



Department of Justice

REMARKS OF

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TO

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I am pleased to be here today to talk with you about two **aspects** of business prospects, particularly small business prospects.

The available data indicate that small business is healthier today than it has been in the past. Small businesses have grown in size, increased in number, have become more profitable, and continue to provide a large number of jobs. I don't want to numb you with statistics but let me cite just two: A Small Business Administration study of 45 of the nation's 440 manufacturing industries shows that in a high percentage of these manufacturing industries the small firms are operating at levels of profit comparable with large firms. Federal Trade Commission figures reveal that after-tax returns on equity were higher than the average in all but one of the quarters of 1978 and 1979 for manufacturing corporations with assets under \$5 million, and in all but two of the quarters for manufacturing firms with assets of between \$5 and \$10 million.

It cannot be denied that big businesses usually dominate those markets where large scale is essential for production, where massive funds are needed for continued applied research, or where massive capital investment is required for entry. But if we put to one side those kinds of markets or industries, we find that small business plays a very important role in manufacturing. Thus there are many markets where small-scale production can be efficient. For that reason small businesses are prominent, for example, in the fabrication and manufacture of highly specialized products, and are able to more than match big business.

Let me now turn to some of the activities of the federal government which cause business continuing concern. Two of the most important are taxes and regulations. I believe we will see increasing recognition by both Congress and the Executive of the importance of tailoring our federal tax laws so as to avoid unfairly penalizing businesses. For example the Administration supported and obtained enactment of a permanent increase in the investment credit from 7 to 10 percent. It had been scheduled to decline to 7 percent this year.

In response to an Administration proposal, the Congress expanded certain provisions which encourage investments in small corporations by allowing ordinary deductions (rather than less favorable capital loss treatment) for losses sustained by an original purchaser of corporate stock. For example, each small business is now allowed to issue \$1 million of such stock, as opposed to \$500,000 under prior law. Thus, investors are encouraged to invest up to a million dollars in a business knowing that if the investment fails the total loss may be taken as an ordinary deduction.

Concern over estate taxes has contributed importantly to the demise of many small businessmen and hardship on major holders of stock who desired to have their estate in liquid securities.

The Administration is working today with the ABA, New York state bar and the city bar of New York to structure a reform bill to simplify the taxation of deferred or installment sales of property. In particular, the bill would eliminate the often

troublesome requirement that prevents this favorable tax treatment of payments in the year of sale that exceed 30 percent of the selling price.

Recent changes in the estate tax law have helped lessen the estate tax burden. Thus, most taxpayers now pay no estate tax on estates valued at less than a quarter of a million dollars. More importantly, Congress recently reinstated the old rule under which, for capital gains tax purposes, the cost basis for inherited property is the value at the time of death, rather than cost.

Government regulation is another major concern of business. Here, again, I think there is reason for optimism. The Administration and the Congress are working together to eliminate or reduce regulation in a number of the most heavily regulated industries in our economy. These efforts have already resulted in significant deregulation of the airline industry, both passenger and cargo, and should soon lead to regulatory reform in important areas of the motor carrier and rail transportation industries. While it is commonly perceived that the primary beneficiaries of deregulation are big companies, small business has at least as much to gain. Indeed, small businesses often find themselves disproportionately burdened by industry-wide regulations. Last November, President Carter directed the heads of Executive departments and agencies to use flexible approaches to regulating small businesses. He directed us to tailor regulatory and reporting requirements to fit the size and nature of the businesses subject to them.

For the most part, health and safety regulations are intended to promote goals on which there is an overwhelming consensus in our society. Yet even regulations designed for uncontroversial purposes can often have very controversial and unintended results.

Because our society believes so firmly in equal treatment under the law for both great and small, there is a natural, and perfectly understandable, inclination to achieve uniformity in the regulatory process. But that instinct overlooks other factors. Suppose we are talking about air pollution. It may well be, for example, that in a given industry, 80 percent or more of the pollutants are discharged by only 10 percent of the corporations. Subjecting all companies in that industry to the same regulatory requirements means that obligations for very costly capital investment in new equipment and for high maintenance costs will devolve upon businesses which can ill afford those outlays at a time when they are struggling to become competitive. Thus, perfectly sound regulations applied indiscriminately would result in economic effects which are not only unjust, but are also inimical to the value which we all place on free and broadly based competition.

We ought to aim at a just outcome for society at large, rather than at a deceptive formal justice in the application of regulations. The Administration is now moving in that direction by a process known as "tiering," which fits regulations to the size and nature of regulated businesses. For example, the Environmental Protection Agency has used tiering to require less stringent pollution control levels. In addition, it has granted outright exemptions to sectors of industries whose economic position is precarious, but which contribute little to the

pollution problem. It is my firm belief that the balancing of society's regulatory goals in this way is a healthy and more just way of proceeding.

Thus far I have been speaking of health and safety regulations, as distinguished from economic regulation. By economic regulations, I refer to statutes and regulations adopted thereunder which both limit entry and regulate competition among those businesses licensed to compete in a given market or industry. The deregulatory mood of the Congress and the Administration aims at substituting competition for government regulation as the market determinant. Increased reliance on competition will enhance prospects for business in several ways. First, deregulation provides new opportunities. There is a tendency in certain regulatory schemes to favor companies already in the industry being regulated at the expense of new entrants. This almost always works to the disadvantage of small businesses that are potential entrants into these industries. A prime example of regulatory reform that eased the burden of small businesses seeking entry into a regulated industry is the 1977 legislation that substantially deregulated the air cargo field. On the passenger side, in the Airline Deregulation Act of 1978, Congress directed the Civil Aeronautics Board to consider strengthening "small air carriers so as to assure a more effective, competitive airline industry." The Motor Carrier Reform Act of 1980, which recently passed the Senate, would reverse the burden of proof in motor carrier entry applications so that opponents of new entry would have to

demonstrate that the **proposed** services were inconsistent with the public convenience and necessity. These and similar reforms will give many more businesses a fairer chance to gain entry into regulated industries.

Second, deregulation promotes flexibility and efficiency. In the trucking industry, for example, a combination of regulations prevents truckers from backhauling in certain circumstances, forcing trucks to return empty after making deliveries although cargo is available and the truckers are willing to haul it. This type of restriction is particularly burdensome to small businesses that must perform at maximum efficiency to prosper. The pending Motor Carrier Reform Act of 1980 would eliminate or change a number of current regulations to make it easier for truckers to backhaul cargo. Moreover, small businesses that depend on motor carriers to deliver their supplies, or carry their products to market, should benefit directly from the flexibility being afforded truckers to serve new routes. If the shipments are there, trucks will be ready and willing to carry them. Shippers also will not have to worry about rates being inflated by anticompetitive agreements.

Let me turn now to the necessary concomitant of deregulation -- reliance on competition and solid, evenhanded antitrust enforcement. A necessary result of an enhanced competitive environment is increased pressure on inefficient businesses and a certain amount of disturbance of the status quo. While most businesses truly favor deregulation and are willing to accept increased uncertainty in exchange for the greater opportunities for success available

in a competitive economy, some may prefer the easy life and protection against competitive inroads. However, those who want to take full advantage of the competitive freedom that deregulation provides -- for example, by lowering prices to attract customers as we are seeing in passenger airlines, or by marketing new products and services -- are fully protected by the antitrust laws. Attempts by others to squelch innovative business behavior through, say, boycotts of the offending company or its customers, would be illegal per se. I am firmly convinced that a competitive economy favors the growth and prosperity of all business, and that the antitrust laws are a key factor in the prospects for small business success.

That the antitrust laws are in many ways the antitheses of regulation is a point often missed by people unfamiliar with them. The resourceful, the innovative, the efficient businesses, large and small, are free to do as they will so long as they stay within the broad boundaries established by the antitrust laws. Within these boundaries, their judgment, and the judgment of the marketplace, are not reviewed by a regulatory agency.

In my opinion, a competitive system, protected by antitrust enforcement, is particularly vital to small business. Because of their lower overhead and smaller staffs, smaller firms are often better able to adjust to new concepts and to introduce new products and operational practices. They need room to innovate and expand. They need to be able to enter markets easily and to be free to shift resources into new areas in response to

changing market conditions. Vigorous antitrust enforcement creates **this** type of environment. Take, for example, the recent litigation **against** manufacturers of folding cartons, corrugated containers, and consumer bags. These are purchased by businesses of all sizes to package their products. The Department's efforts have resulted **in** criminal convictions and injunctive relief. Victims of these **conspiracies**, including numerous small businesses who were defrauded by these price fixing schemes, have recovered hundreds of millions of dollars in damages in private cases following the Department's prosecutions.

I conclude with this observation: As the chief law enforcement officer of the United States, I am dedicated to the rule of law. There is a dangerous tendency abroad in the land to try to solve our problems with mindless quick fixes that weaken the rule of law. Moreover, we have a tendency as a people to dump too many of our problems into the courts, thus creating an unmanageable maelstrom of federal court litigation. Some people believe that the devils in this picture are the regulators at the Washington agencies. Congress appears to believe that the devils can be exorcised by so-called legislative vetoes of agency regulations. With all respect to the Congress, I believe that this so-called solution won't work and that it is unconstitutional, and I have so advised President Carter.

We are of course bound to continue to rely to some degree on government regulation of business, including small business. But wherever possible I believe we should place our chief reliance on market forces to regulate competition, not government agencies. I am convinced that business has the most to gain from free

competition because of its great flexibility and the energy and imagination of businessmen as compared to bureaucrats.