COMPLAINTS OF ANTITRUST LAW VIOLATIONS AND THEIR INVESTIGATION

I. THE WORK OF THE COMPLAINTS SECTION OF THE ANTITRUST DIVISION

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The objective of the Antitrust Division of the Department of Justice in the enforcement of the Sherman Act can be broadly stated in terms of the title of that act: "An Act to protect trade and commerce against unlawful restraints and monopolies." But in discharging this function, the Antitrust Division does not, indeed cannot, act as a policeman patrolling the highways and byways of interstate industry on the look-out for law breakers. Instead, it seeks to protect those who call upon it for protection. It is the complaints which are received that give impetus and direction to the activities of the Division. Accordingly, any comprehensive study of the enforcement of the Sherman Act must include an examination of the source and volume of the complaints received, the process of sifting the inconsequential from the important, the determination of the nature of the investigatory action to be taken and the problems which are encountered in investigation. This article will consider the complaints which are received and the treatment initially accorded them. The subsequent steps in the process, whereby a complaint is converted into a proceeding under the Sherman Act, will be dealt with in the two succeeding articles.

It is the Complaints Section of the Antitrust Division to which complaints received are first routed. Prior to the autumn of 1938 no such section was in existence. The entire Division then comprised but sixty lawyers. With the decision to expand the Division to many times its previous dimensions came an imperative need for more formal internal organization. The Complaints Section was created and a number of attorneys assigned to the task of making the initial selection of those situations in which action could best be taken in the public interest. By devoting careful consideration to this task and by disposing, through informal action, of complaints susceptible to such handling, it was anticipated—and experience has justified the expectation—that the Section could reduce the proportion of field investigations

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to complaints and thereby enable the resources of the Division available for investigation to be directed to assignments which gave substantial promise of disclosing important violations of the Act.

If the development of pending antitrust cases is traced, it will be found that each originated in complaints to the Department. Ultimate consumers complain infrequently because violations of the antitrust laws usually affect them only indirectly. Although large concerns complain when suffering at the hands of other powerful interests, a great majority of the complaints received come from small business men who feel that they are the victims of illegal activities which will take from them their investments and their business opportunities if they are not protected by the Government.

At the outset it may prove interesting to review a few actual complaints so as to see how an antitrust case starts. Not long ago four major typewriter companies were indicted in the Southern District of New York. The Department did not select these defendants after gazing into a crystal ball. Some time ago a certain prominent Washington lawyer was dissatisfied with the trade-in allowance offered by the local representative of a major typewriter company. He tried three other companies only to be quoted identical prices for a new machine and to be offered the same allowance for his old typewriter. This man is known as a corporation lawyer and is entirely sympathetic with big business. However, he became so thoroughly irritated that he wrote to the Assistant Attorney General in charge of the Antitrust Division concerning his experience. Similar letters were received from consumers in all parts of the country. Dealers in second-hand machines also complained. Investigation of these complaints led to the indictment referred to.

Recently a member of a leading New York law firm called on the Antitrust Division. He stated that a company having a monopoly (which he termed "legal") in a certain field is seeking to expand it to embrace related commodities which his client produces. The expansion thus undertaken is resulting in heavy losses to both companies. However, the complaining company, being the weaker, will soon be forced out of business, and the company complained of will then recoup its losses and forge ahead to new profits unrestricted by competition. It is interesting to note this gentleman assumed that the aggressor company had a legal monopoly so far as its major activity was concerned. This view was no doubt based on the apparently cheerful acceptance of this monopolistic control by most of those concerned. However, the Department has received complaints as to the aggressor company's actions from concerns over a thousand miles apart, setting forth charges which they are afraid to make openly because of fear of reprisals. A preliminary investigation has already been made of those charges. Information now in the Department files indicates that the present position of the so-called legal monopoly is being maintained by very crude illegal activities. The current investigation will be broadened to include this new complaint.

The Department is investigating the complaint of a jobber that all suppliers of

a commodity vital to his business have refused to sell to him without cause or explanation. A few weeks ago this very active complainant suddenly ceased to cooperate with the Department, his frank explanation being that he was now able to get the desired material. The companies involved have not changed their attitude due to any pangs of conscience except in so far as such pangs may have been stimulated by the Department's investigation. This complainant does not realize that, if the investigation is dropped, the companies will immediately renew their earlier illegal activities, nor does he know that the companies against which he has complained have been charged with acquiring a number of competitors by devious means—competitors who would have assured the continuance of the complainant's supplies had they been permitted to remain in business.

I have discussed the foregoing complaints somewhat in detail because it is of the utmost importance to emphasize that the American public is the source of the complaints from which antitrust action arises, and that the Department in enforcing the antitrust laws is merely seeking to protect its client, the public. That this client is coming increasingly to call for this protection is shown by the table below which not only sets forth the number of complaints received, but also indicates the volume of investigations and litigation during the past eight years.

COMPLAINTS RECEIVED IN ANTITRUST DIVISION:

*Fiscal Years**							
1932	1933	1934	1935	1936	1937	1938	1939
356	449	1,020	1,451	730	581	923	1,375

INVESTIGATIONS OF COMPLAINTS BY FEDERAL BUREAU OF INVESTIGATION OR BY ANTITRUST DIVISION:

*Fiscal Years**							
1932	1933	1934	1935	1936	1937	1938	1939
139	103	127	69	67	90	59	90

ANTITRUST PROSECUTIONS AND INJUNCTION SUITS:

	*Fiscal Years**							
	1932	1933	1934	1935	1936	1937	1938	1939
Pending	19	18	19	21	27	21	28	32
Instituted	3	7	11	10	4	10	11	13
Terminated	4	6	11	4	10	3	7	9

* Ending June 30th.

Some comment on these data is called for. It will be noted that the peak year in volume of complaints was 1935 and that a high number was received the year before. The explanation for these figures lies in the fact that they include complaints of violations of the NIRA and NRA codes. Over 1,000 of the complaints received in 1935 were from this source. The relatively high proportion of field investigations to complaints in the early years covered by the table reveals that tendency to resort at an early stage to field investigation which the sifting procedure of the Complaints Section is designed to correct. The expansion in the Division's

personnel will not be reflected in the data as to proceedings instituted till the end of the current year.

The number of complaints received increased almost 50 per cent in the past year over the year preceding, and the volume of complaints continues to grow. Complaints received from January 1 to November 30, 1939, inclusive, totalled 2751. Of these 1373 related to price increases following the outbreak of the present war in Europe.

Whenever it is learned that a given industry is being investigated, the number of complaints relating to that industry swings upwards sharply. The institution of a suit has a like effect and, while different violations may not be revealed, leads to valuable evidence are sometimes uncovered. Publicity of a general character concerning the work of the Division—an article in a magazine of national circulation, for example—will stimulate complaints from all quarters of the country and a great variety of industries. Important changes in policy by leaders in an industry are likely to evoke complaints from smaller companies adversely affected.

Many complainants submit their complaints in person, especially when important matters are concerned. Such procedure is most desirable because thus leads are obtained and the problems involved are explored which make for expeditious handling. However, the majority of complaints are received by mail. Every such complaint is given a prompt reply, unless as is sometimes the case, the writer has chosen to remain anonymous. Complaints which are without merit or are clearly lacking the necessary jurisdictional element of interstate commerce are ended at this point. If a complaint seems to be meritorious, every effort is made to develop all available facts by correspondence so as to save time and money if a field investigation is undertaken. Further correspondence may develop that the complaint is without merit.

Great care is taken not to treat a complaint as a mere isolated instance; it may be the symptom of a more widespread condition. In this connection it may be observed that the closed files of the Department are just as accessible as the open files. Accordingly, many times complaints which do not seem on their face to be meritorious take on new significance in the light of material in the Department's files.

Frequently isolated situations which will not justify the expense of an investigation are adequately taken care of by correspondence. For instance, a salesman of a certain machine used by nearly every city in the United States complained to the Department that he had lost a sale in a certain city only because his competitor had violated the Robinson-Patman Act. The letter seemed to justify his position. The Department requested the company complained against to furnish it with a statement concerning the sale in question. In reply the company contended that it had never violated the law. The Department thereupon wrote a more pointed letter to the company in question, which then investigated the matter and wrote the Department that its salesman without its authority had given a secret rebate

of $500 out of his commission. The company promised that it would see to it that its salesmen were more careful in the future. The Department's reply let this company know that it did not like what had happened and indicated that, although nothing futher was contemplated at the time, no promises were made.

Situations which involve probable violations of the law but are lacking in substantial public interest have been disposed of satisfactorily after conference with attorneys for the companies involved. Where a situation does not justify the expense of investigation, much can be done by merely letting the companies involved know that they are under surveillance.

Preliminary investigation of meritorious complaints which involve substantial public interest are made through the Federal Bureau of Investigation. After the Bureau has completed its investigation at times the Department does not press the matter further because facts tending to make a case have not been developed. Sometimes, when the public interest will permit, informal disposition of a case is possible. For instance, the owner of a patented process was seeking to obtain a monopoly for his process by a very wide form of license agreement. The matter was ended when he changed his form of license agreement. The Department will observe the actual working of this concern under the new licensing agreement and, if it proves satisfactory, nothing further will be done. Another illustration is the case of a trade association which during NRA days had adopted restrictive rules for its members with respect to bidding on certain types of contracts. After the NIRA had been declared unconstitutional, these rules were continued because they provided a very convenient way to keep prices up. Conferences by members of the Division staff with officials of the association led to the adoption of a resolution by the association's board of directors abandoning the objectionable rules. Notice of this action was forwarded to all members of the association. The Department thereupon informed the association that no further action was contemplated. Disposal in this manner would not have been possible had the public interest been substantial in either of the two cases described.

From the data presented earlier in this article, it is obvious that a large proportion of the complaints are disposed of by means other than the institution of legal proceedings.[1] Where, however, the preliminary investigation indicates that court action will probably be taken, representatives of the Department go into the field to develop more important aspects of the case. If the type of case will permit, conferences are held with the companies complained against. Of course, there are many complaints in which to approach the defendants would be merely to give them an opportunity to destroy documentary evidence before a grand jury could be called. Whenever grand jury action or the filing of a complaint is deemed necessary, a memorandum setting forth the facts and recommendation is directed to the Attorney General for the signature of the Assistant Attorney General in charge of the Antitrust

[1] The number of complaints so disposed of is not the difference between the total of complaints and the total of proceedings instituted. A large number of complaints may have preceded a single proceeding.