may choose to adopt, under no circumstances should such program foster the growth of monopoly. The Alaska Roads and Trails Act, for instance, as well as other laws designed to develop the resources of Alaska, contains prohibitions designed to prevent subsidization of monopoly. So, too, in allowing for contracts for the carrying of mail, in establishing a procurement policy for the National Military Establishment, and in disposing of surplus Government property, the fundamental tenet that a competitive economy must not be constrained clearly appears. This concept has also taken on an extraterritorial complexion, as in the Reciprocal Trade Agreements Act, where the President is empowered to suspend the application of reduced tariffs undeer reciprocal trade agreements when American commerce has been discriminated against by the operations of international cartels. Of special significance is the avowed policy in the Atomic Energy Act contained in the provision which empowers the Atomic Energy Commission to refuse to license activities which "might serve to maintain or to foster the growth of monopoly, restraint of trade, unlawful competition, or other trade position inimical to the entry of new, freely competitive enterprises in the field * * *."

Many observers have recently charged that Congress has abandoned the basic principles enunciated by the antitrust laws. They point with special concern to the exceptions which have been engrossed onto those statutes designed to preserve competition. A closer scrutiny of these special enactments, however, reveals a congressional policy not

entirely inconsistent with the basic premises underlying the Sherman Act.

Exemptions from the antitrust laws may largely be classified into two separate categories: First, those exemptions granted to industries of public utility stature; and second, exemptions accorded to small groups that might otherwise find it impossible to exist in an atmosphere dominated by larger economic units. Of the former, one must consider the Interstate Commerce Act (including the Reed-Bulwinkle Act), the Civil Aeronautics Act of 1938, and the Shipping Act of 1916. In these instances, close administrative supervision has been substituted for policing by the Attorney General.

On the other hand, where small businesses are faced with the unremitting competition of large aggregations which have developed despite the sanctions of the Sherman law, Congress has sought to bestow the favor of limited exceptions from the prescriptions of the antitrust acts. Thus in foreign trade, as Judge Kaufman recently indicated in his decision in the case of *United States* v. *U. S. Alkali Export Association* (S. D. N. Y., August 12, 1949), the Webb-Pomerene Act was specifically passed in order to enable smaller domestic units to compete with international cartels in markets abroad. Perhaps no better example of this type of legislation exists than those laws permitting certain agreements, combinations, and associations in the field of agriculture. As Secretary Brannan emphasized at our recent hearings, the farmer, as the only entrepreneur who still must operate in the realm of perfect competition, cannot survive in an industrial economy unless certain cooperative practices are permitted him. Even the anomolous Miller-Tydings Act is designed as a legislative support for small business enterprise. But in these limited instances, the exemptions from the trust laws are narrowly drawn and generally practices are subject to administrative review. Thus, for example, the Federal Trade Commission investigates associations registered under the Webb-Pomerene Act, while the Secretary of Agriculture is granted certain supervisory powers under the Capper-Volstead Act, the Anti-Hog-Cholera-Serum Act, and the Agricultural Marketing Agreement Act.

In summary, then, the synthesis of the antitrust laws contained in this publication is clear. The Sherman Act, prohibiting all restraints of trade and monopoly, augmented by the Clayton Act and the Federal Trade Commission Act, lays down a basic and fundamental policy which has permeated the entire fabric of Federal legislation. Far from being abandoned, this faith in a free economy has been repeatedly reaffirmed by congressional pronouncement. Where industry has attained utility status, or where growth of business despite the prescriptions of the trust laws has rendered effective competition by smaller entities impracticable, Congress has reluctantly abandoned the rule of competition for one of either governmental control or administrative surveillance.

I feel that the task of this subcommittee investigating monopoly power has been made immeasurably clearer through this analysis of the present antitrust acts. The Sherman Act and its concomitant statutes have indicated an abiding belief and purpose in the Congress and in the people of this country in the preservation of a free and competitive society. The function of this subcommittee is to aid in the better attainment of this goal.

EMANUEL CELLER.

HOUSE OF REPRESENTATIVES
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The staff of the Subcommittee on Study of Monopoly Power of the Committee on the Judiciary has prepared the following collection of laws known loosely as the "antitrust laws." It is believed to be the most complete collection of its kind available and is current through January 1, 1950. They were first published as part of hearings entitled "Study of Monopoly Power, Serial 14, Part 1," but, because of their value to lawyers and students throughout the country, they have been printed separately as a public service.

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