

# The Federal Trade Commission

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The first measure in President Wilson's trust program has been enacted into law. The federal trade commission bill passed the senate on the 8th day of September; passed the house on the 10th day of September; and was immediately transmitted to the president.

## BRIEF ANALYSIS

The following is a brief analysis of the provisions of the bill:

**Organization:** The commission is to be composed of five members, whose terms of office are seven years each, and not more than three of whom are to be members of the same political party; its employees in general are to be under the civil service; the bureau of corporations is to be transferred to and merged in the commission.

**Declarative Law:** Unfair methods of competition are declared to be unlawful. Power is given to the commission to order such practices stopped, where found, after all parties in interest have been duly heard. The orders of the commission are enforced through the circuit court of appeals. A defendant may also file a petition to have an order set aside, in the circuit court of appeals. Findings of fact by the commission are conclusive; the appellate court reviews only questions of law. The judgment of the circuit court of appeals is final, except that it is subject to review by the supreme court upon certiorari.

**Other Powers:** The commission is also empowered:

(1) To investigate and procure facts upon organization, business, conduct, practices, and management of corporations in interstate commerce, except banks and common carriers.

(2) To require reports, under oath or otherwise, from corporations or classes of corporations prescribed by the commission as to facts of organization, business, conduct, practices, management, and relation to other corporations, partnerships, or individuals.

(3) To investigate the manner in which decrees under the Sherman law are carried out, and to make report to the attorney general.

(4) To investigate violations of the anti-trust acts whenever directed to do so by the president or either house of congress.

(5) To make recommendations upon the request of the attorney general for readjustment of business of any corporation to comply with the anti-trust laws.

(6) To make public such information obtained by it hereunder as it may deem expedient, except trade secrets and names of customers.

(7) To investigate trade conditions in and with foreign countries where associations, combinations, practices of trades, or other conditions may affect the foreign trade of the United States, and to report to congress thereon.

(8) To aid the courts in the formulation of decrees in trust cases whenever called in by the court.

(9) To require by subpoena the attendance and testimony of witnesses and the production of documents, and to examine and copy any documentary evidence of any corporation investigated.

(10) Penalties of fine or imprisonment are imposed for failure or refusal to testify or to answer, or for making any false statement or false entry, or for mutilation or alteration of documentary evidence. Penalty is also made in the form of a forfeit of \$100 for each day for failure to file reports within the time required by the commission. Any employee or officer of the commission who makes public any information, unless directed by the court, is subject to fine or imprisonment.

## POWERS IMPOSED BY THE BILL: INTERLOCKING STOCKHOLDINGS AND DIRECTORATES

The Clayton bill as now pending in congress prohibits interlocking stock ownership and directorates, the effect of which is to lessen competition. Power to enter orders to enforce these provisions within its jurisdiction is also conferred upon the federal trade commission by the Clayton bill. At the date of writing the final form of the Clayton bill had not been agreed upon; but the powers as above outlined are substantially assured.

## COMMISSION OF STRONG POWERS

It is to be noted that the bill provides for a commission with strong powers. The court re-

view provided for by the act is practically a "narrow review"; the findings of the commission as to facts are in practical effect made conclusive. The procedure is made simple, and is expedited by direct appeal from the commission to the circuit court of appeals. It is adapted to speedy and expeditious determination of matters to the benefit and advantage of business.

## FORECAST BY THE LATE JUSTICE HARLAN

As far back as 1893, the late Justice Harlan, in the case of Interstate Commerce Commission v. Brimson, 154 U. S. 474, pointed out that:

"All must recognize the fact THAT THE FULL INFORMATION NECESSARY as a basis of intelligent legislation by congress from time to time upon the subject of interstate commerce CANNOT BE OBTAINED, NOR CAN THE RULES ESTABLISHED for the regulation of such commerce BE EFFICIENTLY ENFORCED, otherwise than through the instrumentality of an administrative body representing the whole country, always watchful of the general interests, and charged with the duty not only of obtaining the required information, but of compelling, by all lawful methods, obedience to such rules." (Capitals ours.)

Thus did this great jurist foresee the necessity for an administrative body representing the whole country, always watchful of the general interest, and charged with the duty not only of obtaining information as to the enforcement of the law, but charged with the duty of compelling, by all lawful methods, obedience to the rules of law as to interstate commerce laid down by congress.

The federal trade commission bill seems to have been the fulfillment of this need. It passed the house of representatives without a dissenting vote, and it passed the senate with but five dissenting votes.

## FACTS AS TO CORPORATIONS

There were 305,336 corporations in the United States in 1912, according to reports made to the commissioner of internal revenue. This number, of course, includes corporations doing business solely within a state (intrastate business), as distinguished from those coming under the jurisdiction of congress doing an interstate business. It is only over interstate commerce that congress has jurisdiction.

Of this total, only about 1,600 have a capitalization of \$1,000,000 or over.

It should be noted that in this 8,700 are included many corporations that are doing an intrastate business, and therefore are not included within the jurisdiction of the federal trade commission; and included therein also are a large number of railroads and banking corporations, which are under the jurisdiction of the federal reserve board and the interstate commerce commission.

## \*TABLE OF CORPORATIONS AND CAPITAL

Total number of corporations, 1912,	305,336
Number having less than \$1,000,000 capital . . . . .	296,670
Number having capital of \$1,000,000 and less than \$2,000,000 . . . . .	4,688
Number having capital of \$2,000,000 and less than \$3,000,000 . . . . .	1,399
Number having capital of \$3,000,000 and less than \$4,000,000 . . . . .	677
Number having capital of \$4,000,000 and less than \$5,000,000 . . . . .	292
Number having capital of \$5,000,000 and less than \$10,000,000 . . . . .	861
Number having capital of \$10,000,000 and less than \$50,000,000 . . . . .	652
Number having capital of \$50,000,000 and less than \$100,000,000 . . . . .	62
Number having capital of \$100,000,000 or over . . . . .	35
Total having capital of \$5,000,000 or over . . . . .	1,610
	305,336

\*Derived from publications of the commissioner of internal revenue, treasury department.

Of the total number of corporations, only 1,600 have a capitalization of \$5,000,000 or over. Here again this number includes corporations engaged in intrastate commerce, banks and railroads.

## JURISDICTION OF COMMISSION

**Orders on Unfair Competition:** Probably the most significant, and certainly the function most discussed by congress is the power of the commission to enter orders on unfair competition. Apart from control of transportation or natural resources, it is generally recognized that the most powerful factors in the building up of monopoly are unfair trade practices. In practically all of the government trust suits the pleadings are full of declarations of unfair methods of competition, by which the monopoly had grown up. Some of these practices are as follows:

Bogus independents, used to drive out and destroy competition.

"Fighting ships and fighting brands," used to fill the market of a competitor.

Espionage and bribery.  
Refusal to sell to dealers unless they act as exclusive agents, to deprive competitors of markets and to destroy them.

Refusal to sell article unless dealer or purchaser agrees to buy certain other articles tied up in the contract of sale, for the purpose of destroying competition.

Cutting the price of an article locally, to drive out competition, and raising the price elsewhere to recoup the loss.

All these and many others appear in the pleadings and decrees in the trust cases brought by the government. They are generally alleged as a part of the conspiracy or as tending to show a monopoly or an attempt to monopolize. Where they have been brought together, showing a conspiracy in restraint of trade or showing a monopoly or an attempt to monopolize, they have been condemned by the courts. There was considerable doubt, however, as to whether the law has been sufficient to reach any one of these practices by itself. The commission is given power to stop them IN ISOLATED INSTANCES, wherever they may appear, upon due hearing had, and to stop them before the restraint of trade has actually been accomplished or before the monopoly has actually been achieved. By prohibiting these practices in their inception, it is maintained that the seeds of monopoly are destroyed. There is promise, therefore, that by its rulings on unfair competition there will gradually be built up a body of administrative law for the definite guidance of business in this field that is declared by many to be uncharted. The object and design of the legislation is to destroy monopoly and to provide for competition upon a sane and just basis. It contains possibilities of great promise for real constructive aid to the business world. It affords relief to the moderate-sized businesses of the country, those which have not attained monopolistic size, and which are seeking and must have protection from monopoly and its weapons of unfair competition.

## SEEDS OF MONOPOLY DESTROYED

According to the latest returns available, there were only 1,600 corporations out of a total of 305,336 that had a capitalization of \$5,000,000 or over, as shown in the preceding table. This is but one-half of one per cent of the corporations of the country. The great body of corporations, practically 303,000, are of a smaller capitalization than \$5,000,000. There are 296,000 corporations that have a capitalization of under a million. Practically all of these relatively smaller units are subjected to the possibility of practices of unfair competition employed by their monopolistic rivals. It is to the great advantage of this 95 per cent of the corporations of the country, and to the great preponderance of the business men of the nation, that unfair practices, the favorite weapon of these big units, may be stopped before monopoly has been created and has become susceptible of proof in a suit by the government under the Sherman law. INFORMATION, PUBLICITY — AN AID TO BUSINESS

Substantive law may prohibit the interlocking of interests, either through stockholding or through directorates, or restraints of trade and monopoly; but up to this time there has been no administrative agency of government directing its exclusive attention to the procuring of the facts. Publicity is in itself a great corrective agency. This commission is charged with the duty of obtaining the facts with reference to these matters in the interest of the public and business. Provision is made in the law for the protection of trade secrets, lists of customers, and the like.

Benefit and advantage to business and to busi-