Commerce Clause – Implied Obligation

In the Home Page of this Web Site, the Writer asserts that we have an obligation to "build the better and cheaper mousetrap in a fair manner". This admonition is not imagined but is found in several federal court decisions which deal with our family of trade and commerce laws. Consider the following four:

1. *Gough v. Rossman Corp.*, 487 F.2d 373 (9th Cir. 1973)
   Congress, in enacting the Sherman Act, intended to extend substantive prohibitions of such Act to farthest reaches of its power under the Commerce Clause, thereby mandating the nation's competitive business economy to the full extent that Congress could do so under its constitutional power to regulate interstate and foreign commerce.

2. *U.S. v. National Lead Co.* 332 U.S. 319 (1947)
   Economic theory underlying Sherman Act is that in long run competition is more effective to production and more trustworthy regulator of prices that even an enlightened combination.

3. *Northwestern Oil Co. v. Scocony-Vacuum Oil Co.*, 321 U.S. 792 (1944)
   Sherman Act was intended to advance public welfare by promoting free competition and preventing undue restriction of trade and commerce.

4. *Northern P.R. Co. v. U.S.* 78 S. Ct. S 14 (1958)
   Sherman Act was designed to be comprehensive charter of economic liberty aimed at preserving free and unfettered competition as rule of trade; it rests on premise that unrestrained interaction of competitive forces will yield best allocation of our economic resources, lowest prices, highest quality, and greatest material progress, while at the same time providing environment conducive to the preservation of our democratic political and social institutions.

It is quite true that the majority of our Commerce Laws are written in the "thou shall not" mode; (do not create monopolies, do not restrain trade, do not conspire, do not practice unfair trade practices, etc.). However some jurists do put a positive tone to the law do practice fair trade, do compete, etc.).