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THE WHITE HOUSE
WASHINGTON

NETA:

Call Wally Scott for
me. IO 239. Tell him
Rodino will NOT introduce
"Price Reduction Act of 1975"
as of this morning! Polic
says McElroy will.
CHAS.

Done 1/29/75
12:55 pm
Neta



12:22 PM

Jan 1/98/52



NETA

THANKS— NOW DO WE
FIVE THIS ON WHAT?
CHAS

WASHINGTON
THE WHITE HOUSE

THE WHITE HOUSE
WASHINGTON

January 28, 1975

MEMORANDUM FOR: VERN LOEN

FROM: CHARLIE LEPPERT

SUBJECT: Introduction of "Price Reduction
Act of 1975"

On January 27, 1975, I gave Frank Polk a copy of the Administration's proposed "Price Reduction Act of 1975" and asked him to check with Congressman Hutchinson or any other Members of the House Judiciary Committee willing to introduce the bill for us.

Polk agreed to do so and to get back to me as soon as he knew something.

cc: Bennett
Kendall
O'Donnell

1-28-75 - Addendum

Delivered extra copy of proposed legislation to Polk. Polk is coordinating introduction of bill by McClary + Rodino for 1-29-75. Polk wants to be advised around 11 AM on 1-29-75 that the proposed legislation has been referred to the Speaker + he will have (hopefully) Rodino put bill in the hopper that afternoon. It will be a pro forma session so I hope we can coordinate this well with Polk.

Charlie



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

JAN 28 1975

Honorable Carl B. Albert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

There is enclosed for your consideration and appropriate reference a legislative proposal entitled the "Price Reduction Act of 1975."

The draft bill would change section 1 of the Sherman Act, as amended by repeal of the Miller-Tydings Act and would change section 5(a) of the Federal Trade Commission Act, as amended, by repeal of the McGuire Act.

The Miller-Tydings Act permits States to authorize resale price fixing agreements under specific immunity from prosecution under Federal antitrust laws. The McGuire Act exempts States from application of the Federal Trade Commission Act by allowing non-signer agreements in which a single manufacturer can enter into a pricing agreement with one retailer and to enforce this agreement against all other retailers in the State, irrespective of the fact that they were not parties to the original agreement. Thirty-six States still statutorily authorize resale price maintenance. In fourteen of these States, the nonsigner provision, binding all nonsigners to observe a manufacturer's resale price to the same extent as signers, remains in full force and effect.

The President believes that the privileged status of resale price fixing under present law is contrary to our current effort to lower costs by reducing government intervention in the marketplace. The removal of this protection will be a significant step in the President's economic program to combat inflation and achieve economic stability and prosperity.

Sincerely,

Roy L. Ash
Director

Enclosure



A BILL

To repeal exemptions in the antitrust laws relating to fair trade laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Price Reduction Act of 1975."

SEC. 2. The first section of the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, as amended (15 U.S.C. 1), is amended by striking out the colon preceding the first proviso in the first sentence and all that follows before the period at the end of such sentence.

SEC. 3. Paragraphs (2)-(5) of section 5(a) of the Federal Trade Commission Act, as amended (15 U.S.C. 45(a)), are repealed.

SEC. 4. The amendments made by this Act shall become effective 90 days following the date on which this Act is enacted.



Judy Meata - 2206

Bob Linden - 2594



THE WHITE HOUSE
WASHINGTON



Spark Matsunaga

Alma Henderson

Phas stated that he
will give special \$
to area hit hardest by
the oil import tariffs
Has he done anything for
Hawaii? What is planned
for Hawaii?

THE WHITE HOUSE
WASHINGTON

January 28, 1975

MEMORANDUM FOR:

VERN LOEN *VL*

FROM:

CHARLIE LEPPERT

SUBJECT:

Introduction of "Price Reduction
Act of 1975"

*CL -
Coordinate w/
Wally Smith &
Jerry Jones
John Ralston Ford?
Tols future
progress + ref.
plse.
VL*

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Charlie

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

January 27, 1975

MEMORANDUM FOR VERNON C. LOEN

Subject: McGuire Act and the Miller-Tydings Act

Attached is a draft piece of legislation which repeals appropriate sections of the McGuire Act and the Miller-Tydings Act, as well as a marked-up copy of the desired deletions in each bill. I have also attached a letter to the Speaker which provides an explanation of these laws and why they should be repealed.

The bill will be introduced by Senator Brooke in the Senate today with a strong endorsement from the President. It would be extremely helpful if we could get similar legislation introduced in the House as quickly as possible, preferably this week.

If you think it would be useful, we will provide additional material which might be incorporated into floor remarks. For your information, I believe the Judiciary Committee will have jurisdiction. If I can be any further help, please call me on Ext. 6176.



Stanley E. Morris
Deputy Associate Director
Economics and Government

Attachments

THE WHITE HOUSE
WASHINGTON

1-23-75
ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ROY L. ASH

SUBJECT: Repeal of the Fair Trade Enabling Legislation;
i.e., Miller-Tydings Act and McGuire Act

Issue:

During discussions preparatory to the State of the Union address, the Justice Department strongly recommended that you propose repeal of the Federal legislation which permits States to establish "fair trade" laws. These laws, where they exist, permit manufacturers to establish the retail price at which their merchandise shall be sold. Senator Brooke introduced such repealing legislation toward the end of the 93rd Congress; however, no hearings were held. He has asked for Administration support for similar legislation which he intends to introduce in the 94th Congress.

Background:

Fair trade legislation was originally enacted in 1937, with the passage of the Miller-Tydings Act. This legislation, exempted from the antitrust laws (both the Sherman Act and the FTC Act) agreements between manufacturers and retailers specifying the price at which a product would be sold. Without this legislation, such agreements would be per se illegal price fixing.

Immediately following enactment of Miller-Tydings many State laws were passed which contained "nonsigner" clauses, making a pricing contract between a manufacturer and any reseller binding upon all others reselling the same product.



The Supreme Court ruled in 1951 that Miller-Tydings did not exempt such nonsigner clauses from the antitrust law. Consequently, great pressure was put on the Congress resulting in the passage of the McGuire Act in 1952 which in effect overturned the Supreme Court decision.

Such laws have a number of negative consequences. Fair trade price lists are often used by manufacturers in both fair trade and non-fair trade ("free") States. In the free States, the lists are often utilized as "suggested retail price" lists. There is some indication that these prices are frequently adhered to in free States as well as fair trade States, thus creating a spillover effect of the higher fair trade prices.

In addition, these practices encourage other clearly illegal collective restraints, frequently giving rise to agreements among competing wholesalers, competing retailers, and among manufacturers competing at different distribution levels. Fair trade prices introduce undesirable rigidities into the retail price structure since retailers are unable to respond to special market conditions, changing costs of doing business, and new levels of competition. Finally, there is some evidence that fair trade practices contribute both to the maintenance of inefficient wholesalers and retailers and to excess capacity and costs in the distributional chain.

For these and other reasons, there has been a substantial erosion of State fair trade laws in recent years. In ten States, these laws have been eliminated altogether; in others, the nonsigner clauses have been repealed or declared unconstitutional. Nevertheless, 36 States still authorize resale price maintenance. Of these, 14 still retain the nonsigner provision. (These 14 States, which include New York, California, New Jersey, Illinois and Ohio, comprise almost half of the population in the country.)

In addition, fair trade policies have been abandoned by many manufacturers. It is estimated, however, that approximately 7% of the total U. S. retail sales are still covered by fair trade, including such commodities as cameras

and photographic supplies, clocks and watches, liquor, books, sporting goods, small appliances, auto supplies, hardware, clothing and shoes. The total value of all goods sold under fair trade is estimated to be as high as \$35 billion. There is a consensus among economic observers that fair trade practices result in higher prices. In fact, the purpose of fair trade practices is to maintain a minimum retail price. Although quantifying this cost is somewhat difficult, the Council of Economic Advisors estimates the annual cost to be \$1.5 billion. Other estimates have stated that the potential savings to consumers from repeal could be as high as \$7.0 billion.

Elimination of fair trade would contribute to the fight against inflation, and would not appear likely to create serious adverse consequences, even for traditional retailers. Where States have eliminated these laws, the negative impacts have been modest and manageable. In addition, fair trade has been completely abandoned over the last two decades by Canada, Sweden, Denmark and France, and largely banned (with some exemptions) in England, Japan and the Netherlands. The experience in these countries has been favorable, with limited dislocations and price levels falling from 10-20 percent on most items. Recent surveys in this country have indicated price differentials on some commodities may be as high as 35% between fair trade and free States. While repeal of these laws will be seen to disadvantage some small retailers and some manufacturers which believe strongly in the use of fair trade practices to protect their public image, in fact the impact on individual firms will be minimal.

Efforts to repeal the Federal enabling legislation have been made in the past without success. These efforts did not, however, have the unified support of the Administration then in office, and the necessary public consensus did not exist. The public climate today is considerably different, as more and more attention is focused on high prices and their causes. Recent statements calling for repeal by persons within and outside the Administration (the Attorney General, the Assistant Attorney General, the FTC Chairman, Forbes Magazine, etc.) have met with virtually unanimous public support. Congressional support for repeal can be expected from the tradi-

tional advocates of antitrust and those interested in reducing government intervention in the free market.

Options:

- (1) Announce the Administration's support of Senator Brooke's proposed legislation. This would fit with the Administration's economic program, adding to the general thrust of regulatory reform in freeing markets from non-justified rigidities.
- (2) Do not support repeal of the fair trade enabling legislation.

Decision:

Option (1) _____ Supported by: Justice,
Treasury, Commerce
HEW (Office of Consumer
Affairs), CEA, OMB,
COWPS, SBA

Option (2) _____

See Me _____

IN THE HOUSE OF REPRESENTATIVES

Mr. _____ introduced the following bill; which was referred to
the Committee on _____

A BILL

To amend the Sherman Antitrust Act and the Federal Trade Commission Act to increase competition and promote lower prices by prohibiting resale price maintenance. (Insert title of bill here)

1 *Be it enacted by the Senate and House of Representatives of the*
2 *United States of America in Congress assembled,* That this Act may
be cited as the "Price Reduction Act of 1975."

Sec. 2. Section 1 of the Act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (26 Stat. 209; 15 U.S.C. 1), as amended, is amended by changing the colon after "illegal" in the first sentence to a period, and by striking the two provisos which follow.

Sec. 3. Section 5 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914 (38 Stat. 719; 15 U.S.C. 45), as amended, is amended

(1) by striking paragraphs (2), (3), (4),

and (5) of subsection (a); and

(2) by redesignating paragraph (6) of subsection (a) as paragraph (2).





Office of the Attorney General

Washington, D. C. 20530

The Speaker
House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

There is enclosed for your consideration and appropriate reference a legislative proposal entitled the "Price Reduction Act of 1975."

The draft bill would change section 1 of the Sherman Act, as amended (15 U.S.C. 1), by repeal of the Miller-Tydings Act amending the Sherman Act (50 Stat. 693) and would change section 5(a) of the Federal Trade Commission Act, as amended (15 U.S.C. 45(a)), by repeal of the McGuire Act amending the Federal Trade Commission Act (66 Stat. 631).

The Miller-Tydings Act provides that, if state law permits resale price fixing, no antitrust liability will attach to a contract which restrains interstate commerce by prescribing minimum resale prices for a product bearing, or the label or container of which bears, the trademark, brand, or name of the producer or distributor and which is in free and open competition with commodities of the same general class produced or distributed by others. Under the Federal Trade Commission Act, as amended by the McGuire Act, agreements fixing minimum or stipulated resale prices and the requiring of vendees to enter such agreements are not unlawful as unfair methods of competition or a restraint of interstate commerce under the Act or any of the antitrust laws, where state law allows such agreements, nor is it unlawful to enforce any right against one offering a commodity covered by a resale price maintenance agreement at less than the prescribed resale price, whether or not the one so offering the commodity is a party to the agreement. Thirty-six states still statutorily authorize resale price maintenance. In fourteen of these states, a nonsigner provision, binding nonsigners to observe the manufacturer's resale prices to the same extent as signers, remains in full force and effect.



The Department of Justice believes that the privileged status of resale price fixing under present law is an unjustified exception to the policy of the antitrust laws, which call for the determination of price by the unfettered interplay of supply and demand in the market-place. Ending this privileged status, by enacting our legislative proposal, will significantly aid the effort against inflationary and artificially high prices.

The Office of Management and Budget has advised that submission of this legislation is in accord with the program of the President.

Sincerely,

Attorney General



The bill accompanying this memorandum would have the following effect upon 15 U.S.C. 1 and 15 U.S.C. 45(a). Material to be added is underscored; material to be deleted is placed in brackets:

15 U.S.C. 1

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. [~~Provided, That nothing contained in sections 1-7 of this title shall render illegal; contracts or agreements prescribing minimum prices for the resale of a commodity which bears; or the label or container of which bears; the trademark; brand; or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others; when contracts or agreements of that description are lawful as applied to intra-state transactions; under any statute; law; or public policy now or hereafter in effect in any State; Territory; or the District of Columbia in which such resale is to be made; or to which the commodity is to be transported for such resale; and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title;--~~ Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum



resale-prices-on-any-commodity-herein-involved;-between
manufacturers;-or-between-producers;-or-between-wholesale-
ers;-or-between-brokers;-or-between-factors;-or-between
retailers;-or-between-persons;-firms;-or-corporations-in
competition-with-each-other.] Every person who shall make
any contract or engage in any combination or conspiracy
declared by sections 1-7 of this title to be illegal shall
be deemed guilty of a misdemeanor, and, on conviction thereof,
shall be punished by fine not exceeding fifty thousand dollars,
or by imprisonment not exceeding one year, or by both said
punishments, in the discretion of the court.

15 U.S.C. 45

(a) (1) Unfair methods of competition in commerce,
and unfair or deceptive acts or practices in commerce, are
declared unlawful.

[(2)-Nothing-contained-in-this-section-or-in-any-of-the
Antitrust-Acts-shall-render-unlawful-any-contracts-or-agree-
ments-prescribing-minimum-or-stipulated-prices;-or-requiring
a-vendee-to-enter-into-contracts-or-agreements-prescribing
minimum-or-stipulated-prices;-for-the-resale-of-a-commodity
which-bears;-or-the-label-or-container-of-which-bears;-the
trade-mark;-brand;-or-name-of-the-producer-or-distributor
of-such-commodity-and-which-is-in-free-and-open-competition
with-commodities-of-the-same-general-class-produced-or



distributed-by-others;-when-contracts-or-agreements-of that-description-are-lawful-as-applied-to-intrastate transactions-under-any-statute;-law;-or-public-policy-now or-hereafter-in-effect-in-any-State;-Territory;-or-the District-of-Columbia-in-which-such-resale-is-to-be-made; or-to-which-the-commodity-is-to-be-transported-for-such resale.

(3)-Nothing-contained-in-this-section-or-in-any-of-the Antitrust-Acts-shall-render-unlawful-the-exercise-or-the enforcement-of-any-right-or-right-of-action-created-by-any statute;-law;-or-public-policy-now-or-hereafter-in-effect in-any-State;-Territory;-or-the-District-of-Columbia;-which in-substance-provides-that-willfully-and-knowingly-advertising;-offering-for-sale;-or-selling-any-commodity-at-less-than the-price-or-prices-prescribed-in-such-contracts-or-agreements whether-the-person-so-advertising;-offering-for-sale;-or selling-is-or-is-not-a-party-to-such-a-contract-or-agreement; is-unfair-competition-and-is-actionable-at-the-suit-of-any person-damaged-thereby.

(4)-Neither-the-making-of-contracts-or-agreements-as described-in-paragraph-(2)-of-this-subsection;-nor-the exercise-or-enforcement-of-any-right-or-right-of-action-as described-in-paragraph-(3)-of-this-subsection-shall-constitute-an-unlawful-burden-or-restraint-upon;-or-interference with;-commerce.



~~{5}--Nothing-contained-in-paragraph-{2}-of-this-sub-section-shall-make-lawful-contracts-or-agreements-provid-ing-for-the-establishment-or-maintenance-of-minimum-or stipulated-resale-prices-on-any-commodity-referred-to-in paragraph-{2}-of-this-subsection;-between-manufacturers; or-between-producers;-or-between-wholesalers;-or-between brokers;-or-between-factors;-or-between-retailers;-or between-persons;-firms;-or-corporations-in-competition with-each-other.]~~

(2) [~~{6}~~] The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 227(a) of Title 7, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

