INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

HEARINGS

BEFORE THE

TEMPORARY NATIONAL ECONOMIC COMMITTEE CONGRESS OF THE UNITED STATES

SEVENTY-SIXTH CONGRESS

FIRST SESSION

PURSUANT TO

Public Resolution No. 113

(Seventy-fifth Congress)

AUTHORIZING AND DIRECTING A SELECT COMMITTEE TO MAKE A FULL AND COMPLETE STUDY AND INVESTIGATION WITH RESPECT TO THE CONCENTRATION OF ECONOMIC POWER IN, AND FINANCIAL CONTROL OVER, PRODUCTION AND DISTRIBUTION OF GOODS AND SERVICES

PART 5-A

FEDERAL TRADE COMMISSION REPORT ON MONOPOLISTIC PRACTICES IN INDUSTRIES

MARCH 2, 1939

Printed for the use of the Temporary National Economic Committee

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INVESTIGATION OF CONCENTRATION OF ECONOMIC POWER

THURSDAY, MARCH 2, 1939

UNITED STATES SENATE,
TEMPORARY NATIONAL ECONOMIC COMMITTEE,
Washington, D. C.

EXHIBIT NO. 308 [1]

FEDERAL TRADE COMMISSION,
Washington.

REPORT OF FEDERAL TRADE COMMISSION TO THE TEMPORARY NATIONAL ECONOMIC COMMITTEE RE MONOPOLISTIC PRACTICES IN INDUSTRIES

PART I

Résumé of data concerning formal action taken by the Federal Trade Commission in cases involving unlawful monopolistic practices and restraints of trade (except cases arising under secs. 7 and 8 of the Clayton Act, and the Robinson-Patman Act) covering the period July 1, 1930, to date.

INTRODUCTORY

During the month of July 1938 there was submitted to the Temporary National Economic Committee for its consideration a compiled list of data relating to matters upon which the Commission had taken formal action in the view that such matters involved unlawful monopolistic practices and restraints of trade in interstate commerce, which data were available in the records of the Commission.

It is the purpose in this part I, to present to the Committee a brief résumé of the cases therein referred to, consisting of a brief statement of fact pertaining to each case, the commodity involved, the nature and extent of the monopolistic practices used and the effect thereof as found by the Commission upon the evidentiary facts in the record. A descriptive generalization of these acts and practices is that they are all calculated and tend to interfere with the natural play of normal competitive forces, with a resultant increased concentration of private economic power in the hands of private and limited groups, and in the imposition of unnatural limitations and restrictions on trade with consequent injury to the public.

Documentary evidence submitted with this report is identified herein by exhibit numbers such as "F. T. C. Ex. No. 1." The cases are arranged chronologically and indexed as to companies and commodities. The Federal Trade Commission Act is indicated by the letters FTCA, the Clayton Act, by the letters CA, and the numeral following such abbreviation indicates the section of the act referred to. Where the findings and orders of the Commission have been published in volume form, the reference is made to the Federal Trade Commission Reports as "14 F. T. C. 261."

November 17, 1930 (CA-3) (FTCA-5)	FOOD—CANNED SYRUPS AND MOLASSES PENICK & FORD, LTD., AND PENICK & FORD SALES COMPANY, INC., RESPONDENTS. DOCKET NO. 1580

STATEMENT OF FACTS

Penick & Ford, Ltd., a Delaware corporation, controlled the stock of Penick & Ford Sales Company, Inc., and certain of the officers and directors of the two corporations were the same. The former engaged in the business of packing various

[1] Entered in the record March 2, 1939. See Hearings, Part V, p. 1769.

canned syrups, in plants located in Alabama, Louisiana, Iowa, and Vermont, and selling its entire output to the Sales Company for resale to wholesale and retail grocers. Between 1924 and 1927 the Sales Company was the largest vendor of canned cane syrups in Mississippi, Louisiana, Arkansas, and Texas, and the only vendor in the Southern States selling a complete line of canned cane, corn, and blended syrups and molasses.

MONOPOLISTIC PRACTICES

The Sales Company pursued the policy and practice of entering into agreements with its wholesale grocer customers whereby such customers would deal in its canned syrups and molasses to the exclusion of the merchandise of its competitors, in return for sales assistance and cooperation to be furnished by the Sales Company. This sales assistance was refused or discontinued in the event that the wholesale grocer customer sold any competitive products. In furtherance of this sales policy, which was a violation of section 3 of the Clayton Act, and of section 5 of the Federal Trade Commission Act, the respondent Sales Company, in one instance, purchased from a wholesale grocer 2,500 cases of a competitive syrup which it repacked under its own labels and resold at less than its cost to respondent.

EFFECT

By the aforesaid practice, the public was deprived of a substantial proportion of the competition previously existing between the Sales Company and its competitors in numerous Southern markets by virtue of the closing of outlets for this class of merchandise to competitors. This had a direct tendency toward monopoly in canned syrups and molasses and the Commission ordered cessation of such practice.

A copy of the Commission's findings as to the facts and conclusion, and its order to cease and desist, is herewith submitted, marked "F. T. C. Ex. No. 1." The order was directed against the Sales Company only, because the parent company was not engaged in interstate commerce and was not the Sales Company's principal (14 F. T. C. 261).

March 24, 1931 CLOTHING—MERCERIZED COTTON YARN
(FTCA-5) MERCERIZERS ASSOCIATION OF AMERICA, ET AL. DOCKET NO. 1755

STATEMENT OF FACTS

The Association was a voluntary, unincorporated association of nine competing companies, located in Massachusetts, Pennsylvania, North Carolina, and Tennessee and engaged in the manufacture, processing and mercerizing of plied cotton yarns and in the sale and distribution of the same to manufacturers of hosiery, underwear, and other garments. They had an aggregate capacity of 1,200,000 pounds of yarn per year, and occupied a dominant position in this industry.

MONOPOLISTIC PRACTICES

By understandings, agreements, and combinations, through the Association, respondents fixed and maintained uniform prices, terms, and discounts, and uniform extra charges and thereby suppressed competition in the sale of the mercerized yarns at wholesale to garment manufacturers located throughout the United States.

EFFECT

Between August 1, 1926, and August 1, 1929, prices on said product advanced without respect to the raw cotton yarn market or the cost of the raw yarns to the respondents, competition in the sale of the product was substantially lessened, restricted, and suppressed, and the Commission ordered the respondents to cease and desist.

A copy of the Commission's findings as to the facts and conclusion, together with its order to cease and desist, is submitted, marked "F. T. C. Ex. No. 2" (15 F. T. C. 1).

September 21, 1931 (FTCA–5) DRAFT GEARS

WAUGH EQUIPMENT COMPANY, AND THREE INDIVIDUAL RESPONDENTS. DOCKET NO. 1779

STATEMENT OF FACTS

Waugh Equipment Company, a Maine corporation, manufactured draft gears, which are devices for use on railway cars. Selling its products to railroads in competition with some eight principal competitors it sold less than 1 percent of the total draft gears sold for new freight equipment.

The individual respondents were executive officials of Armour and Company, who, together with other officials and employees thereof, owned or controlled a majority of the common stock of the Waugh Equipment Company. In 1924 the promoters of the respondent corporation gave 1,666 shares of that company's stock to these individual respondents as consideration for them to use their influence with railroad officials in advancing the sale of the corporate respondent's draft gear and, pursuant to such agreement, respondents succeeded in making substantial sales to some fifteen railroads during the period from 1924 to 1929.

Armour and Company, one of the largest meat packing concerns in the world, in connection with its shipping of meat products from its various plants to more than 500 distributing depots in the principal towns and cities of the United States, then utilized for that purpose more than 7,000 refrigerator and other cars owned by it or its subsidiaries, and in the regular course of its business, negotiated with the various railroad companies with respect to the transportation of approximately 275,000 carloads annually. Much of said traffic was competitive and eagerly and insistently sought for by the railroad companies.

MONOPOLISTIC PRACTICES

Actively exercising their influence as executive officials of the Armour and Company, the individual respondents, in cooperation with the corporate respondent, by promises of freight traffic to be shipped by Armour and Company, and by threats of withdrawal of traffic, coercively and oppressively used the large volume of the Armour traffic to secure the sale of the respondent company's draft gears to the various railroads in preference to draft gears sold by companies who did not have any appreciable traffic to offer as an inducement.

EFFECT

Despite the fact that respondent corporation, between August 1924 and August 1929, was manufacturing and selling practically an unknown gear in competition with well-established competitors, the proportion of its sales to the total sales of this industry rose from 1 percent in 1924 to 25 percent in 1929, and 35 percent in 1930.

The factors ordinarily conducive to sales, namely, quality, price, and salesmanship, were replaced and overcome by the coercive and oppressive factors used by these respondents in cooperation with one another and were to the injury of the public and respondent's competitors; unduly tended to suppress competition between respondent corporation and competing manufacturers of draft gears and to create a monopoly in respondent corporation in the sale and distribution of draft gears and other railroad equipment. Customers were thereby prevented from exercising free will and judgment as to which competitive device was the most efficient in serving their needs at the lowest net cost over a period of time. There was thus injected into this competitive filed an unfair, abnormal, and uneconomic element, tending to give to the concern controlling the largest volume of freight traffic an unfair advantage which would more than offset the higher efficiency in the production and sales methods of competing concerns controlling no such traffic. The Commission ordered the respondents to cease and desist from such practices, and a copy of the Commission's findings as to the facts and conclusion, together with such order, is herewith submitted, marked "F. T. C. Ex. No. 3" (15 F. T. C. 232).

March 4, 1932
FTCA-5)

DRAFT GEARS AND OTHER RAILWAY EQUIPMENT
MECHANICAL MANUFACTURING COMPANY, AND TWO INDIVIDUAL RESPONDENTS. DOCKET NO. 1727

STATEMENT OF FACTS

Mechanical Manufacturing Company, an Illinois corporation, manufactured meat packing house machinery and equipment and, from 1912 to 1932, made, sold, and delivered pumping posts, draft gears, and coupler-centering devices to the principal railways in the United States.

The individual respondents were stockholders in Mechanical Manufacturing Company and also executives of the Transportation Department of Swift & Co., meat packers. Swift & Co. had headquarters in Chicago, Ill., and plants in Illinois and various other states. It shipped its meat and other products in approximately 7,500 refrigerator cars to more than 500 principal cities and towns of the United States.

The principal stockholders of Swift & Co. owned and controlled the stock of Mechanical Manufacturing Company. The directors of Swift & Co., together with three of its employees, constituted the Mechanical Manufacturing Company's board of directors.

MONOPOLISTIC PRACTICES

The respondents cooperated in using their official positions in Swift & Co. to induce and compel the officials of various railway companies to give undue preference to the draft gears and other railway equipment manufactured and sold by Mechanical Manufacturing Company, by threatening to withhold, and promises to increase, Swift & Co.'s traffic routings.

EFFECT

The respondent corporation, cooperating with the individual respondents, had created and taken advantage of a competitive weapon, oppressive and coercive in nature, which prevented the customers to whom the respondent corporation and its competitors were trying to sell their products from exercising their free will and judgment in determining which competitive device was the most efficient and had thus injected an abnormal and unfair element in this competitive field, tending to give the concern controlling the largest volume of freight traffic an unfair advantage, and to operate as an unlawful restraint of trade in the draft-gear industry, and the Commission ordered the respondents to cease and desist from such practices.

A copy of the Commission's findings as to the facts and conclusion, together with the order, is herewith submitted and marked "F. T. C. Ex. No. 4" (16 F. T. C. 67).

September 29, 1932
(FTCA-5)

MACHINE TOOLS—HEAVY MACHINERY
MACHINE TOOL DISTRIBUTORS, CHICAGO DISTRICT, AND MEMBERS. DOCKET NO. 1882

STATEMENT OF FACTS

This respondent was a voluntary, unincorporated association, composed of 22 members engaged in the business of manufacturing and selling heavy machinery known as "machine tools," such as presses, lathes, planers, boring machines, etc., in a territory comprising all of Iowa and large parts of the States of Illinois, Indiana, Wisconsin, Michigan, and Nebraska. These members transacted approximately 85 percent of the total volume of sales of new tool machinery made in that territory. Many of the members accepted used machinery as part payment on the purchase price and, prior to the adoption of the monopolistic practices hereinafter described, the members competed with one another in bidding for such used machinery.

MONOPOLISTIC PRACTICES

In 1928 the association, with the purpose and effect of eliminating competitive bidding and limiting the amounts offered by them for the used machinery taken in as "trade-ins," maintained and enforced a method of cooperation controlling such allowances, known as "the Chicago appraisal plan." In substance, this plan obligated the members to register their bids for used machinery with the association's central office and advise themselves of prior competitive offers before making their own firm cash offers. The plan also provided that the member making the initital or highest appraisal might be called upon to accept the used machinery at that price, irrespective of whether or not he secured the order.

EFFECT

This plan resulted in a tendency on the part of members to refrain from increasing appraisal prices on the old machines offered as "trade-ins" and to deprive their customers, principally machine shops and manufacturing establishments, of the benefits of bidding on their old machines and compelling them to accept a smaller allowance for their used machinery. This resulted in the customers paying higher prices for such new machinery. The members of the association were the only dealers in new machine tools in the above territory who did accept used machinery as part payment for new machines. Such practice tended to suppress competition and restrain trade in interstate commerce in violation of the Federal Trade Commission Act, and the Commission ordered the cessation of such practices.

A copy of the Commission's findings as to the facts and conclusion, and order to cease and desist is submitted herewith as "F. T. C. Ex. No. 5" (17 F. T. C. 48).

January 23, 1935 (FTCA–5)
SEA FOOD
WASHINGTON SEA FOOD DEALERS ASSOCIATION ET AL. DOCKET NO. 2189

STATEMENT OF FACTS

The respondent was an unincorporated association of some twenty brokers, commission merchants, wholesale and retail dealers engaged in the District of Columbia in the business of selling fish, oysters, clams, shrimp, and other sea-food products, who, for their mutual interest, associated together for the purpose of accomplishing the monopolistic practices hereinafter described.

MONOPOLISTIC PRACTICES

For the purpose and with the effect of eliminating price competition among themselves, and between themselves and others of their competitors, they entered into and maintained agreements, combinations, and conspiracies to fix and maintain prices in sea food. As a means of accomplishing that end, they agreed to furnish and did furnish schedules of minimum prices to each member and agreed with each other not to sell at any lower price.

EFFECT

Together, these respondents constituted a large and influential factor both in the business of selling and in the business of purchasing sea foods for resale in the District of Columbia and, in that way, lessened, hindered, and prevented price competition between themselves and their other competitors, in violation of section 5 of the Federal Trade Commission Act. The Commission thereupon issued its order to cease and desist.

A copy of the findings as to the facts and conclusion, and order is herewith submitted and marked "F. T. C. Ex. No. 6" (20 F. T. C. 106).

June 20, 1935 (FTCA–5)
MAGAZINES
BUTTERICK PUBLISHING COMPANY, ET AL. DOCKET NO. 2171

STATEMENT OF FACTS

The Butterick Publishing Company, McFadden Publications, Frank A. Munsey Co., Street & Smith Publications, Inc., and the Pictorial Review Company published and sold periodicals throughout the United States and the District of Columbia.

Respondents International Circulation Company, Inc., S-M News Company, and Midwest Distributors, Inc., sold and distributed periodicals throughout the United States and in the District of Columbia in competition with each other; and with publishing sellers of periodicals; and with distributors and sellers of back-number magazines. The magazine publishers sold principally to distributors or wholesalers. It was the custom in this industry for the covers of unsold magazines to be returned to the publishers for credit to the wholesaler or retailer in the amount paid therefor. The remaining body of the magazine was sold as waste paper.

Also, throughout the United States there were persons and companies engaged in the business of collecting back numbers of story magazines from waste paper and junk dealers and the Salvation Army and selling them to news stands, drug stores, and other retailers who handled current magazines, for resale as "back numbers" at from one-third to one-fourth of the original sale price of the same magazine while current. Two distributors dealing only in back-number magazines (as distinguished from coverless magazines or returns) in 1932 had an aggregate of 800 retail dealers, 90 percent of whom were also dealers in current magazines.

MONOPOLISTIC PRACTICES

Respondents got together and formed a special committee on magazine distribution, which wrote the wholesalers handling their magazines, demanding that they inform their retail-dealer customers that the handling of back-number magazines would no longer be permitted, upon penalty of being cut off from further supplies of current issues. The wholesalers complied, and about half of their retail-dealer customers discontinued handling back-number magazines. Also, by letters and other pressure, the special committee sought to interfere with the sources of supply of the distributors of back-number magazines.

EFFECT

Competition between respondents and the distributors of back-number magazines was substantially lessened and the public was deprived of the benefits normally flowing from such competition, in violation of section 5 of the Federal Trade Commission Act. The Commission ordered respondents to cease and desist from such practice.

A copy of the findings of fact, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 7" (20 F. T. C. 429).

Respondents filed a petition for review in the United States Circuit Court of Appeals for the Second Circuit, which court, on July 13, 1936 (85 Fed. 2d. 522), affirmed the order of the Commission. In so holding, the court, speaking through Judge Chase expressed, among other, the following conclusions:

"Though any one publisher acting alone may sell or not sell his magazines as he may choose, *Federal Trade Commission* v. *Raymond Bros.—Clark Co.* (263 U. S. 565), two or more may not combine in such refusal if the result is to harm the public or any person against whom the concerted action is taken. *Binderup* v. *Pathe Exchange* (263 U. S. 291).

"While the Federal Trade Commission is not an agency for the enforcement of the Sherman Anti-Trust Act, that act does require consideration in deciding what, in view of the public policy so declared, are unfair methods of competition which the Commission is authorized to suppress (*Federal Trade Commission* v. *Beech-Nut Packing Co.* (257 U. S. 441)). And an unfair method of competition which is against public policy may be stopped by the Commission for that alone (*Federal Trade Commission* v. *Klesner* (280 U. S. 19))."

December 13, 1935 (FTCA–5) — LINEN COATS, TOWELS, AND APRONS
LINEN SUPPLY ASSOCIATION OF THE DISTRICT OF COLUMBIA, ET AL. DOCKET NO. 2256

STATEMENT OF FACTS

This voluntary unincorporated Association consisted of fourteen individuals and companies engaged in furnishing to businesses in the District of Columbia and nearby Virginia and Maryland linen coats, towels, aprons, frocks, trousers, table and other linens. The Association represented 87½ percent of all the linen supply firms engaged in this industry in the District of Columbia.

MONOPOLISTIC PRACTICES

The members combined and cooperated through the Association with the purpose and effect of adopting certain rules and regulations, assessing penalties for their violation, fixing uniform prices, exchanging information of contemplated changes in prices, discounts, terms and conditions of sale, allocating customers among the members, obligating themselves not to compete for the business of each other's customers and imposing fines on those members who cut prices.

EFFECT

Competition in this industry was suppressed, hindered, and obstructed and the free flow of said products in the channels of commerce was unlawfully restrained. The Commission ordered respondents to cease and desist therefrom.

Copy of said findings as to the facts and conclusion, and order is submitted herewith, marked "F. T. C. Ex. No. 8" (21 F. T. C. 666).

March 5, 1936. (CA-2) RUBBER TIRES
GOODYEAR TIRE AND RUBBER COMPANY. DOCKET NO. 2116

STATEMENT OF FACTS

Respondent, an Ohio corporation, with principal place of business at Akron, Ohio, was the largest manufacturer and distributor of pneumatic rubber tires in the United States, distributing most of its product which was sold for resale through approximately 25,000 retail dealers. Through subsidiary corporations it operated tire-manufacturing plants at Los Angeles, Calif., and in Gadsden, Ala., Cuyahoga Falls, Ohio, and other plants in Canada, Australia, Argentina, and England. Auxiliary to its business and also through subsidiary corporations, it owned and operated cotton plantations in Arizona; rubber plantations in Sumatra and East Indies; textile mills in Decatur, Ala.; New Bedford, Mass.; in Canada; Georgia; and California. In 1926 respondent's crude rubber requirements represented nearly one-seventh of the world's total production and exceeded by nearly 50 percent that of any other manufacturer.

Sears, Roebuck and Co. was a New York corporation with its principal office in Chicago, Ill., engaged in the distribution, among other general merchandise of pneumatic rubber tires and tubes by mail order and through chain stores to the consuming public, and was reputed to be the largest mail-order house and chain-store operator in the United States.

In March 1926 respondent and Sears, Roebuck and Co. entered into a contract whereby respondent agreed to manufacture and to sell and Sears to purchase on a basis of cost plus 6 to 6½ percent Sears' requirements of rubber tires. This contract, with minor modifications, was renewed May 17, 1928, and again October 5, 1931, and under the terms of the last renewal was to remain in force until December 31, 1942.

When the last contract was made, a secret agreement was entered into between the two by which respondent assigned to Sears' 18,000 shares of Goodyear common capital stock and $800,000 in cash to be used in the purchase of 32,000 more shares as a consideration for the signing of such contract without opening it to competition.

Under these contracts the respondent, with minor exceptions, manufactured and sold to Sears the latter's requirements of rubber tires which it sold at retail.

Pursuant to the terms of these contracts, respondent sold tires to Sears at prices substantially lower than it sold tires of comparable grade and quality to independent retail tire dealers. The average gross discrimination on four sizes for the entire period of time, from May 1926 to December 1931, was approximately 40 percent. On other sizes the gross discrimination over the entire period varied from 32 to 42 percent.

The net average sales-price discrimination remaining after deductions had been made from the dealer prices for discounts and allowances and transportation over the entire period varied from 29 to 40 percent on eight sizes of tires. The total aggregate net discrimination, after making such allowances, amounted to approximately $41,000,000, or approximately 26 percent of the aggregate net sales price to independent dealers on a volume of business comparable to the volume sold to Sears.

MONOPOLISTIC PRACTICES

The Commission issued and served its complaint on September 13, 1933, and on March 5, 1936, after receiving testimony and other evidence from all of the representative tire manufacturers in the industry, from independent retail tire dealers representing the retail branch of the industry over a territory consisting of 24 States and the District of Columbia generally and 59 cities in particular, and from leading economists and others, found that such discrimination in prices constituted a violation of section 2 of the Clayton Act, and was not given to Sears on account of differences in quantity of the commodity sold nor to make only due allowance for differences in the cost of selling or transportation. It found that the net price discrimination, after making due allowance for selling and transportation costs, ranged from 11 to 22 percent on 8 popular sizes of tires.

The Commission also found that such discriminatory prices were not made to Sears in good faith to meet competition; that no competitor of the financial responsibility necessary to meet Sears' requirements as to quantity and quality of tires had ever solicited its business by offering tires of Goodyear quality to Sears at prices so low.

The respondent concealed the prices and terms at which it was selling its tires to Sears from its own sales organization and from the trade generally, and never offered to its own dealers like prices on tires of equal or comparable quality.

EFFECT

None of Sears' competitors had the advantages of similar low prices and Sears was thereby enabled by discount discriminations to undersell at a substantial profit to itself all retail tire distributors, including retail dealers selling respondent's brands of tires and competing dealers selling tires of other manufacturers.

Sears did persistently, systematically, and substantially undersell such dealers by 20 to 25 percent on tires of comparable grade and quality, except during the year 1933, when the Sears prices were only about 10 percent lower. Sears' volume of sales increased more rapidly than that of any other retail distributor from 1926 to 1930 and, in 1933, it was still the largest retail distributor of tires in the United States. Sears usually led in industry price declines during the period of the contracts and the competition thus brought into the retail tire market in the several States was a major factor in forcing out of business a large number of retail tire dealers by reducing their volume of sales or by curtailing profits, or both.

This competition became destructive and Sears was enabled, through its discriminatory price advantages, to engross for itself abnormal profits while at the same time curtailing the profits of all its competitors.

This competition was a major factor in curtailing the number of competitors who were independent tire dealers and a major factor in substituting for them mass distributors and other large-volume dealers.

All this, in turn, drove out of business numerous small tire manufacturers and thus reduced the manufacture and sale of rubber tires to a smaller and smaller number of independent manufacturers and dealers.

Respondent, as a result of the increased volume it obtained through the sale of tires to Sears and the reduction in the number of independent manufacturers and dealers, substantially increased its percentage of the total industry renewal sales and increased its dominant position in the tire industry.

The Commission considered that a manufacturer, under the Clayton Act, is under a duty to comply with the law, and he may not make his bargains according to his own interest by discriminating as he pleases, however honest and justifiable such course might be from the standpoint of commercial principles. Large industrial companies, through price discrimination, can control competitive business conditions among their customers to the extent of enriching some and ruining others. The practice here involved of a large manufacturer giving disproportionately large discounts was held by the Commission to be unjustified, and that such a discrimination, when made merely on account of size, tended toward monopoly and the suppression of competition. In order to maintain the principle of equality to purchasers intended by section 2 of the Clayton Act, it was necessary that the difference in price be reasonably related to a difference in cost and not a covert means of favoritism. If it were left to a manufacturer to make the price solely on account of quantity, he could easily make discounts by reason of quantity so high as to be practically open to the largest dealers only, and in that manner might hand over the whole trade in his line of commerce to a few or a single dealer

The evidence found by the Commission showed that the normal result of the discrimination as it affected the retail tire dealer was that it enabled Sears, at a 35 to 40 percent profit, to sell to the consumer a Goodyear-manufactured tire for a price which was the same as or less than the cost to the independent dealer for a Goodyear-made tire of comparable grade and quality.

The Commission's order forbade any further discrimination such as that above described, and required Goodyear to report the manner in which its order was being complied with. This Goodyear failed and refused to do and on April 5, 1936, filed in the United States Circuit Court of Appeals for the Sixth Circuit, its petition to review the order.

On June 19, 1936, Congress passed the Robinson-Patman Act, amending section 2 in certain respects. On October 5, 1937, during oral argument before that court, Goodyear stated for the first time that the aforesaid contract had been canceled and the price discrimination stopped.

While contending before that court that the case was not moot, counsel for Goodyear, having in a footnote to their brief indicated that such contention was technical only and, during the course of the argument having further invited the court's attention to that possibility, the court, on November 5, 1937, without passing upon the merits of the controversy, held that the case had become moot and set aside the Commission's order.

Thereupon, the Commission applied for and obtained a writ of certiorari from the Supreme Court of the United States and the matter was argued there. On May 16, 1938, by a per curiam decision, the Supreme Court reversed the circuit court's decision and remanded the case for a determination of the merits.

The case was reargued upon the merits by counsel for the Commission and counsel for respondent on December 9, 1938, and at the time of writing, the circuit court still has the case under advisement.

There are submitted herewith the following: Four volumes of transcript of record and exhibits filed with the Circuit Court of Appeals, marked "F. T. C. Exs. Nos. 9–a, 9–b, 9–c, and 9–d," respectively; a copy of the decision of the United States Circuit Court of Appeals for the Sixth Circuit, marked "F. T. C. Ex. No. 10;" and a copy of the decision of the Supreme Court of the United States, marked "F. T. C. Ex. No. 11." The findings as to the facts, conclusions, and order of the Commission will be found in volume I (F. T. C. Ex. No. 9–a) of the transcript of record (at pages 26–142), and a separate copy thereof is also submitted herewith, marked "F. T. C. Ex. No. 12."

March 31, 1936 (FTCA–5) — ZINC AND COPPER PLATES
EDES MANUFACTURING COMPANY, ET AL. DOCKET No. 2660

STATEMENT OF FACTS

Eleven companies, manufacturing more than 90 percent of the zinc- and copper-plate products in the United States, and variously incorporated under the laws of Massachusetts, New Jersey, New York, Illinois, California, Indiana, Pennsylvania, and Connecticut, formed a voluntary unincorporated trade association known as Photo Engravers Copper Zinc and Grinders Association, organized in the city of Pittsburgh. This association acted as a clearing house for the exchange of information among the various members as to reports of sales, prices, discounts, and terms and, from time to time the members met, discussed, agreed upon and established trade policies to be followed and prices to be charged in the interstate sale and distribution of their products.

MONOPOLISTIC PRACTICES

Cooperating to fix and maintain uniform prices, terms, and discounts by meeting and exchanging price information through an association.

EFFECT

The effect of the practice was to restrict and suppress competiton, particularly in the prices quoted and discounts allowed, thus enhancing prices of zinc and copper engravers' plates above the prices which would prevail under normal, natural, and open competition between the respondents and between them and others, and also a tendency to create a monopoly in the corporate respondents in the manufacture and sale of such products in interstate commerce.

A copy of the Commission's findings as to the facts, conclusion, and order is submitted herewith, marked "F. T. C. Ex. No. 13."

January 1, 1936 (FTCA-5) CONFECTIONARY

NEW YORK STATE WHOLESALE CONFECTIONERY ASSOCIATIONS, INC., ET AL. DOCKET NO. 2613

STATEMENT OF FACTS

About 1933 the New York State Wholesale Confectionery Associations, Inc., with headquarters in Syracuse, N. Y., eight local and regional member associations consisting of wholesale candy distributors and the Empire State Candy Club, Inc., an organization of candy brokers and agents with headquarters in Utica, N. Y., and the officers and members of all these associations, totaling more than 700 respondents, combined and conspired with the purpose and effect of fixing uniform prices and obstructing commerce in the candy trade in New York and Pennsylvania and other connected territory.

These associations and their members occupied an important position in the candy trade of the United States, particularly in the Eastern States, and their members did a substantial part of all the wholesale candy business in the States of New York and Pennsylvania.

MONOPOLISTIC PRACTICES

The regional and local associations organized the respondent New York State Wholesale Confectionery Association to assist them in carrying out agreements, combinations, and conspiracies among themselves to prevent competing dealers from obtaining candy and allied products directly from the manufacturers and to establish themselves as a class of "recognized" wholesalers, distributors, and brokers.

Several methods were used to accomplish these objectives, among which were the following:

"Agreements among the association members to fix and maintain uniform prices and to induce manufacturers not to sell to dealers who sold or would resell at less than the prices fixed.

"Exacting pledges and other promises of agreements from 'recognized' dealers, members, manufacturers, and producers to support the associations' programs.

"Publishing so-called 'white lists' of 'recognized' dealer members and inducing manufacturers to cease dealing with dealers, brokers and distributors not listed therein.

"Concerted action, boycott, and threats of boycott against manufacturers, dealers and others to require them to conform to the price program and to refrain from selling to nonmembers of the associations.

"Holding of meetings to devise ways of influencing manufacturers, producers, brokers, dealers, and others engaged in the tobacco and confectionery trade to abide by the program."

The Empire State Candy Club, among whose membership were brokers and factory salesmen, also was organized to assist and did assist the said local and regional associations in making the aforesaid program effective.

EFFECT

Numerous outlets in New York and Pennsylvania, for the sale by candy manufacturers located in other States of candies shipped into New York and Pennsylvania, were closed with a tendency to give the respondents and the dealers recognized by them a monopoly in the business of dealing in and distributing confectionery, candy, and allied products, depriving the public of advantages in price and service which they would receive under normal competitive conditions. It had the effect of discriminating against small business enterprises and others who did not desire to, but were compelled to, conform to the respondent's program, and spread into States other than New York the same methods of boycotting and "white listing" as those employed by the respondent associations. All of which unreasonably lessened, eliminated, restrained, stifled, hampered, and suppressed competition in the confectionery industry in the State of New York, and unlawfully obstructed the natural flow of commerce in the channels of interstate trade.

Respondent associations, after service of the complaint upon them, filed answers admitting all of the material allegations of the Commission's complaint to be true. There are, therefore, submitted a copy of the Commission's complaint issued November 6, 1935, marked "F. T. C. Ex. No. 14"; the answer of the New York State Wholesale Confectionery Associations, Inc., marked "F. T. C. Ex. No. 15"; the answer of the Rochester Area Wholesale Confectioners Association, Inc., marked "F. T. C. Ex. No. 16"; the answer of the Capital District Wholesale Confectioners Association, Inc., marked "F. T. C. Ex. No. 17"; the answer of the Northern New York Wholesale Confectioners Association, Inc., marked "F. T. C. Ex. No. 18"; the answer of the Central New York Wholesale Confectionery Distributors, Inc., marked "F. T. C. Ex. No. 19"; the answer of the Hudson Valley Candy Distributors Association, marked "F. T. C. Ex. No. 20"; the answer of the Greater Buffalo Wholesale Confectioners Association, marked "F. T. C. Ex. No. 21"; and the answer of the Empire State Candy Club, Inc., marked "F. T. C. Ex. No. 22"; the answer of Mohawk Valley Candy Distributors Association, marked "F. T. C. Ex. No. 22–A"; and the answer of Southern Tier Candy Distributors Association, marked "F. T. C. Ex. No. 22–B"; and a copy of the Federal Trade Commission's findings as to the facts, conclusion, and order to cease and desist, entered June 1, 1936, marked "F. T. C. Ex. No. 23."

June 24, 1936 (FTCA–5)

TIN PLATE

AMERICAN SHEET AND TIN PLATE COMPANY ET AL. DOCKET No 2741

STATEMENT OF FACTS

The American Sheet and Tin Plate Company (merged in 1936 into Carnegie-Illinois Steel Corporation), Bethlehem Steel Company, Canton Tin Plate Corporation, Columbia Steel Company, Trustees of Follansbee Brothers Company, Granite City Steel Company, Inland Steel Corporation, Jones and Laughlin Steel Corporation, McKeesport Tin Plate Company, Republic Steel Corporation, N. & G. Taylor Company, Washington Tin Plate Company, Weirton Steel Company, Wheeling Steel Corporation, and the Youngstown Sheet and Tube Company were severally engaged in the manufacture, among other products, of tin plate which they sold to tin-plate jobbers and manufacturers of tin cans and other metal containers located throughout the United States. The American and Continental Can Companies were the principal purchasers.

Respondents produced this tin plate in several grades designated as "production plate"—tin plate manufactured to the customer's specifications; "stock plate"—seconds, surpluses, and "warming up" sizes accumulated due to difficulties in controlling production in the manufacture of production plate; and "waste-waste"—tin plate containing defects so great as to disqualify it for use as "seconds."

Prior to 1935 respondents had sold a substantial portion of their accumulation of "stock plate" to tin-plate jobbers who resold it to small can manufacturers and packers unable to carry "production plate" in stock in various sizes and quantities required.

MONOPOLISTIC PRACTICES

Late in 1934 these respondents conferred and agreed to cease the production and sale of "stock plate" after January 1, 1935, and further agreed to require buyers of "production plate" to accept "seconds" up to 25 percent of their orders. This constituted a combination and conspiracy not to cut prices on "stock plate" to jobbers and manufacturers, thereby restricting and eliminating competition in the interstate sale and distribution of that kind of plate.

The respondents, after January 1, 1935, cooperated to carry out the terms of such agreements. To that end they sold some of their accumulations of "stock plate" as "production plate" at prices higher than the prices theretofore received for "stock plate" and cut up some of their "stock plate" into such shapes as to make it unfit for use in the manufacture of tin cans or other metal containers so that it was classified by respondents as "wastewaste."

One defense presented for the consideration of the Commission was that in 1933 the respondents, operating under the National Recovery Act of June 16, 1933, and the Code of Fair Competition for the Iron and Steel Industry, adopted pursuant thereto, were required to file prices with the Code Authority for that industry and to refrain from certain unfair-trade practices defined in said code.

Many manufactu rs, it was alleged, acting in evasion of the provisions of that act and code, sol as "stock plate" that plate which was properly classified as "production plate," and, while apparently selling at the same prices, to discriminate in price between different customers, making corrective action within the industry necessary.

The Commission did not consider this to be a good defense or that it authorized the making and execution of the aforesaid agreements.

EFFECT

The above practices tended unduly to suppress competition in the sale of tin plate, particularly in the sale of "stock plant," and enhanced the prices of "stock plate" which would have prevailed under normal competition. It tended to destroy the business of jobbers of tin plate and create a monopoly in the manufacture of tin containers in the American Can Company and the Continental Can Company through depriving small competitors of their normal source of supply of tin plate, and forced smaller manufacturers to buy "production plate" at prices substantially higher than they formerly paid for "stock plate."

A copy of the findings as to the facts, conclusion, and order of the Commission requiring the respondents to cease and desist from such practices is submitted herewith, marked "F. T. C. Ex. No. 24."

August 19, 1936 (FTCA–5) — CLOTHING—SPORTSWEAR—FLANNEL SKIRTS
BOSTON SPORTSWEAR COMPANY, ET AL. DOCKET NO. 2755

STATEMENT OF FACTS

Prior to October 5, 1935, five corporations and three individuals manufactured practically all of the flannel skirts made in the New England States, and sold them in interstate commerce in competition with each other and others.

MONOPOLISTIC PRACTICES

On October 5, 1935, they agreed with each other to sell their flannel skirts at a uniform price of $16.50 per dozen, and notified their respective customers to that effect, in writing. Pursuant to their agreement and notice, sales were made at that uniform price.

EFFECT

This unduly restricted and suppressed competition in the sale of flannel skirts throughout the United States, particularly in New England.

A copy of the Commission's complaint issued August 19, 1936, is herewith submitted, marked "F. T. C. Ex. No. 25." Photostatic copies of respondents' several answers, admitting the allegations of fact contained in said complaint to be true, are also submitted, marked "F. T. C. Exs. Nos. 26 to 33," inclusive, together with a copy of the Commission's findings as to the facts, conclusion, and order to cease and desist, marked "F. T. C. Ex. No. 34."

December 2, 1936 (FTCA–5) — CLOTHING—WOMEN'S GARMENTS
CONDE NAST PUBLICATIONS, INC. DOCKET NO. 2399

STATEMENT OF FACTS

Conde Nast Publications, Inc., was a New York corporation which published and sold magazines, including "Vogue." Vogue is a women's style magazine having 150,000 circulation throughout every State of the United States and in England and France. In its field it is considered a style leader and its opinions and recommendations have great weight with women and a large portion of dress manufacturers and retailers.

Vogue had a department called "Vogue's Finds of the Fortnight." In connection with this department, it entered into contracts with garment manufacturers and retailers. The contract with the manufacturers provided in substance that, in return for recommending in this department a model of garment from the manufacturer's line, it would receive a service fee of 5 percent on all that manufacturer's sales; that Vogue would furnish the manufacturer with a list of the retailers featuring such garments, such a list to be published in Vogue; and that the manufacturer would not sell these garments to any other retailers without Vogue's written consent.

With the retailers it was agreed that, in return for publishing in each issue the name of the retailer as an outlet for the particular models therein recommended, the retailer would purchase a minimum number of garments shown each issue in that department of the magazine and, for a period of at least 1 month, would maintain the retail price thereof as quoted. Also, Vogue promised the retailer that, for a period at least of 2 months after delivery of these models, the same model would not be sold by the manufacturer thereof to any other retailer in the same city except under identical terms.

During 1932 respondent entered into such contracts with 73 dress-garment manufacturers in New York City; in 1934 with 73; and in 1935 with 40 such manufacturers. Manufacturers outside of New York City were not permitted to participate in the plan. The wholesale-price range of dresses featured by Vogue in its "Finds of the Fortnight" department were from \$10.75 to \$39.50. In New York City there were about 200 manufacturers of dresses of this class, approximately 160 of whom Vogue approached with its plan. In each issue, Vogue favored from 4 to 7 New York manufacturers against the remainder of those in New York and all manufacturers outside of New York. The selected manufacturers, of course, stressed to their trade the fact of their selection by Vogue.

The retail dealers with whom Vogue contracted did business in about 75 different cities in the United States besides New York and, after the plan was adopted, written contracts were made with a total of 137 retail dealers. Failure by retailers to maintain the resale prices for the garments as fixed by respondent and quoted in Vogue would result in denial to the retailer of further participation in the plan. In 1934 Vogue's circulation increased approximately 15,000 copies per issue, due in large part to this department, "Finds of the Fortnight," and the plan under which the department was operated resulted in the sale of 32,459 garments in 1933, 32,301 in 1934, and 9,937 in the first 7 months of 1935.

MONOPOLISTIC PRACTICES

The publishers of Vogue agreed with retailers in fixing retail prices, and with manufacturers in limiting the number of their retail dealer customers, pursuant to the aforesaid plan of conducting its "Finds of the Fortnight" department.

EFFECT

The effect was to insure the maintenance by the selected retail dealers of the resale prices published in Vogue, and to deprive the public of normal price competition among the retailers of such garments. The plan operated to the substantial injury of manufacturers and retailers of the class of garments featured in the respondent's "Finds of the Fortnight" department who did not participate in the practice.

The Commission ordered the respondent to discontinue this plan and a copy of the findings as to the facts, conclusion, and order is submitted herewith, marked "F. T. C. Ex. No. 35."

December 9, 1936 GROCERIES
(FTCA–5) FALL RIVER WHOLESALE GROCERS' ASSOCIATION, ET AL.
DOCKET NO. 2677

STATEMENT OF FACTS

Nine wholesale grocery concerns, trading in the Fall River region comprising the city of Fall River, Mass., and the trade area contiguous to it in the State of Rhode Island, constituted the membership of the Fall River Wholesale Grocers' Association, located at Fall River, Mass. Each of the members had been competitively engaged in the wholesaling of groceries purchased by them from various States of the United States and sold to retailers in Massachusetts and Rhode Island.

MONOPOLISTIC PRACTICES

They combined in an agreement to refuse to deal with manufacturers of grocery products who sold direct to retailers in that region and informed such manufacturers of their policy in that respect. They threatened boycott in the event of the manufacturers' refusal to comply with their wishes. The Association wrote one large manufacturer of milk products that surplus evaporated milk shipped in pool cars must not be delivered to a public warehouse, upon penalty of refusal to deal, and the company addressed, to save itself from loss of business, did discontinue selling its products to two competitors of the members of the Association. It maintained an "unfair list" and warned its members to cease handling the products of companies on that list, under penalty of forfeiting certain deposits made with said Association for the purpose of securing compliance with its rules. It wrote and disributed a letter announcing that its members had definitely decided to cooperate only with those producers, packers, or manufacturers who confined their sales to wholesale grocers, and asked for replies. It entered into a working agreement with a retail association of grocers in that region, to prevent purchases by retailers direct from manufacturers, and threatened to suspend any member who refused to sign and subscribe to the agreement. A similar course of action was taken against large manufacturers of sugar and of coffee and such manufacturers were coerced into refusing to sell to retailers.

EFFECT

The effect was to unduly lessen, restrain, and suppress competition in the interstate sale of grocery products in that region and to deprive the public of any benefits which would have accrued to it from the maintenance of normal competition in the distribution and sale of groceries.

The Commission ordered the respondents to cease and desist from these practices, and a copy of its findings as to the facts, conclusion, and order is herewith submitted, marked "F. T. C. Ex. No. 36." Said order was based upon answers filed by these respondents admitting all the material allegations of the Commission's complaint to be true. Wherefore, there are also submitted a copy of the Commission's complaint filed January 4, 1936, marked "F. T. C. Ex. No. 37," and photostatic copy of the answer of all the respondents, marked "F. T. C. Ex. No. 38."

December 15, 1936 PIN TICKETS
(FTCA–5) A. KIMBALL CO. ET AL. DOCKET NO. 2329

STATEMENT OF FACTS

Seven companies incorporated in the States of New York, Pennsylvania, Connecticut, Illinois, Ohio, and Rhode Island, who were engaged in the manufacture of pin tickets which are small tickets for temporary attachment to clothing, fabrics, and like materials by pin-like fasteners and upon which the dealer customarily enters the cost and selling price, etc., sold their product competitively to jobbers throughout the United States. These seven companies represented practically the entire source of the supply of this product, their annual sales aggregating about $750,000.

MONOPOLISTIC PRACTICES

Prior to 1931 the prices at which these manufacturers sold were competitive. In 1931, 1932, and 1933 they held a series of meetings at which time they discussed and compared prices, and at such meetings came to an agreement to fix uniform prices at which they would and did thereafter sell such product.

EFFECT

Prices were kept at an artificial level, price competition restricted, and interstate trade unlawfully restrained.

After the issuance of the complaint herein on March 15, 1935, a stipulation of fact was entered into between the Commission and the respondents' attorney of record, upon which the Commission's findings as to the facts, conclusion, and order were based.

The complaint is submitted as "F. T. C. Ex. No. 39;" a photostatic copy of the stipulation of fact as "F. T. C. Ex. No. 40;" and a copy of the findings as to the facts, conclusion and order as "F. T. C. Ex. No. 41."

December 29, 1936 (FTCA-5) POWER CABLE AND RUBBER COVERED BUILDING WIRE NATIONAL ELECTRICAL MANUFACTURERS ASSOCIATION ET AL. DOCKET NO. 2565

STATEMENT OF FACTS

The complaint in this case was brought against 16 principal manufacturers of copper cable and wire for electrical transmission as representative of several hundred corporations, individuals, and firms producing, selling, and distributing the major part of, and in some cases all of, the output of such commodities in the United States.

Among the manufacturers specifically named were General Electric Company, American Electrical Works, American Steel and Wire Company, Anaconda Wire and Cable Company, and United States Rubber Products, Inc. The cable and wire usually were sold directly to the larger consumers, but some of the manufacturers supplied the smaller requirements of such consumers, and the entire requirements of smaller consumers, through jobbers and retailers.

The power cable and wire are used for transmission of large voltage electric current. Among the largest purchasers of these commodities are public utilities, municipal, State and Federal Governments and large industrial plants. The cable and wire are used in lighting streets, parks, highways, and public buildings.

These manufacturers combined in the National Electrical Manufacturers Association, and established within the Association a number of separate groups, each composed of manufacturers selling similar and competing kinds of electrical wire and cable.

MONOPOLISTIC PRACTICES

Normally in competition with one another these respondent members, by concerted action and agreement among themselves, put into effect the following practices:

(*a*) Established subsidiary sectional organizations of groups of manufacturers selling similar kinds of electrical wire and cable.

(*b*) Held meetings and conferences resulting in agreements to quote and sell their goods at identical delivered prices, terms, and sales conditions.

(*c*) Maintained fixed and uniform selling prices on said commodities.

(*d*) Some of the larger manufacturers compiled and circulated exceedingly complex and detailed price lists assuring their competitors that if the latter would not quote and sell at less than the list prices contained therein, the former would immediately notify such competitors of all proposed price changes or methods of calculating the same, for the purpose and with the effect of avoiding and suppressing price competition among all of the respondents.

(*e*) Agreed that no customer should be allowed to purchase, except on a delivered price basis; and circulated a formula by which such prices were to be calculated. As to some products there was a single delivered price throughout the United States, including Panama, Puerto Rico, Hawaii, and Alaska. As to other products, the territory was divided into zones, each composed of a number of states, for the purpose of effectuating the delivered price policy, the effect of which was to prevent the members from allowing differences in the proximity of any given customer to their respective plants to result in any differences in the amount to be paid by him as a delivered price.

(*f*) They adopted and carried on a system of reporting to each other detailed information as to prices at which the products were sold, made investigations into cases of alleged price cutting, and, in the case of offenders, disciplined them.

One of the kinds of wire sold by respondents was "Safecote," upon which there were patents. Under cover of a licensing contract between themselves as licensees and the National Electrical Products Company as licensor, the respondents first jointly determined upon an identical price for this product and thereafter imposed such price in the licensing contract.

In addition to the foregoing, the respondent manufacturers of power cable adopted identical discounts from their published list prices to cover sales to jobbers. Then established a system of resale price maintenance by jointly requiring jobbers to maintain minimum resale prices under penalty of joint refusal to deal with them if they failed to maintain them.

EFFECT

One of the necessary incidents to a system of delivered prices such as these respondents adopted is the discrimination in price among the various customers after making due allowance for cost of transportation, exacting higher prices from customers having little or no transportation expense and lower prices from those having heavy transportation expense. That is, that customers located in or near the place of manufacture and shipment are deprived of the normal economic advantage of their location, and are required to contribute to the cost of transportation to more distant customers.

The foregoing practices deprived purchasers of power cable and rubber covered building wire of the advantages of normal competition formerly existing among the respondent manufacturers and compelled unorganized purchasers to buy such commodities at artificially enhanced prices. The increased amounts thus obtained from public utilities, municipalities, and the Government, as an incident to the transmission of light and power, became a part of the permanent investment on which consumers of electricity had to pay a continual return (in the case of privately owned utilities) and, if publicly owned, an amount sufficient to retire the investment in such utilities. In all events the amounts exacted by the combination and conspiracy became a part of the utility and Government operating expenses to be borne by the rate payers.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 42."

December 31, 1936 (FTCA-5)

FURNITURE

RETAIL FURNITURE DEALERS ASSOCIATION OF ST. LOUIS, ET AL. DOCKET NO. 2757

STATEMENT OF FACTS

The respondent Association in this case was composed of approximately 36 retail furniture dealers located in St. Louis, Mo., for the protection of their common interests. These retailers purchased furniture and allied products from various manufacturers and wholesalers in different States of the United States for resale to consumers in Missouri and Illinois and States adjacent thereto, and were in normal competition with each other and with other retail furniture dealers not members of the Association.

Between August 1, 1933 and May 27, 1935, the Association adopted and maintained certain methods and trade practices hereinafter described which were found to be in violation of the Federal Trade Commission Act.

MONOPOLISTIC PRACTICES

They requested wholesalers, jobbers, and manufacturers selling furniture in that area:

1. Not to make sales directly to ultimate consumers, contractors, institutions, hotels, apartment-house operators, real-estate dealers, or large industrial plants.
2. Not to accept orders from dealers in cities other than St. Louis, Mo., or East St. Louis, Ill., for delivery in St. Louis or East St. Louis.
3. Not to give away any merchandise, or sell it on a consignment basis, except for display purposes.
4. Not to sell retailers who, while retailing, represented themselves as contract home furnishers operating on a basis similar to that of wholesalers.
5. Not to talk to purchasers or prospective purchasers on the sales floor of any retail dealer.

The Association published the names of the sellers who had agreed to cooperate, and informed the sellers of those whom the Association asserted were not entitled and should not be permitted, to buy furniture at wholesale prices, and obtained th promises and assurances of cooperation by manufacturers, wholesalers, and jobbers, that all the purchasing public would be refused the advantage of buying at wholesale.

Further, some of the members called upon certain manufacturers engaged in interstate commerce in that area in furtherance of their desire that the manufacturers adopt a policy of selling only to retail dealers who imposed a carrying charge in addition to the cash prices whenever merchandise was sold on installments.

EFFECT

Some of the manufacturers and distributors believed the Association would cease buying from them if they did not comply with the Association's wishes.

This tended to place a monopoly in the hands of members of the Association and to deprive consumers of price advantages normally obtainable, as well as to increase the cost of furniture, refrigerators, radios, and other hourse furnishings.

A copy of the findings as to the facts, conclusion, and order of the Commission to cease and desist from such practices is submitted herewith, marked "F. T. C. Ex. No. 43." The findings were based on a stipulation, a photostatic copy of which is marked "F. T. C. Ex. No. 44."

January 22, 1937 (FTCA-5) — RUBBER HEELS AND SOLES
THE I. T. S. COMPANY AND NATIONAL FEDERATION OF MASTER SHOE REBUILDERS, ET AL. DOCKET NO. 2802

STATEMENT OF FACTS

The I. T. S. Company was an Ohio corporation engaged as a wholesaler of rubber heels and soles which it purchased from B. F. Goodrich Company.

Normally, commerce in this industry flows from the makers of the product through shoe manufacturers, shoe findings jobbers, shoe repairers, five- and ten-cent stores, and hardware stores to the public. The I. T. S. Company did not sell to the five- and ten-cent stores, but had competitors who did. The National Federation of Master Shoe Rebuilders, had a large and constantly changing membership.

MONOPOLISTIC PRACTICES

In 1935 the company and the federation united in an agreement to close the normal channels of distribution to competitors selling five- and ten-cent stores, and solicited the boycotting of those dealers who sold to such outlets, by circularizing the trade. They asked every shoe maker and jobber to make a New Year's resolution that they would not buy from heel manufacturers supplying that type of competitor. They published a list of those manufacturers and wholesalers who did not sell to five- and ten-cent stores, and the I. T. S. Company used persuasion, intimidation, and threats of boycott on shoe findings jobbers to get them to stop handling the products of manufacturers or wholesalers who did not comply with its wishes.

EFFECT

Commerce in the rubber heel and sole industry was unduly restrained, competition substantially suppressed, and the consuming public deprived of the benefits normally accruing from competition.

A copy of the Commission's findings as to the facts, conclusion, and order requiring the I. T. S. Company to cease and desist from these practices is submitted herewith, marked "F. T. C. Ex. No. 45."

April 2, 1937 (FTCA-5) — TURBINE GENERATORS
GENERAL ELECTRIC COMPANY, ET AL. DOCKET NO. 2941

STATEMENT OF FACTS

The General Electric Company, Westinghouse Electric & Manufacturing Co., Allis-Chalmers Manufacturing Co., and Elliott Company manufactured and sold turbine generators principally to private corporations and to municipal, State, and Federal Governments. Combined, they were so influential as to influence and control trade in such products. Before 1933, they competed. Efficiency and performance guaranties, as well as the initial cost, were vital factors in making sales.

MONOPOLISTIC PRACTICES

To eliminate price competition, these companies agreed to fix and maintain uniform delivered prices and performance guaranties for turbine generators. They adopted and adhered to, as their own, the delivered pricing sheets and confidential performance data compiled by one of them, without giving any consideration to their respective costs or the true theoretical performance of their turbine generators.

EFFECT

This monopolized the business of selling turbine generators, unreasonably restrained, stifled, and suppressed competition in the industry, and deprived the public of price, service, and other advantages which would otherwise have accrued.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such practices is submitted herewith, marked "F. T. C. Ex. No. 46."

Simultaneously, the Commission issued its findings and order against all of the corporations, except General Electric Co., named in the same complaint, and who were engaged in the manufacture and sale of condensers, and who had combined with each other to accomplish the same objectives with reference to their condensers, and who had used the same means.

A copy of the findings as to the facts, conclusion, and order against the condenser manufacturers and sellers is herewith submitted, marked "F. T. C. Ex. No. 47."

April 29, 1937 (FTCA-5) — CLOTHING—WOMEN'S HATS
MILLINERY QUALITY GUILD, INC., ET AL. DOCKET NO. 2812

STATEMENT OF FACTS

Fourteen New York corporations, engaged in the designing and manufacturing of millinery at their factories located in the States of New York and California, combined in an organization known as Millinery Quality Guild, Inc., which organization they dominated and controlled. These respondents, together with some 10 other New York corporations, designated as affiliate members, formed a substantial majority of the originators of leading styles in high-grade millinery and were recognized leaders in that field. High-grade retailers, in order to offer a full line of women's hats, were required to procure some of their models from them.

These hats wholesaled at $8 per hat and they orginated their own designs. In this industry, some manufacturers do not originate their own designs but copy designs of other manufacturers. This is known as "style piracy." Many of the respondents maintain designing departments and employ stylists who visit Paris, consult the prevailing French stylists, determine style trends, and make original creations for their respective manufacturers.

MONOPOLISTIC PRACTICES

In 1934, through the Guild, the members adopted a plan to prevent, so far as possible, the piracy of styles. They secured the cooperation of the affiliate members in a working agreement to the effect that after July 16, 1934, none of them would make sales or show merchandise to any retail store which had failed to enter into a so-called "Declaration of Cooperation Agreement" with the Millinery Quality Guild, Inc.

A registration bureau was established by the Guild for the registration of models which, upon registration, were regarded as an original design of the registrant. Approximately 1,600 high-grade retail dealers in women's hats were solicited to sign such cooperative agreement, which provided in substance that the retailer would instruct its buyer not to buy any copies of pirated styles created by members of the association, and would place all orders for hats conditionally upon the seller's warranty that the styles of hats so ordered were not copies of styles originated between members of the Millinery Quality Guild, Inc. By letters sent to various retail stores the Guild advised them that its membership comprised practically every important creative firm in the industry and only those stores which had signed the agreement could inspect or purchase women's hats from them, and the members of the Guild jointly refused to sell their products to retail dealers who failed to sign. They also expelled from membership any one who would not so agree. In some cases, by declaring that certain hats were copies of styles originated by members, the Guild induced retail stores to return them to manufacturers who had sold them.

EFFECT

This limited the retail outlets for such products and interfered with retail dealers' source of supply; deprived the public of the benefits of normal price competition; and prevented retailers from purchasing their requirements of hats in interstate commerce, except subject to the limitations and restrictions of the plan. Prices to retailers and consumers were increased and control of business practices in the industry was placed in the hands of the members. They prevented the sale of women's hats which they claimed were copies of styles and designs originated by the members and registered with the Guild. It also tended to limit interstate commerce in high-grade hats to models originated and designed by the manufacturers thereof or to copies produced by his permission.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 48."

May 18, 1937—WATER GATE VALVES, HYDRANTS, AND FITTINGS
(FTCA–5) THE WATER WORKS VALVE AND HYDRANT GROUP OF THE VALVE AND FITTINGS INSTITUTE, ET AL. DOCKET NO. 2958.

STATEMENT OF FACTS

Approximately 31 corporations engaged in the business of manufacturing water-gate valves, hydrants, fittings, and similar products and in the sale thereof to towns, cities, muncipalities, State and Federal Governments, comprised substantially all of the manufacturers of such products used for water-supply systems and, prior to December 1933, were in competition with each other as to price.

They were incorporated and had their principal offices and places of business in some 17 different States of the United States and were members of the Water Valve and Hydrant Group of the Valve and Fittings Institute, a New York corporation. From December 1933 until January 3, 1935, the valve and fittings manufacturing industry operated under Code Authority pursuant to the National Industrial Recovery Act, and some of the respondents named were administrative officers of that Authority.

MONOPOLISTIC PRACTICES

They agreed among themselves to fix and maintain, and did fix and maintain, enhanced uniform delivered prices for their products, dividing the United States into zones, fixing uniform discounts to distributors, and requiring the distributors to maintain uniform minimum resale prices and, by intimidation and persuasion, certain of the respondents induced others of them to raise prices to the prices agreed upon.

By uniform delivered prices the various members were prevented from allowing differences in the proximity of any given customer to their respective manufacturing plants to result in any differences in the amount to be paid as the delivered price.

EFFECT

This uniform delivered price system results in discrimination in price between the various customers after making due allowance for cost of transportation, exacting higher prices from customers having little or no transportation expense and lower prices from those having heavy transportation expense. That is to say, customers located in or near the place of manufacture and shipment are deprived of the normal economic advantage of their location and are required to contribute to the cost of transportation to more distant customers. The Commission found that these acts and practices had a dangerous tendency and they actually had hindered price competition in the sale and resale of the aforesaid products and had created in the respondent members of the Water Works Valve and Hydrant Group a monopoly unreasonably and unlawfully restraining interstate commerce.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 49."

January 8, 1937
(FTCA-5)
(CA-2)

BUTTER TUBS
MENASHA WOODEN WARE CORPORATION ET AL. DOCKET No. 2650

STATEMENT OF FACTS

The Menasha Wooden Ware Corporation, the Creamery Package Manufacturing Company, Elgin Butter Tub Company, Wisconsin Butter Tub Company, Bousfield Wooden Ware Company, and Storey City Butter Tub Company made and sold butter tubs to jobbers and creameries for use in packing butter. The Butter Tub Manufacturers Council, which was also a respondent in this case, was an association of substantially all of the butter-tub manufacturers of the United States. For many years, prior to 1932, competition between butter-tub manufacturers was very keen, extending throughout the dairying regions of the United States where most of the product is sold, and the price of butter tubs had reached a new low. It was to remedy chaotic conditions in the industry and to stabilize the competitive situation that the Butter Tub Manufacturers Council was organized in 1932.

In Minneapolis, Minn., there was a cooperative creamery corporation known as the Land O'Lakes Creameries, Inc., which handled creamery supplies as a wholesaler, and had, prior to 1931, been purchasing butter tubs from the manufacturers at jobbers' prices. Since July 1931 the regular jobbers' discount to it was discontinued, because the Butter Tub Manufacturers Council decided not to recognize it as a jobber.

These respondents manufactured and sold more than 90 percent of the total volume of new butter tubs in interstate commerce. About 75 percent of such tubs were sold in the States of Illinois, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin.

MONOPOLISTIC PRACTICES

The respondents, cooperating through their Council, conspired to restrict and suppress competition in the interstate sale of butter tubs by agreeing upon uniform prices, terms, and discounts; exchanged information with regard to past and future prices of their product, including lists of preferred customers and reports of sales and adopted special lists of preferred customers who were to be allowed extra discounts, amounting to favorable discriminations in price.

EFFECT

Competition in the sale of butter tubs throughout the several States, particularly in the prices quoted and the discounts allowed to distributors was substantially lessened and restrained, and the prices of said butter tubs enhanced above the prices theretofore prevailing under the normal and open competition which theretofore existed.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 50."

June 10, 1937
(FTCA-5)

CLOTHING—CAPS
CAP ASSOCIATION OF THE UNITED STATES, INC. DOCKET No. 2530

STATEMENT OF FACTS

A trade association of 100 manufacturers of all types of caps, an association with 27 members who were manufacturers of uniform caps, and companies making and selling vizors and trimmings used in their manufacture, sold such caps throughout the United States for use by the Military, Naval, Postal, and Coast Guard Services of the United States, the military services of the States, police and fire departments, railway employees, chauffeurs, telegram messengers, theatre attendants, and fraternal organizations, in competition with each other and with others. It is not practicable for the average uniform cap manufacturer to manufacture his own vizors and trimmings and those of the respondents engaged in that business supplied approximately 60 percent of the total volume of vizors and trimmings used by the uniform-cap-manufacturing industry.

MONOPOLISTIC PRACTICES

In July 1933 the respondents commenced to hold meetings at which they discussed and compared prices and came to an agreement fixing the prices at which said caps were thereafter to be sold. They agreed that they would adhere to and enforce this program and the price schedules so agreed upon. In connection therewith, they caused to be printed and circulated lists containing the names of all uniform-cap manufacturers who refused to sell at the suggested prices, both members and nonmembers, and induced the vizor and trimming manufacturers to refuse to sell to the offenders who were so reported. This plan, or policy, was cooperatively enforced through threats of boycott and other concerted action. In some instances fines were agreed upon and imposed and collected from members who sold below the suggested prices. On one occasion a uniform-cap manufacturer was threatened with a fine of $2,000 and with strike and labor troubles. The methods used earned for the respondent manufacturers the title of "policemen of industry."

EFFECT

As a result of the combination and agreement above described, the prices of uniform caps were raised to higher levels and the prices of vizors and trimmings used in their manufacture were advanced, thereby depriving the purchasing public of price and service advantages which they would normally receive and enjoy under conditions of free competition in this industry. Of course, such acts also resulted in oppression and discrimination against small-business enterprises who were competitively engaged with the members of the Association.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 51."

June 30, 1937 (FTCA-5)

CANNED AND DRIED FOODS

CALIFORNIA PACKING CORPORATION, ALASKA PACKERS ASSOCIATION, AND SIX CORPORATE OFFICERS. DOCKET No. 2786

STATEMENT OF FACTS

California Packing Corporation, organized in California in 1916, was engaged in packing and distributing food products such as dried and canned fruits, canned vegetables and fish, canned pineapples, and coffee. It was one of the largest packers and distributors of such products in the world and an important factor in Hawaiian-pineapple industry and the packing of sardines and tuna fish since 1936. It owned and controlled more than 100 canning factories located in 10 States and in Alaska and Hawaii, and sold such products under brand names such as "Del Monte," "Sunkist," "Goldbar," etc.

The Alaska Packers Association, another California corporation, engaged exclusively in the packing of salmon and the sale thereof, with nine canning factories located in Alaska and one on Puget Sound; 84 percent of its stock was owned by the California Packing Corporation.

In the course of their respective businesses these two companies purchased substantial quantities of raw materials and manufactured products such as containers and cartons, tin, steel, copper, paint, and other articles from the manufacturers thereof throughout the United States, and both in the aforesaid sales of products and puchase of materials were in competition with other manufacturers and producers and purchasers using the same instrumentalities of distribution and transportation as respondents, including various ports, docks, wharves, and terminals located in San Francisco Bay and tributary waters.

Encinal Terminals was a public wharfinger corporation in the city of Alameda, on the east side of San Francisco Bay, and leased the land upon which its facilities were located from the Alaska Packers Association. It was organized by the aforesaid two corporations who, since 1925, utilized its facilities in the distribution of their products.

San Francisco Bay, upon which the cities of San Francisco, Oakland, and Alameda are located, is a land-locked harbor, 48 miles long, with 100 miles of shore line, and for many years has been recognized as the principal harbor for steamships on the Pacific Coast, and ranks second only to New York Harbor in the United States as to the number of steamship lines landing their cargoes at docks and wharves there. Approximately 166 steamship lines carry freight to and from those three ports which are under the immediate control of the Board of State Harbor Commissioners and are operated on a nonprofit basis. Five other terminal companies were there engaged in the public wharfinger business competitively with each other and with the Encinal Terminals. The function of each was to act as a connecting link from railroad to ocean carriers and vice versa, acting as the agents for both exporters and in-bound steamers.

MONOPOLISTIC PRACTICES

By promises that the said corporate respondents would buy or increase their volume of purchases from the suppliers of their raw and manufactured materials, and by threats of reduction or discontinuance in the purchase of such materials, they coerced and compelled a substantial number of such sellers to divert substantial quantities of freight tonnage, which normally and usually would have been routed through the competitive terminals located on San Francisco Bay, to their owned and controlled Encinal Terminals company.

By the same means they also coerced the routing through their terminal of shipments by steamship companies, although the services and facilities of the competitive terminals were equal to those of the Encinal Terminals and, in many instances, more economical to the said steamship companies and shippers. Incidental to this program, the respondents coerced and compelled a number of steamship companies to disclose the identity of consignees of freight shipments and to allow confidential records and manifests to be inspected so as to enable the respondents to bring pressure and influence to bear upon the said consignees to divert traffic to their own terminals. Acting concertedly, and in cooperation with the individual respondent officers named, they spied upon the business of their competitors for the same purpose.

EFFECT

The effect of these practices was that the distribution expenses of the California Packing Company and the Alaska Packers Association were reduced and their revenues increased, to the unfair advantage of their competitors who had been compelled, against interest, to route their products through the Encinal Terminals. This naturally caused the competitors to have to pay more for their raw materials and manufactured products and gave respondents an unfair competitive advantage over all of their competitors who did not control a large tonnage of freight and who did not engage in such coercive practices. The usual and normal competitive considerations of quality, service, and price were thus displaced by respondents and this tended to create a monopoly in them in the sale and distribution of the food products above described.

A copy of the Commission's findings as to the facts, conclusion, and order to case and desist is herewith submitted, marked "F. T. C. Ex. No. 52."

July 3, 1937 — RAYON YARN
(FTCA-5) — VISCOSE COMPANY ET AL. DOCKET NO. 2161

STATEMENT OF FACTS

Ten manufacturers of viscose rayon yarn sold it to makers of rayon cloth, who in turn, sold to manufacturers of rayon clothing. In the aggregate, these manufacturers produced substantially all of the viscose rayon yarn manufactured in the United States since 1913, and were normally in competition with each other, but on October 21, 1931, they combined, agreed, and conspired among themselves to fix and maintain uniform prices.

MONOPOLISTIC PRACTICES

Combination and conspiracy to fix and maintain uniform prices.

EFFECT

This prevented price competition and increased the prices of the yarn, the prices of cloth made from the yarn, and the prices of all rayon articles of wear to the consumer.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such practices is herewith submitted, marked "F. T. C. Ex. No. 53."

July 17, 1937 (CA-2) (FTCA-5)

CLOTHING—HATS
HOLLYWOOD HAT COMPANY, INC. DOCKET No. 3020

STATEMENT OF FACTS

The Hollywood Hat Company, Inc., a New York corporation, sold and distributed women's hats. There are approximately 1,200 establishments in the millinery industry, more than half of which are located in New York City, and do about 70 percent of the millinery business in the United States. This business amounts to about $100,000,000 annually.

This particular company purchased the so-called "body" of the hats which it styled, reshaped, and ornamented for subsequent resale to jobbers and syndicates.

MONOPOLISTIC PRACTICES

In 1936 it sold its largest syndicate customer suede hats for $21 a dozen. At the same time, it sold similar hats to that customer's competitors for from $24 to $27 per dozen. Also it engaged in other similar discriminating practices.

EFFECT

The effect of these discriminations was to injure, destroy, or prevent competition with customers receiving the benefit of the more favorable prices.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from these practices is submitted herewith, marked "F. T. C. Ex. No. 54."

September 4, 1937 (FTCA-5)

CLOTHING—COVERED BUTTONS AND BUCKLES
COVERED BUTTON AND BUCKLE CREATORS, INC., ITS OFFICERS AND REPRESENTATIVE MEMBERS ET AL. DOCKET No. 3186

STATEMENT OF FACTS

About 1934 some 150 concerns, engaged chiefly in New York in the manufacture of covered buttons, buckles, and novelties for use in the manufacture of wearing apparel and sales to dress manufacturers and those engaged in kindred industries, combined and conspired to maintain uniform prices for these products.

These concerns together manufactured approximately 90 percent of all the covered buttons, buckles, and like novelties made in the United States.

MONOPOLISTIC PRACTICES

In 1937 they agreed among themselves to fix and maintain uniform minimum prices and discounts at which these products should be sold, and notified the industry of their attempt to police it by a notice in Women's Wear, a trade magazine of wide circulation, warning all who were not members of their association that they would be held strictly accountable to the rules laid down by the Federal Trade Commission and subjected to legal action for any violation. In this way it was impliedly represented that the rules of the association were approved by the Federal Trade Commission fair-trade-practice rules for the industry. That was not true.

EFFECT

Such practices hindered and prevented competition in, and increased the prices of covered buttons, buckles, and novelties paid by dress manufacturers and indirectly the prices paid by the public for clothing on which those articles were used.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such practices is submitted herewith, marked "F. T. C. Ex. No. 55." Attention is invited to appendix 1 of the findings, which is a mimeographed copy of the Federal Trade Commission's trade-practice rules for that industry, approved by the Commission, which rules did not authorize the practices indulged in by these manufacturers.

September 30, 1937 (FTCA-5) (CA-2(a) & 3)

PASSBOOKS—ACCOUNT BOOKS, ETC. CHRISTMAS CLUB. DOCKET NO. 3050.

STATEMENT OF FACTS

This Club sold passbooks, account books, advertising literature, and other paraphernalia used by banks for conducting Christmas Savings Clubs. The conduct of Christmas Clubs is a very popular form of saving. This particular company was the largest single dealer in the United States selling these "systems" to the banks.

MONOPOLISTIC PRACTICES

The Club falsely represented that it had exclusive rights to the term "Christmas Club" and that the phrase was trade-marked; also that it was the manufacturer and printer of the "systems" which it sold and that it spent more on advertising to promote the growth of Christmas clubs than it actually did spend. This was the violation of the Federal Trade Commission Act.

Also it sold its "systems" upon the condition, agreement, or understanding that its bank customers would not deal in the "systems" of any of its competitors. This constituted violation of section 3 of the Clayton Act which makes "tying agreements" illegal.

In violation of the Robinson-Patman Act, which is section 2 (a) of the Clayton Act, the Club discriminated in price between its different customers.

EFFECT

The unfair methods of competition consisting of the false representations tended to divert trade to the Club from its competitors to their injury; the violation of section 3 of the Clayton Act tended to promote a monopoly in the respondent and eliminate competition by agreement; and the violation of the Robinson-Patman Act tended to unduly restrain trade by giving an unfair competitive advantage to any customer selected by the Club as a beneficiary of its favorable and unlawful discriminatory price.

A copy of the finsings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 56."

October 4, 1937 (FTCA-5)

HOT AIR FURNACES
NEW YORK SHEET METAL ROOFING AND AIR-CONDITIONING CONTRACTORS' ASSOCIATION, FOX FURNACE COMPANY, ET AL. DOCKET NO. 2931

STATEMENT OF FACTS

The Fox Furnace Company manufactured and sold hot-air furnaces in interstate commerce. The New York Association was a trade organization of plumbing contractors and dealers in sheet-metal roofing supplies and hot-air furnaces. The members competed with each other and with other plumbing contractors and dealers in similar commodities. The member dealers purchased their hot-air furnaces from various manufacturers, some of whom also sold such furnaces to large mail-order houses.

About September 1934 the Association and the Fox Furnace Company agreed to, and did, make a list of those manufacturers who sold to mail-order houses and urged all their members not to buy from them.

MONOPOLISTIC PRACTICES

They held meetings at which means were devised to exert their combined influence and pressure on their own members and upon members of various other trade associations to confine their dealings to those manufacturers who would not sell to mail-order houses located throughout the United States. To this end they printed and published so-called "white lists" containing the names of "approved" manufacturers and indulged in boycotts, threats of boycotts, and other united ction against all manufacturers not so listed.

EFFECT

This tended to monopolize in the members of the association the business of selling hot-air furnaces, supressed competition in this industry, and operated as an unreasonable restraint upon the legitimate competition of mail-order houses and others depriving the public of price and service advantages which it would otherwise have enjoyed.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No 57."

November 30, 1937 (FTCA-5) METAL WINDOWS
METAL WINDOW INSTITUTE ET AL. DOCKET NO. 2978.

STATEMENT OF FACTS

Nineteen corporations, constituting substantially all of the manufacturers and distributors of steel window products in the United States, and who had been in active and substantial competition with each other, became members of the Metal Window Institute, a voluntary unincorporated trade association.

The products manufactured and sold by these firms were used principally in the construction of industrial and commercial buildings, generally through competitive bids. A substantial part of their sales for several years was to the United States and to the several States, as well as to municipalities or political subdivisions thereof, for use in the construction of public buildings.

MONOPOLISTIC PRACTICES

Before the association was formed certain of the members compiled and, afterward, through the association, revised and computed their sales prices by the application of discounts to gross or basic prices published in a so-called "basic price book," which was a comprehensive and detailed list of prices for all of the products of the metal window industry and contained formulas for determining prices.

Acting through the association the firms mentioned established and maintained clearing bureaus to assist each other in checking estimates for metal window products from plans and specifications under which bids were to be submitted. In connection with this method of procedure they entered into agreements in furtherance of which they combined to establish and maintain uniform minimum prices, terms and conditions of sale, and schedules of discounts from basic prices. In any given geographic area the members would submit all estimates of bids, to be made on a project located there, to one of these clearing bureaus theretofore designated by the association as the bureau to clear bids or prices for that particular area, and identical gross, and in some instances identical net price estimates were agreed upon and used in submitting bids on these projects.

The association required its members to adhere to the established prices by actively policing the industry and threatening to impose penalties on those who sold for less.

One way in which nonmember competitors were prevented from becoming the successful bidders on projects, and were induced to join the association, was the agreement by the members that in certain cases the bidding should be "open." In those cases the members would concertedly underbid and undersell the "noncooperating" competitors. Sometimes, by concerted action, the members secured the withdrawal or cancelation of bids where the bids were less than the prices which they had established by mutual agreement.

EFFECT

This unduly and unlawfully restrained trade in metal window products substantially enhanced prices, maintained prices at artificial levels, and deprived the public of benefits which would have obtained from free and open competition in this industry.

A copy of the Commission's findings as to the facts, conclusion and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 58."

October 30, 1937 WINDOW GLASS
(FTCA–5) PITTSBURGH PLATE GLASS CO. ET AL. DOCKET NO. 3154
(CA–2 (a), (f))

STATEMENT OF FACTS

The Pittsburgh Plate Glass Company manufactured and sold window glass and other glass products. It had a total of 8 factories located in Pennsylvania, Indiana, Missouri, Ohio, West Virginia, and Oklahoma, together with 70 warehouses located in many different States from which it distributed its products. This company and 7 competing glass manufacturers comprised the membership of the Window Glass Manufacturers Association.

The National Glass Distributors Association was composed of distributors of window glass and glass products. The 7 manufacturers above referred to, and 1 more were associate members in this Association. The Pittsburgh Plate Glass Company, however, held membership in the Distributors Association for 38 of its 70 distributing establishments.

Except for the monopolistic practices and combinations engaged in by these manufacturing and distributor firms, the members of each group would have been in competitition with the other members of their class, and also in competition with other manufacturers and other distributors. The manufacturers who constituted the membership of the Manufacturers Association owned and controlled practically all of the factories producing window glass in the United States and the distributors group was so large and influential in the trade as to be able to influence the prices, terms, and conditions upon which all distributors must buy such products.

MONOPOLISTIC PRACTICES

About 1935 these manufacturing and distributing firms conspired and combined to enforce by coercive means, observance of certain policies and sales methods by distributors who were either not permitted to be or did not desire to be members of the Association.

Some of these policies and practices were as follows:

1. All buyers were classified as either "quantity buyers" or "carload lot buyers," and lists so classifying the buyers were printed and circulated.
2. Each of the manufacturers published only one window glass price list showing the prices for "quantity buyers," exclusively.
3. The Distributors Association published price lists for "carload lot buyers," exclusively, and only their members could distribute them.
4. All who were not classified as "quantity buyers" had to buy glass from or through "quantity buyers."
5. All buyers, except "quantity buyers" had to pay up to 7½ percent percent more for window glass of the same grade and quality than the price quoted to and paid by "quantity buyers."
6. Sales of "quantity buyers" were confined to a restricted trade area apportioned the authorized "quantity buyer" who either never or very rarely accepted orders for window glass to be transmitted to the manufacturer from dealers located outside of that area.
7. Two or more dealers were precluded from making pool purchases in carload lots to get the benefit of the discount accruing to that classification. "Carload lot buyers" might not reconsign or divert the shipment to any other dealer.
8. Distribution and outlets for the product were generally controlled.

"Quantity buyers" were arbitrarily defined as those buyers purchasing from 3,000 to 5,000 50-foot boxes of window glass for stock each year. The manufacturers issued price lists for window glass to "carload lot buyers" and refused to sell carload lots directly to any buyers except approved "quantity buyers" and sought and obtained the assurances of cooperation from one another in making these practices, policies, and pricing methods effective. The distributors, on the other hand, combined to induce the manufacturers to grant the discriminatory prices and received and accepted such prices.

EFFECT

All this tended to place control over the channels of distribution in the particular manufacturers and distributors who had so combined. It also concentrated and limited in the "quantity buyers" the opportunity to buy window glass from the manufacturers at the manufacturer's discount price; standardized prices and favored certain purchasers through unlawful discrimination in prices to the unfair competitive disadvantage of others; and unreasonably restrained, stifled, and suppressed competition in the window-glass industry. In turn this tended to increase the cost to purchasers of such window glass; discriminated against small business enterprises; obstructed the establishment of new window glass distributing concerns; and otherwise interfered with the normal flow of trade in the general commerce of window glass, to the injury of all dealers, distributors, and others who would not confrom to the program and policies of these two groups. Competition was substantially lessened and a monopoly in the sale and distribution of window glass promoted. Real competition between the manufacturers and their competitors was prevented.

A copy of the findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 59."

December 30, 1937 (FTCA-5) BUILDING MATERIALS AND BUILDING SUPPLIES
BUILDING MATERIAL DEALERS ALLIANCE ET AL. DOCKET No, 2191

STATEMENT OF FACTS

Building Material Dealers Alliance was organized in 1931 as an unincorporated trade association having as members over 150 dealers in building materials and builders' supplies who were located and traded in the Cleveland-Pittsburgh trade area. The materials dealt in included cement, brick, tile, clay products, sewer pipe, plaster, sand, gravel, stone, lime, lumber, lath, roofing, and other materials ordinarily used in the construction industry. The trade area named consisted of a portion of Ohio and Pennsylvania and was one of the largest markets in the country for the sale of such supplies. The Alliance was managed by a board of councilors who were representative of the dealer members. For the more effective operation of the Alliance, the membership was divided into local associations or subdivisions.

The Pittsburgh Builders Supply Club was an association of the largest business firms in this industry in Pittsburgh, Pa., who sold over 75 percent of the builders' supplies in that area.

Dealers operating in the trade area around Cleveland banded together in an unincorporated trade association known as Building Material Institute. These dealers, with few exceptions, were also members of the Alliance.

Dealers in the western half of Pennsylvania and the adjacent trade area (which territory was part of the Cleveland-Pittsburgh trade area) formed the Western Pennsylvania Builders Supply Alliance. This Alliance was affiliated and actively cooperated with the other associations in carrying out their joint programs and policies. Its members were also members of the Alliance.

The Allied Construction Industries of Cleveland, Inc., was an Ohio corporation whose membership consisted of firms engaged in various lines related to the building and construction industry, including certain building materials and builders' supplies dealers in and about Cleveland. Five of such dealers were listed as members of the Building Material Dealers Alliance.

The Lime and Cement Exchange of Baltimore, Md., was an incorporated association constituting an affiliated unit of the National Federation of Builders Supply Associations.

The Middle Atlantic Council of Builders Supply Associations was an unincorporated trade association comprising eight builders' supply associations whose members were engaged in this same industry.

Maryland Builders Supply Association comprised dealers in builders' supplies from that part of the State of Maryland which is west of Chesapeake Bay and west and south of the Susquehanna River. It was a unit of the Middle Atlantic Council and the National Federation.

The National Federation of Builders Supply Associations, incorporated in 1933 under the laws of the State of New Jersey, comprised certain associations of dealers engaged in the several States and federated together for the purpose of promoting their common business interests. It consisted of 41 federated units located in approximately 32 States throughout the United States.

The members of these organizations and associations bought their supplies from manufacturers and producers located throughout the United States and sold and shipped the same in interstate commerce, in the course of which, but for the combinations and conspiracies in which they conspired to engage, would have been in competition with each other and with other firms engaged in the industry.

MONOPOLISTIC PRACTICES

They classified their members and other approved concerns as "recognized" dealers. This classification theoretically depended upon whether the dealer seeking recognition could establish some economic justification for the existence of his business in the community which he served, or proposed to serve, but actually it depended upon the arbitrary decision of the officers and members of the associations and who were competitors or prospective competitors of the dealer who desired recognition.

The main objective of the program, in which all of these associations and their members actively cooperated, was to control and confine retail distribution in building materials and supplies to such "recognized" dealers, and to prevent the direct sale by manufacturers to all others, including consumers, nonrecognized dealers, contractors, State governments, and other political subdivisions; and to force all purchases and flow of commerce in such materials to come through the "recognized" dealers channels upon terms or conditions of sale affording a profit to such "recognized" dealers.

A further objective was to limit the distribution of such supplies to carload quantities by rail, eliminating motortruck distribution so as to prevent competitors from obtaining truckload quantities; to prevent other than "recognized" dealers from participating in pool-car shipments; to prevent certain manufacturers from purchasing raw materials direct from other manufacturers and to facilitate price fixing among "recognized" dealers in their respective communities and to eliminate brokers.

To these ends they procured written agreements from each member, from manufacturers, and from producers to support their program. By circulating statements of policy and threats of boycott against those who refused to cooperate these agreements were enforced. Insistent pressure was exerted by the dealers upon manufacturers and producers to cooperate.

Price lists were furnished dealer members in some communities for their guidance. If a dealer failed to observe such prices the organizations brought pressure on manufacturers who sold to the offending dealer to refuse to make any further sales to him.

At the last meeting of the Building Material Dealers Alliance, held on January 5, 1933, the National Federation of Builders Supply Associations was formed to apply on a national scale the foregoing principles and policies. In 1936 the National Federation issued a so-called "call to arms" to 500 or more dealers throughout the United States who had always sold more than one-half of all hard material distributed through dealer channels in this country. Various commodity committees were formed, such as committee on cement, clay products, metal lath, lime, etc. These various committees formulated certain recommendations. For instance, some of the recommendations of the cement committee which the Federation adopted were:

1. That manufacturers should not ship to dealers outside the prescribed dealer territory.
2. That the organized units, with their dealer members, should determine what that territory was to be.
3. That cement manufacturers stop all warehouse operations.
4. That all trucking of cement be stopped.
5. That a minimum differential of 15 cents per barrel on sales of portland cement in carload quantities should be maintained.
6. That the federated units should make revised lists of established dealers, to be furnished to all cement manufacturers shipping into their territory.

In 1935 the United States, through the Procurement Division for the Relief Administration, attempted to buy direct from manufacturers and sent to manufacturers within the State of Ohio an invitation for bids on 100,000 barrels of cement. As a result of prompt action, on the part of Ohio Builders Supply Association, an affiliated unit of the National Federation, no cement company would quote prices. When the same invitation was mailed to manufacturers outside of Ohio, again no direct bids were made. The National Federation in this way succeeded in having the United States Government change its policy of direct purchases of materials for relief purposes, and a form letter was sent to the various units of the Federation referring to the last-described activities as "one of the finest pieces of cooperative work this industry ever engaged in in bucking a department of the Government."

EFFECT

Interstate commerce in the sale and distribution of building materials was restrained by eliminating so-called irregular dealers and manufacturers and producers selling to such dealers, and restricted and confined to such manufacturers and producers and dealers as would adhere to the plan of combination of the various trade associations and their members. Competition in the sale of building materials was substantially lessened and suppressed. Competitors of members were unable to obtain interstate shipments of their requirements due to the combined will of the associations and their members. Manufacturers were injured in their business and in their freedom to sell their products direct to purchasers as they pleased. They dared not sell to many to whom they wished to sell and considered as dealers, and would not sell to consumers, contractors, the Government or its political subdivisions. Truck transportation was interfered with and the small purchaser injured by being prevented from obtaining supplies in small quantities to be transported by truck. Costs to the consuming public were increased and the consuming public denied the advantages in price which it would have obtained from the natural flow of commerce in free competition.

A copy of the Commission's findings as to the facts and conclusion, together with order to cease and desist from such practices, is submitted herewith, marked "F. T. C. Ex. No. 60."

January 5, 1938 (FTCA-5) SPONGES
TARPON SPRINGS SPONGE EXCHANGE, INC., ET AL. DOCKET No. 3024

STATEMENT OF FACTS

The Tarpon Springs Sponge Exchange, Inc., was a Florida corporation which conducted an exchange for the benefit of its stockholders, in all approximately 25 members, who bought sponges through the Exchange and sold them to wholesale and retail dealers throughout the United States. Except as competition was restricted and suppressed by the practices hereinafter described, they were in competition with each other and with others engaged in a like business.

The Exchange built a rectangular building containing stalls opening into a middle court. These stalls were rented to boat captains to store sponge catches until ready for sale, and practically all sponges brought into Tarpon Springs were stored there in piles to be sold at auction. The bidding was secret and each captain free to accept or reject any bid made.

After purchase at the Exchange, the sponges were taken by the packer member to his warehouse to be prepared for shipment.

Of four classes of sponges produced in the United States, namely, sheep's wool, yellow, wire, and grass, the first species exceeds in value all other varieties combined. They are best for automobile washing and the paint industry. Nearly all of them come from the waters of the Gulf of Mexico adjacent to Florida, and Tarpon Springs is the largest and most important sponge-producing center in the United States, producing more than 80 percent of the wool sponges, which have the reputation of being the finest wool sponges produced anywhere. Over 90 percent of the population of that city was directly dependent on this industry.

Wholesalers and retailers had to get their requirements of wool sponges from members of the Exchange, either directly or indirectly. Six of the members of the Exchange, known as operators, advanced funds and supplies to the fishermen for a percentage of the proceeds of sale which were turned over to the operators who deducted a percentage and distributed the balance upon a share basis to those who gather the sponges. There were also some independent boat operators. Only member packers, and such others as might be able to secure permits, were permitted to purchase at the Exchange.

For some time prior to 1934, due to a lessened demand for sponges, the industry at Tarpon Springs had been in a relatively chaotic condition so that at the end of 1934 the packers were greatly overstocked and a considerable portion of this stock was heavily mortgaged. Collections were slow and financial credit exhausted.

MONOPOLISTIC PRACTICES

At a general meeting of all interested parties in the industry on January 10, 1935, was discussed the problem of how to dispose of more than $100,000 worth of sponges which had accumulated in storage at the Exchange. An agreement was reached whereby the packers could pay 60 percent in cash and the operators carry the remaining 40 percent. After a vote taken, the fishing-boat captains promised the Exchange not to sell any further wool-sponge catches, except those already in the Exchange, until after May 1, 1935. It was resolved that the catch on hand January 25, 1935, should be sold by February 15, 1935, and that new catches should not be offered for sale until after May 1, 1935, and that the Exchange should be closed as to all sales of wool sponges. It was further agreed that no buyers would be permitted to buy any wool sponges outside of the Exchange, except from one another to supply a shortage, and that any buyers who violated the agreement should be fined in amounts from $750 to $2,500, depending upon the extent of the violation. From February 16, to May 2, 1935, the Exchange was closed so far as sales of wool sponges were concerned; the members, by concerted action, refusing to buy or sell them except from or to one another to fill outstanding orders.

EFFECT

The purpose and effect of closing the Exchange to the sale of wool sponges was not only to prevent a further decline in prices, but to substantially increase them. Between February 16 and May 2, 1935, the normal flow of sponges in commerce from the Exchange to consumers in other States of the United States, in the District of Columbia, and in foreign countries was completely stopped, and the price of wool sponges to dealers and the public generally was increased.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such practices in submitted herewith, marked "F. T. C. Ex. No. 61."

January 31, 1938 (FTCA-5) — AUTOMOBILE TESTING DEVICES
JOSEPH WEIDENHOFF, INC. DOCKET NO. 2675

STATEMENT OF FACTS

This corporation located in Chicago, Ill., manufactured electrical and automobile motor testing devices, together with accessories, and sold them to wholesale automotive-supply dealers located in various parts of the United States for resale to the public. It was the largest manufacturer in its line with an annual sales volume of about $450,000, and was in competition with five other manufacturers.

In 1932 it purchased a patent pertaining to a vacuum gauge used in combination with an internal-combustion engine as an indicator of the load factor and relative fuel economy in the motor. This patent expired on December 2, 1936.

Afterward, it continued to manufacture and sell such testing devices at from $175 to $1,000 each. In the completed device many separate parts and items were assembled and the vaccum gauge was but a minor part, judged as to cost, relative value, and functional importance. Neither the other parts nor the completely assembled device was protected by patent.

MONOPOLISTIC PRACTICES

By threatening suits for infringement, the Weidenhoff company tried to induce all of its competitors, and succeeded in inducing some of them, to enter into license agreements fixing resale prices which were 25 percent higher than formerly. The Weidenhoff company was to receive royalties. These provisions were not confined to the patent rights on said vacuum gauge but related to the completely assembled testing device, and all its unrelated parts.

EFFECT

The license agreements exceeded all incidental ownership rights in the patent on the vacuum gauge, and were used to control competition and to fix prices. Ensuing higher prices caused injury both to purchasers and competitors who were by coercion compelled to agree to this company's terms and conditions.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 62."

January 31, 1938 (FTCA-5)
SCHOOL SUPPLIES—CHALK—CRAYONS
AMERICAN CRAYON COMPANY, ET AL. DOCKET NO. 2967

STATEMENT OF FACTS

Fourteen corporations, who were engaged in the manufacture and sale of chalk and waxed crayons, water colors, and other items of school supplies and who, prior to 1933, had been engaged in selling them competitively, organized their industry under the name of Paint and Crayon Industry Association and, about May 1936, formed the Crayon Water Color and Craft Institute.

MONOPOLISTIC PRACTICES

Acting in concert through the Association and the Institute the respective companies combined to fix uniform prices, terms, and discounts at which they sold such crayons and school supplies. The Association and the Institute acted as clearing houses for the exchange of price information.

EFFECT

Price competition was substantially restricted between and among these concerns and the prices of crayons, water colors, and other school supplies maintained at an artificial level.

A copy of the Commission's findings as to the facts, conclusion, and order is herewith submitted, marked "F. T. C. Ex. No. 63," and a photostatic copy of the stipulation as to the facts entered into between the Commission and the respondents, upon which evidence the findings were based is also submitted herewith, marked "F. T. C. Ex. No. 64."

February 25, 1938 (FTCA-5) (CA-2 (a), (d), (f))
GOLF BALLS
GOLF BALL MANUFACTURERS' ASSOCIATION, ET AL. DOCKET NO. 3161

STATEMENT OF FACTS

The Golf Ball Manufacturers' Association had a membership consisting of manufacturers and wholesalers of golf balls. Representative members included A. G. Spalding and Brothers, John Wanamaker, Inc., U. S. Rubber Products Company, Acushnet Process Company, and others. The manufacturers belonging to this Association produced most of the golf balls sold in the United States. They were in competition with other manufacturers and wholesalers of golf balls and, except for the practices hereinafter referred to, they would have been in competition with each other.

The Professional Golfers' Association of America, known as "P. G. A.," was a nonprofit association created to promote the game of golf and the general welfare and interests of its members. Its membership consisted of approximately 1,500, out of an estimated total of 2,500, professional golfers who were engaged in the retail sale of golf balls and equipment throughout the United States in competition with each other and with others.

MONOPOLISTIC PRACTICES

The two Associations adopted the policy and practice of coercing manufacturers and wholesalers to contact with "P. G. A." to pay the latter for the privilege of imprinting the letters "P. G. A." on the golf balls sold to that Association, a certain percentage of which was passed on to the retailing members. The remainder of the funds derived in this manner were used by "P. G. A." to create a preference on the part of the public for golf balls bearing that imprint. Under these agreements the manufacturers fixed and maintained uniform list prices at which they sold golf balls of equal grade and quality to members of the "P. G. A." and to nonmember retail dealers and refused to give any rebates or other discounts to retail dealers who were not members of the "P. G. A."

The two Associations cooperated in supervising and investigating and policing the pricing practices and methods of retail dealers, and acted concertedly to maintain the minimum resale prices agreed upon and otherwise control the retail market in golf balls.

EFFECT

The payment by the manufacturers to the "P. G. A." of royalties for the privilege of printing those letters on the golf balls sold by them, and the subsequent disposition of such payments to and for the benefit of the individual retail members of the "P. G. A." constituted an unlawful discrimination in violation of section 2 (a) of the Clayton Act and had the effect of enabling the Professional Golfer retail dealer members to drive out successful competition of nonmember retailers in the sale of golf balls of like grade and quality, since the latter, having received no such discounts or favorable discrimination, were not in position to meet the competition offered by the members of the Association.

This unreasonably lessened and suppressed competition in the golf-ball trade and deprived the public of the price advantages that would otherwise have been received, and put small business enterprises, which had been engaged in the manufacturing, selling, and distributing of golf balls, to a serious disadvantage. It also prejudiced and injured manufacturers and wholesalers who did not conform to the sales program laid down by the two Associations and their members, and tended to monopolize the manufacture and sale of golf balls in the members of the respective Associations.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from these practices is submitted herewith, marked "F. T. C. Ex. No. 65."

January 23, 1938 (CA-3) — OPTICAL LENSES — SOFT-LITE LENS COMPANY, INC. DOCKET NO. 2717

STATEMENT OF FACTS

The Soft-Lite Lens Company, Inc., was located in New York and manufactured and sold to wholesalers of optical goods and supplies a certain kind of glass lens under various trade names. These lenses were made in four different densities and in a tint or color known in the trade as "rose" or "flesh" and sold under the general trade name of "Soft-Lite." It was in competition with many others similarly engaged.

MONOPOLISTIC PRACTICES

The company, in the course of its business, required many retailers to enter into contracts with it, known as "Registered Dispensing Licenses." Under the terms of these agreements a license was granted to the retailer to sell Soft-Lite lenses at prices prevailing in the retailer's locality, and the retailer agreed that upon selling a Soft-Lite lens he would place an order with someone holding a license from the manufacturer to accept such orders. He also agreed not to sell or deal in any lenses similar in tint, color, or type to the Soft-Lite lenses. The manufacturer agreed to furnish certain sales promotional assistance and requested the wholesalers, to whom it sold, to resell only to the retailers whom it had licensed. More than 4,000 of these retail licensing agreements were entered into.

EFFECT

This was contrary to the provisions of the Clayton Act, section 3 of which makes it unlawful for anyone engaged in commerce to sell commodities upon the condition, agreement, or understanding that the purchaser will not use or deal in the commodities of a competitor of the seller, where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

The Commission found that the effect of the use of the licensing agreements might be to substantially lessen competition in the optical-lens business in the United States, and ordered the Soft-Lite Lens Company, Inc., to cease and desist from such practice.

A copy of the Commission's findings as to the facts, conclusions, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 66."

June 10, 1938
(FTC-5)

ALCOHOLIC BEVERAGES
SEAGRAM-DISTILLERS CORPORATION, GOODERHAM & WORTS, LTD., ET AL., SCHENLEY DISTILLERS CORPORATION, ET AL., HIRAM WALKER, INC., ET AL., NATIONAL DISTILLERS PRODUCTS CORPORATION, ET AL. DOCKETS NOS. 2988, 2989, 2990, 2991, 2992

STATEMENT OF FACTS

Seagram-Distillers Corporation was one of the four largest distributors of alcoholic liquors in the United States, selling wherever the sale of liquor was legalized, in an annual total dollar volume of about $70,000,000. It had sales offices in New York, Illinois, California, Louisiana, Michigan, Pennsylvania, and Massachusetts and employed a large number of salesmen who solicited the trade of wholesalers, retailers, hotels, bars, and restaurants throughout the United States. It did a very substantial amount of national advertising and made direct sales of all of its products to carefully chosen wholesale distributors, who in turn sold to package stores, retailers, and bars. From time to time it prepared price lists upon which were scheduled its prices to the wholesalers, the suggested minimum prices at which wholesalers were to resell to the retailers and the suggested minimum resale prices which the retailer should charge the consumer. These prices varied for different States. The liquors were sold wholesalers upon the definite understanding and agreement that the wholesaler would observe the suggested minimum resale prices and would sell only to retailers who likewise observed the suggested minimum resale prices to the consumer.

Gooderham & Worts, Ltd., was a Delaware corporation, affiliated with a Canadian corporation of the same name. It sold alcoholic beverages, some of which were manufactured and sold to it by the Canadian corporation and the balance of which it purchased from Hiram Walker & Sons, Inc., a Michigan distilling corporation, with whom it was also affiliated. It had four large sales distribution offices located in New York, Illinois, Colorado, and California and, with regard to the maintenance of minimum resale prices, conducted its business in substantially the same manner as Seagram-Distillers.

Schenley Distillers, a Delaware corporation, owned all the stock of many subsidiary distilleries, including some in Pennsylvania and Maryland. It also owned Schenley Products Company, its sales corporation. Together with its owned and controlled subsidiaries, it constituted one of the largest units for the distilling and distribution of alcoholic liquors in the United States. In 1935 its gross sales exceeded $63,000,000. It had sales offices in New York, California, Colorado, Florida, Kentucky, Louisiana, Illinois, New Jersey, Missouri, Massachusetts, Connecticut, and Arkansas and did a large amount of periodical and newspaper advertising. Substantially the same resale price maintenance practices were adopted and used, as are above described on the part of Seagram-Distillers Corporation.

Hiram Walker, Inc., a Delaware corporation, another of the four largest distributors of liquors in the United States, employed around 200 salesmen, did a large amount of national advertising, and made most of its sales to 49 carefully chosen distributors who, in turn, sold to package stores, retailers, bars, and others. For each sales division were prepared price lists upon scheduling the respective prices at which it suggested the wholesaler and retailer should resell.

The National Distillers Products Corporation was a Virginia corporation manufacturing in its own name and through wholly owned and controlled subsidiary distilleries, including those formerly operated by the American Medicinal Spirits Corporation, Penn-Maryland Corporation, A. Overholt & Company, Inc., the Old Taylor and Old Crow Distilleries near Frankfort, Ky., and many others.

One of the largest distillers in the United States, it maintained divisional sales offices in New York, Louisiana, California, and elsewhere; employed a large number of salesmen traveling throughout the United States soliciting the trade of wholesalers, retailers, hotels, bars, restaurants, chain stores including the Great Atlantic & Pacific Tea Company, Liggett's Drug Stores, Whelan United Drug Stores, and others. It did a large amount of national advertising and adopted the same resale price maintenance plan as above described for the other large distillers.

MONOPOLISTIC ACTS AND PRACTICES

In connection with the sale and distribution of their respective lines of products, these distillers, in order to stabilize and make uniform the resale prices of said products in the District of Columbia, adopted, established, and maintained what is known as the "Beechnut System" of merchandising, whereby they fixed specified, standard, and uniform resale prices, discounts, and mark-ups at which their said products should be resold by wholesale and retail dealers and received and accepted the active support and cooperation of said wholesalers and retail dealers in the maintenance of that system.

In pursuance of this plan, the respective distillers had argeements or understandings with their respective wholesale distributors in the District of Columbia whereby:

(1) The distributors agreed to sell only to those retailers who would agree to resell at the minimum prices suggested.

(2) The distributors also agreed to sell the distillers' products at a uniform fixed price to retailers, and without any discounts from the suggested list prices.

(3) The distillers agreed to cooperate by so-called "missionary men" and other designated representatives in securing and furnishing all necessary information for the purpose of enforcing the suggested prices.

(4) The distillers also agreed to drop from their list of distributors any of them who were found offering to make or making a discount from their suggested list prices.

(5) The distributors agreed to stop supplying retailers who cut prices and to compile and maintain reports or lists of those retailers who failed or refused to maintain the suggested minimum resale prices, and not to reinstate them until such reinstatement had been authorized by the distillers.

(6) The distributors agreed to dismiss salesmen who offered or gave discounts or who divided their commission with retailers.

(7) The distributors agreed to furnish the distillers with the names of wholesalers who offered, or who were suspected of offering, discounts to retailers.

(8) The distillers agreed to supply their distributors with a list of retailers who did not maintain the minimum resale prices suggested.

Employees of the distillers were instructed to report any violations of the above agreements and the distillers received and acted upon such reports to the end that the supply of products on hand with offending retail liquor dealers might become exhausted; cut off the supplies of all price-cutting retail dealers and reinstated offending price cutters who agreed to "behave." For their part the retail-dealer vendees, handling the distillers' respective lines, agreed with distributors and with distillers' representatives that the retail-dealer's profit should be made uniform by fixing and maintaining uniform minimum prices for liquor, and that only such retail dealers who promised to maintain uniform minimum resale prices should be supplied with the distiller's products. They also agreed that wholesalers should be notified not to supply any price-cutting retailers.

All of the foregoing agreements were carried out as far as possible by the concerted and cooperative action of all concerned.

EFFECT

The direct effects of making and executing these agreements were to suppress competition among jobbers, wholesalers, and retailers in the District of Columbia; and to cause them to sell at the prices suggested rather than at such lower prices as they might deem adequate and warranted by their respective selling costs and trade conditions generally, thereby depriving purchasers of the price advantages which would otherwise have obtained from a natural and unobstructed flow of commerce.

The Commission proceeded against each of the foregoing distilling corporations in five separate complaints, wherein, based on extensive investigations and interviews with hundreds of prospective witnesses located throughout the New England and Atlantic seaboard areas, it was charged that these distillers had committed the above acts and practices throughout those areas.

On August 17, 1937, by title VIII of an act to provide additional revenue for the District of Columbia and for other purposes, Congress passed the Miller-Tydings resale price maintenance law, amending section 1 of the Sherman Antitrust Act, and section 5 of the Federal Trade Commission Act, so as to permit contracts and agreements for resale price maintenance, such as were involved in the instant cases, in all States or Territories where such contracts had been made lawful as applied to intrastate transactions under any statute, law, or public policy then or thereafter in effect in such State or Territory.

At the time of the passage of the Miller-Tydings Act approximately 42 States had enacted "fair trade" laws, permitting, under certain conditions, resale price mantenance agreements of the kind charged against these distillers; and, subsequently, a forty-third State, Mississippi, passed a similar law. This left minimum resale contracts affecting commerce going into the District of Columbia and the States of Alabama, Delaware, Missouri, Texas, and Vermont as the only such contracts to which the Commission considered that its jurisdiction any longer applied.

It appeared from the investigational files that, except for the distillers' above acts and practices occurring in connection with liquors shipped for resale in the District of Columbia, all the acts and practices charged in these complaints had occurred in one of the above 43 States. The Commission therefore limited its findings of fact and order to the acts and practices of these distillers in connection with liquor sold or shipped for resale into the District of Columbia. So that presumably, in the absence of any restraint except as to liquors sold in the District of Columbia or shipped for resale therein, the aforesaid distilling enterprises are, by the Miller-Tydings Act, enabled to, and do, continue by agreement to control the resale prices of their products elsewhere throughout the United States.

In the *Beech-Nut case* (257 U. S. 441), a system of merchandising similar to that used by these distillers was held by the Supreme Court to suppress and prevent freedom in competition in violation of the declaration of public policy embraced in the Sherman Act, and to constitute an unfair method of competition in violation of the Federal Trade Commission Act.

In the case of *Old Dearborn Distributing Company* v. *Seagram-Distillers, et al.*, decided December 7, 1936 (299 U. S. 183), it was held that the Fair Trade Act of Illinois, which, except for minor differences not important to a consideration of the facts with which we are here concerned, was the same as the fair-trade laws of the other States, was not unconstitutional, and that prices in respect of "identified" or branded goods could be fixed under legislative leave by contract between the parties.

In this latter decision the Court referred to bills introduced in Congress from time to time, authorizing standardization of price agreements in respect of identified goods upon which bills extensive hearings had been held by congressional committees. These bills were in all essential respects like the Illinois act. Exhaustive legal briefs, testimony, and arguments for and against the economic value of the proposed laws were described in the records of these hearings. (See Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, on H. R. 13305 (63d Cong., 2d and 3d sess.); H. R. 13568 (64th Cong., 1st and 2d sess.); Report of Federal Trade Commission on Resale Price Maintenance (70th Cong., 2d sess., H. Doc. No. 546).

Copies of the Commission's complaints in these distiller cases, together with its findings as to the facts, conclusions, and orders to cease and desist, insofar as the District of Columbia is concerned, are submitted herewith, marked as hereinafter indicated.

With the exception of Seagram-Distillers Corporation, the Commission's findings as to the facts, conclusions, and orders were based upon answers to the complaints in which the respective distillers admitted the acts and practices as charged, insofar as they related to liquors sold in or shipped for resale in the District of Columbia. In the case of Seagram-Distillers Corporation, however, prior to the filing of its answer, the Commission had caused the issues growing out of its complaint against Seagram-Distillers Corporation, and a former answer of denial filed by it, to be tried. A complete copy of the transcript of testimony, together with photostatic copies of certain of the exhibits referred to in the testimony, are also submitted herewith for the consideration of the committee, marked as exhibits to this report in accordance with the following schedule.

A copy of the Commission's Report on Resale Price Maintenance, printed as House Document No. 546, Part I (70th Cong., 2d sess.), and which was referred to by the Court in its decision in the case of *Dearborn* v. *Seagram*, *supra*, is also submitted. This document comprises a report on the General Economic and Legal Aspects of Resale Price Maintenance and was undertaken on the initiative of the Commission. It covers information received in reply to questionnaires sent to manufacturers, wholesalers, retailers, and consumers, together with a discussion of the Legal Status of Resale Price Maintenance in the United States and Certain Foreign Countries. It was transmitted to the Speaker of the House of Representatives on January 30, 1929, in two parts. Part II dealt with the commercial aspects and tendencies, and summarized the results of the inquiry undertaken by the Commission, based on statistical information furnished by manufacturers, wholesalers, and retailers, supplemented by direct oral inquiries made by agents of the Commission.

Schedule of resale price maintenance exhibits

F. T. C. Ex. No. 67: Copy of findings as to the facts, conclusion, and order to cease and desist in the case of Seagram-Distillers Corporation, Docket No. 2988.
F. T. C. Ex. No. 68: Copy of findings as to the facts, conclusion, and order to cease and desist in the case of Gooderham & Worts, Ltd., Docket No. 2989.
F. T. C. Ex. No. 69: Copy of findings as to the facts, conclusion, and order to cease and desist in the case of Schenley Distillers Corporation, Docket No. 2990.
F. T. C. Ex. No. 70: Copy of findings as to the facts, conclusion, and order to cease and desist in the case of Hiram Walker, Inc., Docket No. 2991.
F. T. C. Ex. No. 71: Copy of findings as to the facts, conclusion, and order to cease and desist in the case of National Distillers Products Corporation, Docket No. 2992.
F. T. C. Ex. No. 72 (Parts 1–35, incl.): Copy of transcript of testimony taken by the Commission in the case of Seagram-Distillers Corporation, Docket No. 2988.[1]
F. T. C. Ex. No. 73: Photostatic copies of certain documentary exhibits referred to in the preceding exhibit (Seagram-Distillers Corporation).[2]
F. T. C. Ex. No. 74–A: Report of Federal Trade Commission, January 30, 1929, on the General Economic and Legal Aspects of Resale Price Maintenance, House Document No. 546, Part I (70th Cong., 2d sess.).
F. T. C. Ex. No. 74–B: Commercial Aspects and Tendencies, Part II, of the Commission's report to the Seventieth Congress, second session, dated June 22, 1931, Part I of which was printed as House Document No. 546.

March 26, 1938 — RICE
(FTCA–5) — CALIFORNIA RICE INDUSTRY, ETC. DOCKET NO. 3090

STATEMENT OF FACTS

The California Rice Industry was a voluntary unincorporated trade association in California. Two Boards, known as a Marketing and a Crop Board, controlled its policies and activities. The Marketing Board was composed of all the rice millers in California, eight in number, including the Rice Growers Association of California, a cooperative corporation which milled and processed the rice of its some three hundred rice-grower members, as well as others.

The Crop Board was composed of representatives of California rice growers, whose interests it was intended to protect; but, in time, four of the eight members of this Board became members of the Rice Growers Association of California, a miller organization, so that the millers rather than the growers dominated the activities of both the Marketing and the Crop Boards.

Substantially all of the rice produced in California is a round, plump-grain rice commonly known as the "Japan" or "California-Japan type" and is distinguishable from the long- or medium-grain rice produced in other sections of the United States. The average annual crop of the Japan-type rice grown in California is about three million 100-pound bags of paddy rice, which is equivalent to a million and one-half bags of clean rice, about half of which is shipped to Hawaii, 25 percent to Puerto Rico, and the rest sold in the United States.

MONOPOLISTIC PRACTICES

In September 1933 the said millers and growers entered into an "Interstate Marketing Agreement" which was in force until terminated by the Secretary of Agriculture September 14, 1935. On August 28, 1935, the said millers and growers entered into an "Intrastate Marketing Agreement" which became effective on said date, but under which the Marketing Board did not begin to function until the

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[1] Special reference to Record pp. 312–329; 356–364; 542–550; 559–618 for press cooperation with distillers' resale price maintenance policies; also see Record, pp. 1196–1253; pp. 1289–1330; and pp. 1348–1357 for specific instances of operation and effect of the policy on wholesale and retail trade.

[2] Special reference is made to Commission's Exhibits Nos. 1–4; 5–125, for reports 87, 88, 89, blacklists; 189–C, statement of policy.

beginning of the crop year, to-wit, October 1, 1935. Since October 1, 1935, the said millers and growers have fixed prices, terms of sale, quantity discounts, and brokerage fees in connection with the sales of processed rice sold and shipped to Hawaii, Puerto Rico, and the various States of the United States. On Tuesday of each week the Marketing Board, with the concurrence of the Crop Board, fixed an "industry price" for extra-fancy clean rice. From this price, by use of a formula adopted by said Board, the base price, producer's price, and trade prices for all grades of processed rice were computed. The miller members of the Marketing Board uniformly observed and maintained these prices not only for the purchase of paddy rice from the growers but on all sales of processed rice no matter where sold and shipped, so that, with rare exceptions, for the same grade of rice the trace prices charged by the millers were uniform at any given time.

Prior to 1933 the millers and the growers were engaged in open competition in the purchase of paddy and in the sale of processed rice; since September 1933, there has been practically no competition. The price paid for paddy to the growers and the prices charged by the millers for processed rice have been uniform and fixed by agreement.

The Marketing Board, during the time the Interstate Marketing Agreement was existing, organized the Hawaiian Rice Importers Association in the Territory of Hawaii, which Association is composed of the largest importers of rice in the Hawaiian Islands. The Marketing Board determined and classified the members of said Association as Island importers. The purpose of the organization of said Association was to monopolize the rice markets in the Hawaiian Islands for the benefits of the miller members of said Marketing Board. The Marketing Board, under the Intrastate Marketing Agreement, and in agreement with the Hawaiian Rice Importers Association, fixed a discount of 22 cents a bag to purchasers of a minimum of forty thousand 100-pound bags of rice a month. This was later changed to 25 cents a bag on a minimum of fifty thousand bags per month. No single purchaser could take shipments sufficiently large to entitle him to this discount, so the members of the Hawaiian Association pooled their requirements and thereby were able to achieve a practical monopoly of the rice industry in the Hawaiian Islands. Nonmembers of the Hawaiian Rice Importers Association, because of the afore-mentioned discounts, were unable to buy rice from the millers at competitive prices and only negligible sales were made to them.

The price of the rice for Hawaii was fixed by the Marketing Board at 15 cents per 100-pound bag over the domestic price and this 15 cents per 100-pound bag became a deferred discount which was deducted from the price of rice sold to the Hawaiian Rice Importers Association and deposited by the miller vendors in banks in San Francisco to the credit of said Association. The remainder of 7 cents was a quantity discount which was in most cases deducted from the face of the invoice. The said Association employed a firm of accountants to examine the invoicse of the miller members of the Marketing Board and to check the deposits at the bank in order to determine that the above-described discounts were properly given and deposited to the credit of said Association.

Further, an additional charge of 1 cent per bag was made by the miller members of the Marketing Board on all sales intended for members of the Hawaiian Association, which 1 cent was remitted by the miller members of the Board to the Hawaiian Association as membership dues.

Also, under the Intrastate Marketing Agreement, processing quotas were assigned for each miller member who had to pay into a "Millers' Trust Fund" 10 cents for each bag processed during the preceding month, and an additional 10 cents per bag for any processed in excess of their said quota. After the expenses of the Marketing Board were paid from this fund it was distributed among the miller members subject to the deduction of a penalty to be imposed upon any miller member who violated the agreement.

The Marketing Board also employed accountants to check records and invoices of the miller members to ascertain whether or not they were complying with the prices, terms of sale, quantity discounts, and brokerage rates as fixed by the Board, and these accountants or auditors made monthly reports which were discussed at meetings and except for a few instances, which were later corrected, showed that the terms of the agreement had been fulfilled.

EFFECT

The effect as above indicated was the lessening and suppression of competition in the sale of rice and rice products, resulting in a monopoly in the sale of California-Japan type of rice in commerce.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such practices is herewith submitted, marked "F. T. C. Ex. No. 75."

Petition for review was filed by the California Rice Industry in the United States Circuit Court of Appeals for the Ninth Circuit on May 20, 1938. The case is awaiting briefs and argument.

June 14, 1938 (FTCA–5) — INDUSTRIAL RIVETS
SHELTON TUBULAR RIVET COMPANY ET AL. DOCKET NO. 3107

STATEMENT OF FACTS

A Connecticut corporation, known as the Shelton Tack Company, traded under the name of Shelton Tubular Rivet Company. Two other Connecticut corporations, two Massachusetts corporations, and two Illinois corporations, a Wisconsin corporation, a Virginia, Pennsylvania, New York, and Delaware corporation, and an association known as the Institute of Tubular Split and Outside Pronged Rivet Manufacturers, of which the aforesaid corporations were members, were the principal manufacturers of industrial rivets, which they sold and shipped in interstate commerce. They constituted a substantial majority of all manufacturers of this product in the United States and prior to 1933 were in open competition with each other.

MONOPOLISTIC PRACTICES

In 1933, for the purpose of eliminating price competition among themselves, they conspired and agreed to fix and maintain, and did fix and maintain, uniform prices and discounts, enforcing such agreement by the use of intimidation and persuasion to raise prices and influenced members with the use of pressure, coercion, and other means to execute the agreements.

EFFECT

The effect of such acts and practices was to monopolize, in the aforesaid corporations and the members of the association, the business of manufacturing and selling industrial rivets and to deprive the public of price service and other advantages which would normally have been enjoyed in the absence of such conspiracy.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 76."

April 14, 1938 (FTCA–5) — FIREWORKS
PYROTECHNIC INDUSTRIES, INC. DOCKET NO. 3309

STATEMENT OF FACTS

Eight fireworks' manufacturers, consisting of two Maryland corporations and six others operating under the laws of New York, Massachusetts, Arizona, California, Connecticut, New Jersey, combined in a Delaware corporation known as the Fireworks Industries, Inc., for the purpose of controlling the pricing practices of the industry in the sale of fireworks to jobbers and others. Prior to such association, these companies were in independent competition with each other and with other manufacturers. Also before the combination, the officers, representatives, agents, and jobbers of the association had been in competition with each other in the sale at retail of such fireworks.

MONOPOLISTIC PRACTICES

In 1935 they organized and entered into and carried out an agreement providing for uniform prices and discounts to jobbers, and determined who should be jobbers. They organized and held meetings of groups of jobbers in various parts of the United States to devise means of enforcing the agreements through the use of pressure and coercion. Lists of chain stores were compiled to show which stores they would recognize as being entitled to special discounts and they then agreed to fix and maintain minimum retail prices of the fireworks throughout tht United

States. Through concerted refusal to sell, they boycotted certain jobbers, cutting off their supplies of fireworks and maintained a schedule of special discounts to such concerns as would purchase fireworks in specified amounts.

EFFECT

These acts and practices had the effect of unduly restricting the sale of fireworks in commerce, and unlawfully enhancing prices to the public by maintaining them at artificial levels. The public was thus deprived of the benefits of free and normal competition, not only between the respondent members of the association, but between respective jobbers and retailers in the retail sale of fireworks. This tended to create a monopoly in those who took part in the combination.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 77."

July 23, 1938
(FTCA–5)

Lumber and Building Materials

California Lumbermen's Council, Five Lumbermen's Clubs, and Their Officers, Councilmen and Members. Docket No. 2898

STATEMENT OF FACTS

The California Lumbermen's Council, incorporated in 1934, was an association composed of affiliated organizations whose membership of retail dealers in, and vendors of, lumber and building materials constituted the membership of the Council. Prior to its incorporation the Council was a voluntary unincorporated association and its members were substantially the same. The dealer-members of the Council and members of the affiliated organizations were lumber dealers who supplied building materials to contractors, builders, dealers, consumers, and other purchasers. The affairs of the Council were administered by certain officers and a board of councilmen composed of 10 members, 2 from each of the affiliated organizations. The headquarters of the Council were located in California.

The Coast Counties Lumbermen's Club, Central Valley Lumbermen's Club, Northern Counties Lumbermen's Club, Peninsula Lumbermen's Club, and the San Joaquin Lumbermen's Club were large associations of lumber and building material dealers in California who purchased their supplies from manufacturers, producers, and distributors located in various States, particularly Washington and Oregon, whence they were shipped to the dealers and their customers in California. Except for the acts and practices hereinafter described, the several members of these different organizations would have been in competition with each other and they were in actual and potential competition with others not connected with the various organizations.

The members of the organizations were such a large and important part of the lumber and building material dealers in California as to be able to substantially involve and affect the flow of trade and commerce in that area.

MONOPOLISTIC PRACTICES

By common and concerted action, with the purpose and effect of enhancing the volume of trade and profits of the membership in these organizations, they adopted and enforced certain practices which were primarily intended to limit interstate shipments of lumber and building materials to the dealer members of these organizations and to prevent the direct sale of such products by manufacturers, producers, and wholesalers to any nonmember dealers, sellers, contractors, consumers, or other purchasers, including State and political subdivisions. Some of the other objects were to limit the sale of such materials by the dealer-members to areas surrounding the particular location of that dealer-member, and to keep other dealers from selling in a trading area where a dealer-member was located.

Two of the organizations fixed and prepared price lists to be observed by their members in the respective territories where those organizations operated. These two organizations were the Coast Counties Lumbermen's Club and the Northern Counties Lumbermen's Club.

The Coast Counties Lumbermen's Club fixed quotas of sales which a manufacturer, producer, or wholesaler could make each month in its territory and also determined the quota of business which a dealer-member might do.

To accomplish their objectives, rosters listing the names of the officers and councilmen of the Council and the secretaries and members of all affiliate organizations were issued quarterly and distributed to a large number of manufacturers, producers, and wholesalers of lumber and building materials who serviced the markets within the territorial jurisdiction of these respective organizations.

The secretaries of the Council, and the various organizations mentioned, informed manufacturers that the sale of lumber and building materials in the territories covered by these organizations should be confined to members thereof as listed on these rosters. Such manufacturers, producers, or wholesalers were so informed, with implied threats that if they did not so restrict their sales the members of these organizations would boycott them. The secretary of each of the Clubs were directed to furnish the Council with a list of all nonmember retail lumber dealers in their districts, together with as complete a list as possible of the wholesalers from whom such nonmember dealers bought their requirements.

The officials and members of these organizations spied upon the business of manufacturers, producers, wholesalers, members, and nonmembers; complained against manufacturers and producers who sold to other than members, bringing such competition to the attention of the various meetings of the affiliated organizations; and in other ways cooperated by disseminating and exchanging information which would enable them to accomplish their objectives. At times they demanded cash penalties or commissions from manufacturers, producers, or wholesalers who were found to have sold to nonmembers. A specific instance was where the secretary of the Coast Counties Lumbermen's Club requested the Smith Lumber Company of San Francisco, a wholesaler, either to stop selling W. F. Sechrest, a nonmember dealer, or to charge him $2 or $3 more on each thousand feet and credit the amount to the Coast Counties Lumbermen's Club. The Smith Lumber Company, a large wholesaler, refused to comply and all the members of the Coast Counties Lumbermen's Club, except one, then stopped doing business with the Smith Lumber Company, and attempted to and did interfere with the various sources of supply of the Smith Lumber Company in the States of Washington and Oregon.

The Coast Counties Lumbermen's Club required members to file monthly reports showing purchases and the names of the sellers, and attempted to equalize the sales among friendly manufacturers and wholesalers, notifying its members to buy from certain manufacturers and wholesalers who were selling below their quotas as fixed by the Club during a particular month, and to refrain from buying from other manufacturers and wholesalers who were exceeding their quotas for that particular month. The secretary of the Club would examine the books of the members to see whether or not these requests were being complied with.

The same Club imposed penalties amounting to 10 percent of the total sales made by its members outside of their assigned territories. A further fine of $50 was imposed on any member who disclosed anything whatever regarding the activities, agreements, and understandings of the Club.

The Northern Counties Lumbermen's Club attempted to prevent the retail dealer-members of the Sacramento Lumbermen's Club from selling in the Northern Counties Lumbermen's Club area, and requested the members of that Club to pay a 10 percent commission on all sales made in such territory, and attempted to interfere with the sources of supply of at least one dealer-member of the Sacramento Lumbermen's Club who failed to comply with such request.

EFFECT

Commerce was restrained and interfered with, competition lessened, hindered, and suppressed in the territories of the respective organizations; manufacturers, producers, and wholesalers were injured in their business by restriction of demand and freedom to sell, and costs to the consuming public were increased by this policy of exclusive dealer-member distribution; and the public was denied the advantages in price that would otherwise have obtained.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 78."

July 13, 1938 (FTCA-5

SNOW FENCE
UNITED FENCE MANUFACTURERS ASSOCIATION. DOCKET No. 3305

STATEMENT OF FACTS

United Fence Manufacturers was an unincorporated association of eight companies who made and sold snow fence. The Association's headquarters were at Burlington, N. J., and the member concerns were located at points in New York, Maine, Nebraska, New Jersey, New Hampshire, and several points in the Middle West.

Snow fence is largely sold in carload lots, 8,000 feet constituting a minimum carload. Freight charges are a substantial part of the cost to the competing producer-members in the sales of such product.

MONOPOLISTIC PRACTICES

The Association and its members wanted higher prices for the product within a sales area, comprised of 14 States: Namely, Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and Ohio. Of all snow fence products sold in that said area, these member concerns sold about 95 percent. By concert and agreement they established and maintained a system of identical delivered prices for fence sold to customers within that area, regardless of the customers' locations and, without cost to the customers, whatever, defrayed all carriage charges incident to the delivery.

Delivered price lists, discounts, and terms of sale, were filed with the secretary of the Association and maintained until revised. Such delivered price charges were not made effective by all producer-members on the same day, but soon after any producer-member filed one, the others followed. Delivered prices for carload and less-than-carload quantities were identical on snow-fence products of each standard type. Likewise, the discounts and terms of sale were identical.

Although by the terms of their agreement, Government purchasing bodies were to be excepted from the application of this pricing policy, such exception was not made in practice. Producer-members refused to make shipments upon consignment, and reported all price cutting to their secretary, who undertook to stop it. Each producer-member agreed to submit to an investigation and examination, under oath, conducted by a board of trustees, if he were charged at any time with a violation of his undertakings pursuant to the aforesaid conspiracy and agreement. By agreement, the trade was arbitrarily classified as "distributors" and "dealers" who were to receive discounts of 20 and 10 percent, respectively, from the filed delivered prices. Lists of all customers were filed with the Association, and the Association then issued to producer-members a list of those distributors who would be entitled to the distributor's discount.

Maintenance of resale prices was undertaken and distributors urged to report all instances of price cutting. Persuasion, constraint, and coercion were used on vendees of snow fence to make them maintain the resale prices so fixed.

For instance, they agreed to refuse to sell anyone who would not maintain them, and threatened to cut off all supplies from such dealers.

Sometimes, without the consent or knowledge of the purchaser, producer-members would divide among themselves large orders which had been awarded to one of them through supposedly competitive bidding.

EFFECT

The result was that there was no competition in delivered prices between producer-members for the business of any private or public buyer located in the 14 States above mentioned. Many times producer-members sold and delivered their products at a long distance from their plants to customers who were near the plant of some other producer-member by whom such customer could have been more economically served.

Each producer-member obtained his highest net return when he sold to customers located at or near the point where his own plant was located and from which the delivery charge was accordingly at a minimum; but he did not reduce his delivered price in the slighest to hold or to gain this, his most profitable actual or prospective business. Instead of doing so, he refrained from any acts of price competition and made no effort, so far as price was concerned, to bid for such most profitable business. In return for refraining so to do he reciprocally gained the privilege of quoting and selling to customers in the high net return areas of other producer-members. Each producer-member knew that, so long as other producer-members adhered to the said concerted delivered pricing system, he would nowhere encounter competition in price.

The cost of producing snow fence varied somewhat due to the differing costs, at respective plants, of the lumber, wire, and other materials and differing labor costs. By the said pricing system such variations in cost were nullified as an influence or check upon prices. Prices were made by producer-members with no regard to individual costs or to varying local conditions of supply or demand. Said prices were made in terms of the pricing system and were applied throughout the said 14 States. The producer-members maintained an artificial price level, little related to, and not governed by, truly competitive conditions.

Under the said pricing system, producers more efficient, and better financed and equipped, and better located, as respects supplies, markets, and transportation, in large measure waived these and other competitive advantages by adhering to the identical delivered pricing system. Thus their incentive toward efficiecy and economy was weakened. Any saving that might have been effected could not, under the system, be reflected in price concessions, or in the obtaining of increased volume of business. The same delivered prices were adhered to by all producer-members alike.

The buying public lost the benefit of price competition in snow-fence products, both among producer-members and their distributor dealers in that area, and was obliged to pay artificially enhanced prices. Because these members controlled 90 to 95 percent of such products in that area, the tendency of the above acts was to give them a monopoly.

Under the delivered pricing system used by these concerns the prices quoted and charged were in excess of the net or true prices, except where the buyer was located in the same city as that of the producer-member making the sale, because such prices included not only the price of the fence but the price of its transportation and delivery. In order to ascertain the net or true price received by a producer-member the actual carriage charges incurred by him must be deducted from the price received. Each producer-member thereby made as many different prices to his customers as there were destinations to which the producer delivered, which destinations had different carriage charges from the location of his plant. It will thus be seen that there was inherent in such a system of delivered prices regular, constant, and substantial discrimination. This discrimination against buyers in their respective home territories was not indulged in merely for convenience or by custom, but with the purpose and effect of destroying competition in price on the part of each producer-member.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 79."

August 5, 1938 (FTCA–5)

CONCRETE PIPE

LOCK JOINT PIPE COMPANY, ET AL. DOCKET NO. 3127

STATEMENT OF FACTS

Lock Joint Pipe Company, a New Jersey corporation organized in 1905, owned and operated concrete plants in Colorado, Illinois, Missouri, Ohio, New Jersey, New York, Connecticut, and South America. The Gray Concrete Pipe Company had plants in North Carolina and Maryland.

The Concrete Pipe and Products Company was located in Virginia; Mid-Atlantic Concrete Pipe and Products Company had plants at Norfolk, Va., and Dover, Del.; and the Arlington Concrete Pipe Corporation, organized May 24, 1935, had its home office and principal place of business at South Washington, Va.

The holders of all the stock of Concrete Pipe and Products Company also owned stock in Arlington Concrete Pipe Corporation, and took an active part in the direction of its affairs. The latter Corporation was organized by the other concerns mentioned who, together, owned all of its capital stock and managed its business. All of its officers and directors held some official position in one or more of the other concerns, all of which were engaged in the manufacture, sale, and distribution in commerce of concrete pipe and other concrete products. Their aggregate plants and machinery were valued at more than $375 000, and they did about 40 percent of the concrete-pipe business in the territory constituting the eastern seaboard of the United States, extending from New Jersey and Pennsylvania on the north to North Carolina on the south. In the territory of Virginia, Maryland, and the District of Columbia they did about 75 percent of the total concrete-pipe business.

Until February 10, 1934, all of them (except the Arlington Concrete Pipe Corporation, which had not yet been created), were in active competition with each other in Maryland, Virginia, and the District of Columbia.

MONOPOLISTIC PRACTICES

Shortly prior to February 10, 1934, the county of Arlington, Va., invited proposals to supply the county with $300,000 worth of concrete pipe in various sizes, the bids to be opened on that date. After the invitation was issued, but before February 10, 1934, there was a meeting held in Washington, D. C., at which were present representatives of the Lock Joint Pipe Company, the Gray Concrete Pipe Company, the Mid-Atlantic Concrete Pipe and Products Company, and the Concrete Pipe and Products Company. They there discussed the probable bids of their competitors, certain vitrified clay pipe companies, and laid plans to underbid them; and the probable wage-and-hour requirements, and general conditions with reference to the supplying of this pipe. After the meeting they revised and raised certain prices, which had theretofore been prepared for submission in response to the proposal for bids, and deleted from their proposed bids certain items which had previously been included. When the bids were opened it was found that Concrete Pipe and Products Company was the lowest bidder on certain specified sizes and items, and the Lock Joint Pipe Company was lowest bidder on several other items, but, together, the two were lowest bidders on ali items. Mid-Atlantic Concrete and Products Company was not low bidder on any item and the contract had not been awarded, but, about March 1934, the president of that company proceeded to Arlington County to locate a site on which to install a pipe plant to manufacture the pipe called for in the contract. After the contract had been awarded to the Lock Joint Pipe Company and the Concrete Pipe and Products Company, jointly, on May 16, 1934, and 8 days later, the Arlington Concrete Pipe Corporation was organized and the contract assigned to it. From then, October 11, 1935, the Arlington Concrete Pipe Corporation through its directors, who were also officials of the other companies, refused to permit that corporation to submit specific bids to supply any concrete pipe and directed it to promote sales generally in Virginia, Maryland, and the District of Columbia, and to help obtain contracts for the Gray Concrete Pipe Company and the Concrete Pipe and Products Company in that territory.

Since October 11, 1935, the Arlington Concrete Pipe Corporation has been submitting bids to supply concrete pipe, and has been selling such pipe supplied to it by the Gray Concrete Pipe Company, to the public in that territory at prices fixed by the officials of the other companies.

While under the direct control and management of the other respondents the Arlington Corporation, on five separate occasions, submitted bids to the United States Construction Quartermaster at prices below the production cost of the pipe, and on another occasion submitted a bid to supply pipe to the city of Alexandria, Va., below cost, so that during the years of 1936 and 1937 this corporation suffered a loss of over $9,000. After the Arlington Corporation was organized, none of the other companies competed for any concrete pipe business in Virginia, Maryland, and the District of Columbia.

EFFECT

The Arlington Concrete Pipe Corporation was intentionally used by the other pipe companies as a device to drive competition out of the territory of Virginia, Maryland, and the District of Columbia. Together, these companies constituted such a large and influential group that they were able to, and did, control to a substantial degree the flow of commerce in these products in this area. By the aforesaid agreements and conspiracies they drove out and suppressed competition; they failed and refused to compete with each other through competitive bids, all to the injury of competitors and the public.

A copy of the findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 80."

September 10, 1938 (FTCA-5) BUILDING SUPPLIES
FLORIDA BUILDING MATERIAL INSTITUTE, INC., ITS OFFICERS AND DIRECTORS. DOCKET NO. 2857

STATEMENT OF FACTS

This Institute was organized in 1934 under the laws of the State of Florida. Its active membership consisted of about 280 retail dealers engaged in the sale of lumber, building materials, and millwork. These active members, combined, possessed about 75 percent of the potential purchasers of such materials in the State of Florida. Over 50 percent of the materials sold by them were manufactured in other States. The Institute also had associate members consisting of about 47 manufacturers, producers, and wholesalers in the building-supply industry, many of whom had their places of business in other States. In addition to the active and associate members, there were a number of cooperating dealers and approximately 288 cooperating manufacturers, producers, and wholesalers who conformed to the policies of the Institute as hereinafter set out.

MONOPOLISTIC PRACTICES

For the purpose of carrying out its policies and practices, the Institute divided Florida into 15 divisions, with a director and 5 committeemen for each division. In August 1935 a "Home Rule Plan" was adopted whereby the 15 divisions were divided into 5 districts, each of which was self-governed, subject to the authority of the State organization. The districts and divisions held frequent meetings, made laws for their own government, and established rates of fees, dues, and payments. Membership dues were prorated to the gross sales and divided between the local organizations and the Institute. The Institute adopted and circulated a definition of a "dealer," and anyone seeking active membership had to qualify in accordance with that definition. Names of those not considered qualified by the Institute were, in one instance, officiall published and distributed. The Institute, its officers, directors, and members, by concerted action, conspired to adopt and enforce the following practices to promote the members' volume of business:

(*a*) They established the active members of the Institute as a class of recognized dealers in these materials so as to confine the sale of said products by manufacturers and producers to or through such member dealers.

(*b*) They required associate members and other manufacturers, producers, and wholesalers of lumber and like products to refrain from selling to dealers or other purchasers who were not recognized by the Institute and who were in competition in the retail sale of said products with the member dealers.

(*c*) They interfered with the sources of supply of nonrecognized and noncooperating dealers so as to monopolize trade in lumber, building material and supplies in the State of Florida in the members of the Institute and those cooperating with its policies.

To the above ends, they disseminated information relative to noncooperating manufacturers, producers, and wholesalers; obtained from members written promises of full compliance with the rules and regulations; obtained written statements from cooperating manufacturers, setting forth their intention to cooperate in the plan: listed names of manufacturers, producers, wholesalers, and dealers found to be violating the Institute's policies, and distributed such information, with changes and corrections from time to time; engaged in espionage upon lumber shipments and building supplies coming into the State of Florida, and requested the shippers to state in writing whether they intended to cooperate with the Institute's policies or not. Pressure was exerted by the Institute in various ways to obtain cooperation, such as writing letters implying boycotts and threats of boycotts, and the officers and members kept a close surveillance on all shipments in the State of Florida of all manufacturers who had signified their intention to cooperate. When an associate member, cooperating manufacturer, producer, or wholesaler was found to be selling a nonmember or a noncooperative dealer, the Institute complained directly to such manufacturer, producer, or wholesaler by letter, telegram, or telephone with implied threats of boycotts by all member and cooperating dealers.

Whenever a noncooperating manufacturer, wholesaler, or dealer satisfied the Institute that it would cooperate in the future, the charges against him would be released and notices to this effect given to the trade. The Institute issued "Credential Cards of Cooperation" to associate members and cooperating manufacturers who had gone on record as intending to fully cooperate with the Institute's policy, and requested the holders of such cards to concentrate on insisting that all concerns obtain those cards.

EFFECT

Interstate commerce in the sale and distribution of lumber products, building materials, and builders' supplies was substantially restrained and restricted to the associate and cooperating members, manufacturers, producers, and wholesalers, because of the intimidation and coercion above described, confined their sales to the active members of and the dealers cooperating with the Institute. Shipments to noncooperating dealers and other purchasers were refused and cancelled because of this intimidation. Manufacturers, producers, and wholesalers located in North Carolina, South Carolina, Alabama, Georgia, and other States were restrained in making interstate shipments because of the interference of the Institute, and competition in and between the several States of the United States in these products was hindered and suppressed with the tendency and capacity of creating a monopoly in the sale of said products in the members of the Institute.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 81."

December 16, 1938 (FTCA-5) LIQUID CHLORINE
MATHIESON ALKALI WORKS, INC., ET AL. DOCKET NO. 3317

STATEMENT OF FACTS

The Mathieson Alkali Works, a Virginia corporation, and eight other corporations operating in the States of New York, Pennsylvania, West Virginia, and Missouri manufactured and sold liquid chlorine for industrial and commercial purposes to towns, cities, State, and Federal Governments and the subdivisions thereof, and together, since about 1930, either directly or through their various sales agents, manufactured substantially all of the liquid chlorine manufactured for commercial and industrial purposes and sold in the United States. Purchasers of this product since 1930 had no regular source of supply except these corporations. Before 1931 they competed with one another as to the price at which they sold.

MONOPOLISTIC PRACTICES

In 1931, for the purpose of eliminating competition among themselves, these corporations entered into an agreement and carried it out whereby they fixed and maintained uniform prices which were higher than before; and, for the purpose of more effectively carrying out the agreement and maintaining these enhanced prices, they agreed to and did divide the United States into zones.

EFFECT

The Commission found that the effect of this combination and conspiracy operated to the injury of the public, tended to and actually hindered and prevented price competition in the sale of this product in commerce, and increased the prices which purchasers had to pay, thus creating a monopoly in interstate commerce, in the hands of these corporations.

A copy of the findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81-A."

December 9, 1938 (FTCA-5) PAPER, PULP AND WOODEN DISHES
FOOD DISH ASSOCIATES OF AMERICA ET AL. DOCKET NO. 3397.

STATEMENT OF FACTS

In 1933 a large number of corporations, partnerships, firms, and individuals organized a voluntary unincorporated trade association known as Food Dish Associates of America. The membership was engaged in the sale and distribution of paper, pulp, and wooden dishes or trays such as are ordinarily used by grocery and delicatessen stores and butcher shops as containers for lard, butter meats, and other food products.

From time to time after 1933 the membership was changed and, about July 1936, the Association as formerly constituted became inactive. Eight of the members continued to act through the former secretary of the Association until about May 1937, at which time it was dissolved. Thereupon, a number of these manufacturers retained an "industrial engineer" to act as a price clearing house or intermediary and to keep them mutually informed of general marketing conditions, practices, discounts. and prices. They all filed their current price lists and agreed to adhere to such filed prices until further notice. In one instance the "industrial engineer" persuaded one of the manufacturer members to refuse to sell at a price below its filed prices.

In the above manner and through the above agencies all of the respondents, at various times during the period between 1933 and 1938, had combined and conspired for the purpose of fixing uniform minimum prices and discounts to be made for the sale of their respective products, which prices otherwise and normally would have been competitive.

MONOPOLISTIC PRACTICES

These companies divided the United States into zones, fixing base prices for each zone; exchanged price lists with the purpose and effect of maintaining uniform fixed prices in each zone; and generally conformed to every arrangement which would promote that end. The respondents, who retained the services of the "industrial engineer" corporation, controlled about 45 percent of the total volume of all food trays sold in the United States.

EFFECT

Paper, pulp, and wooden dishes or trays are competitiev in that they are equally acceptable to the trade, and the concerns named in the Commission's complaint, by fixing prices for such product in connection with the sale and distribution thereof, substantially lessened and virtually destroyed all competition therein.

A copy of the findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81–B."

August 8, 1938 (FTCA–5) — WASTE PAPER, RAGS, AND OTHER WASTE MATERIALS
LETELLIER-PHILLIPS PAPER CO., INC. DOCKET NO. 3434

STATEMENTS OF FACTS

This was a Louisiana corporation which bought waste paper, rags, and other waste materials of various kinds throughout the United States and packed and sold them from its warehouses in New Orleans. For many years it had had a dominant control of the waste paper business in the South and Southwest generally, and particularly in the States of Louisiana, Texas, and Mississippi, so that large consumers of waste paper and waste materials in those sections were dependent upon the Letellier-Phillips Company for their necessary supply of these materials. Also, other and smaller dealers in waste materials were dependent upon the Letellier-Phillips Company as an outlet for their supplies.

MONOPOLISTIC PRACTICES

Respondent unfairly disparaged its competitors and attempted to increase its dominant position by threats, intimidation, and boycott. Among other things, it threatened other waste-material dealers that it would discontinue all business relations with them should they continue either to purchase from or sell to certain of respondent's competitors located in the Southern States. It threatened to stop supplying large consumers of waste products in the Southern States if said consumers purchased any waste materials from certain of respondent's competitors, and threatened various dealers located in other States that if they persisted in either purchasing from or selling to certain of respondent's competitors in the Southern States, it, the Letellier-Phillips Paper Co., would move into their territories and enter into active competition with them.

EFFECT

The effect of these practices was to monopolize in the Letellier-Phillips Paper Co. the business of buying, packing, and selling waste paper, rags, and other waste materials in the South and Southwestern States; unreasonably lessen, restrain, hamper, and suppress competition in this industry, and deprive the purchasing public of the advantages that would otherwise be received and enjoyed under normal conditions of free and fair competition.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81-C."

December 2, 1938 (FTCA-5) GLASS
PITTSBURGH PLATE GLASS COMPANY ET AL. DOKCET NO. 3491

STATEMENT OF FACTS

The Pittsburgh Plate Glass Company, a Pennsylvania corporation, manufactured and sold window glass and other products. It also conducted a glass glazing contracting business throughout that section of the United States east of the Rocky Mountains. It maintained and operated factories in Pennsylvania, Indiana, Missouri, Ohio, West Vriginia, and Oklahoma, together with 70 warehouses located in many different States from which it distributed its products. It has a branch in St. Louis which conducted its glazing contracting business in that area.

The Nurre Companies, Inc., an Indiana corporation with jobbing branches in Tennessee, Missouri, Ohio, and New Jersey, also sold and distributed its products in the St. Louis trade area, as did the Burroughs Glass Company and the Hadley-Dean Glass Company, two Missouri corporations.

All four of these concerns, in the ordinary conduct of their businesses, purchased glass from manufacturers having factories located in many different States and caused it to be shipped in interstate commerce into the State of Missouri for the purpose of reselling and delivering the same to purchasers located in the States of Missouri and Illinois and, in some cases, in the States adjacent thereto, so that there was a continuous stream and flow of such commerce in glass across State lines from the place of manufacture to the warehouses of aforesaid companies and their branches and from the said warehouses and branches to the various purchasers thereof.

Except insofar as competition was restrained and lessened by the acts and practices hereinafter set forth, these four concerns were normally in competition with each other.

The National Glass Distributors' Association was composed of various glass distributors throughout the United States and one E. V. Hanser was its secretary. The glass distributors involved in this case employed him part time to police glazing contracting jobs and from time to time he functioned as their employee to effectuate some of the policies and practices hereinafter set forth.

There were two local unions of painters, decorators, and paper hangers with their respective secretaries and business agents also involved in this proceeding.

MONOPOLISTIC PRACTICES

The respondent distributors in this case agreed among themselves to, and did, exchange information concerning prevailing prices, and contemplated changes in prices for plate window or structural glass used in the glazing contracting business. They exchanged information also concerning bids to be submitted by any one of them, with the purpose and result of predetermining which one of them would procure the contract in given areas which they attempted to allocate among themselves. They collectively agreed upon certain formulae to be used in computing costs for the purpose of regulating total amount of such bids. In cooperation with the local unions of painters, decorators, and paper hangers, and with the purpose and effect of discouraging competition by smaller distributors and glazing contractors, they procured and helped maintain a requirement by the said labor organizations that all competing glazing contractors should be compelled to employ four glaziers steadily at the rate of $12 per day, each, whether needed or not, as a condition to securing glaziers to install glass in any structure or building, and also cooperated with the said unions in a requirement that competing glazing contractors must have the glass glazed on the premises or glaziers could not be procured.

EFFECT

The effect of such policies and practices was to concentrate in these four distributors the glazing contracting business in the St. Louis area; to maintain higher prices; to restrict and suppress competition and to burden, hamper, and interfere with the normal and natural flow of trade and commerce in glass into and through the various States of the United States, particularly those included in the St. Louis trade area.

The public was affected by the resulting increase in the price of glass sold; the discrimination against small glazing contractors, who either were or might desire to become engaged in the glazing contracting busines in that area, correspondingly lessened the volume of private and public construction in which glass was used, and lessened opportunities for employment. This tended to raise the cost of public buildings and private structures in which glass was used, and tended to make them either less available to the public or to raise the rents and taxes by which the public paid for them.

The Commission found that the above acts and things done by these respondents placed in them the power to control the glazing contracting business in that area, and tended to create a monopoly in them.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 81-D."

December 13, 1938 CALCIUM CHLORIDE
(FTCA-5) COLUMBIA ALKALI CORPORATION, ET AL. DOCKET NO. 3519

STATEMENT OF FACTS

The Columbia Alkali Corporation and three other companies were the only manufacturers of flake calcium chloride in the United States, and also manufactured over 75 percent of all other forms of calcium chloride, controlling the sale and distribution of a substantial majority of the entire output of this product in commerce in the United States and in the District of Columbia. Normally, and except for the acts and practices herein set out, they would have been in active and substantial competition.

MONOPOLISITC PRACTICES

During the period of November 1937 to January 1938 they entered into understandings, agreements, combinations, and conspiracies to fix and maintain, and did so fix and maintain, uniform prices in the sale of this product. For that purpose they maintained a uniform zoning system; exchanged information with respect to the prices each was to charge for calcium chloride in its various forms and suggested what the retail prices should be. When there was any change in the prices they all made the same change at the same time, and offered identical bids for carload and less than carload lots to prospective purchasers; they eliminated cash discounts for prompt payment, and made identical raises in the prices of calcium chloride in various forms, acting in concert, one with the other.

EFFECT

The Commission found that these acts and practices were to the prejudice of the public and had a dangerous tendency to hinder and prevent price competition in the sale of calcium chloride in various forms in commerce in the United States, and constituted an unfair method of competition.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is submitted herewith, marked "F. T. C. Ex. No. 81-E."

December 15, 1938 (FTCA-5) CORN CRIBS AND SILOS
ROWE MANUFACTURING COMPANY, ET AL. DOCKET NO. 3544

STATEMENT OF FACTS

The Rowe Manufacturing Company was an Illinois corporation and, together with one other Illinois corporation and two Iowa corporations, an individual and a partnership, engaged in the manufacture and sale, among other products, of combination wood and wire portable corn cribs and silos. Combined they produced the major portion of such products in the industry, and were so large and influential as to be able to influence and control the flow of trade in such products in commerce in the United States.

Portable corn cribs and silos are made from pine picket lathing, measuring 4 feet by 1½ inches by ½ inch, and spaced 2 inches apart, pointed at one end, woven together with galvanized wire, and painted with red mineral preservative, and are practically identical with snow fencing, differing only as to use. They are largely used in the corn-producing States of the Middle West, especially in the State of Iowa, for the storage and preservation of corn, ensilage, and other corn products.

Normally these concerns were in competition with each other.

MONOPOLISTIC PRACTICES

They entered into joint agreements, combinations, and conspiracies with the purpose and effect of eliminating competition by agreeing to fix and maintain uniform delivered prices for said products to customers in the above-mentioned States. They allowed the Rowe Manufacturing Company to act as a clearing house for an exchange of price information and suggestions as to what prices should be charged; they initiated uniform prices for the State of Iowa, during the year 1936, and applied the Iowa program to the other States as closely as possible; granted uniform discounts; designated common basing points; made effective simultaneously all delivered price changes; reported upon price cutting nd urged others to so report, and acted upon such reports by negotiating with the price cutters in an attempt to eliminate further price concessions.

EFFECT

The Commission found that these acts and practices were to the prejudice of the public and said acts hindered and prevented price competition in the sale of portable corn cribs and silos in the above-named States, and placed in respondents the power to control and enhance prices, and tended to create a monopoly.

A copy of the Commission's findings, conclusion and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81-F."

January 18, 1939 (FTCA and CA-3) AUTOMOBILE CARBURETORS AND CARBURETOR PARTS
CARTER CARBURETOR CORPORATION. DOCKET NO. 3279

STATEMENT OF FACTS

The Carter Carburetor (Delaware) Corporation of St. Louis, Mo., manufactured and sold carburetors and parts for original standard equipment and for replacement. It and Bendix Products Corporation in 1937 supplied carburetors to more than 90 percent of domestic passenger cars. Marvel and Tillotson carburetors, and recently Chandler-Groves, have been made standard equipment on some popular makes of automobiles. In 1937, on 60 percent of passenger cars and trucks, and for 3 years prior to 1937, on more than half of all passenger cars and trucks sold, Carter carburetors were standard equipment. They were standard equipment on the 1937 and 1938 models of Chevrolet, Pontiac, Oldsmobile, LaSalle V-8, DeSoto, Hudson, Terraplane, and Reo, also Chrysler-Royal, Plymouth DeLuxe model, Cadillac V-16, Dodge trucks, and some Studebaker cars and trucks.

The two principal branches of commerce in carburetors are original equipment and replacement. During 1937 Carter Carburetor Corporation sold 1,635,000 carburetors to automobile manufacturers as original equipment. In the same year it sold more than 103,000 replacement carburetors, the list prices of which ranged from $10 to $28 each, and this business was greatly increased by the sale of parts.

At first the replacement business of a new manufacturer is relatively small and takes 2 or 3 years to develop, because ordinarily a carburetor does not have to be replaced or repaired during the first year. However, service-station distribution from the first is necessary to assure the automobile manufacturer, on whose models the carburetor is placed as standard equipment, that proper warranty service will be given. Also, the automobile makers rely on the service stations for a ready supply of carburetor parts for making repairs. This service can be given only through a wide service-station distribution, the availability of which is a very important factor to consider when adopting any make of carburetor as standard equipment.

The business of servicing, replacing and repairing automobiles and automobile equipment is carried on by about 60,000 independent service stations and garages in the United States, about 7,000 of which specialize in the service of electrical equipment and carburetors. Practically all such carburetor-service stations carry and sell Carter carburetors.

A modern carburetor is a complicated mechanism of some 150 to 175 parts. Special equipment and training are necessary for proper service. So a large part of the carburetor-service business in their respective localities is handled by the 7,000 specialized service stations.

These stations were accustomed to stock and deal in competing lines of carburetors constituting standard equipment. Large service stations carried practically all lines of such equipment and had contracts with competing manufacturers. Not only does the average automobile driver not know the make of the carburetor on his car, but different models of the same make of car may and do carry different carburetors.

As of January 1939 most of the stations handling Carter products also carried other lines and gave service on one or more competing carburetors.

Customarily carburetor manufacturers contract with large independent service stations respecting the sale of their products; require the station to stock the manufacturer's equipment and parts and prescribe the price to be paid and discounts to be received by the service station. These are called official service stations of the particular carburetor manufacturer.

Carter did not enter the service field on a large scale until about the year 1930, when it began to sell a "general parts cabinet" to about 6,000 stations throughout the country, which were known as "general cabinet" stations, and were allowed a discount of 40 percent compared with Carter's general trade discount of 25 percent.

In 1932 Carter began offering service-station contracts in many cases to stations handling competing carburetors and, by January 1939, had between 900 and 1,000 such stations in addition to its "general cabinet stations." These contracts allowed a discount of 50 percent, and in some cases 50 and 10 percent from list prices, and provided that the service station should sell at the prices and discounts recommended by Carter, as well as give warranty service.

Carter sold f. o. b. St. Louis to distributors or wholesalers located in the various States of the United States, who were also under contract. Regional distributors received discounts of 60 and 10 percent and had exclusive territory covering, in the aggregate, the entire United States. Zone distributors, of whom there were 86, might purchase at 60 percent discount for shipment either direct from St. Louis or from the regional distributor.

All distributors' contracts required resale at prices and discounts fixed by Carter. Catalog list prices were used as a basis for figuring the resale price.

From time to time Carter furnished service and sales bulletins, charts, trade information, and other valuable literature to all of its stations, and employed 19 field representatives to call on distributors and stations. It conducted short training courses where many service-station mechanics received special training in the servicing and repairing of carburetors.

MONOPOLISTIC PRACTICES

About April 1, 1937, the Carter Carburetor Corporation notified all its distributors, service stations, cabinet stations, and personnel that if any new carburetor lines were taken on without its written approval the above preferential discounts, service information, and Carter contracts would be discontinued. It also notified its distributors that if a line of competing carburetors was taken on the distributor could not hold his Carter representation on an exclusive territorial basis. There were three carburetors which were made only since June 1934 Chandler-Groves, Mallory, and Fish—the first of which is the only one which has been adopted as standard equipment on automobiles. In 1936 Chandler-Groves carburetors had been adopted for use as standard equipment on Packard Six and Plymouth PT–50 truck. In 1937 Chandler-Groves became standard equipment on Plymouth passenger cars and, late in that year, were adopted for Lincoln-Zephyr and some Fords. The Carter Carburetor Corporation had received notice of the adoption of the Chandler-Groves carburetor by Plymouth in a bulletin issued March 10, 1937, a short time before it issued its above instructions to its distributors. Prior thereto it had not objected to its service stations handling Chandler-Groves carburetors along with other competing lines.

Field representatives were instructed to insist upon the enforcement of this policy and to check up on the service stations to see that it was carried out. They were notified that "our outlets must choose between Chandler-Groves and Carter" and, on April 5, 1937, they were told that "until they make up their minds, 25 percent will be their discount." All service stations handling the Chandler-Groves carburetors were told that if they kept on handling them after May 1, 1937, mailings to them would be discontinued and Carter contracts would lapse and they would get only the standard trade discount.

Chandler-Groves Company had a sales set-up similar to that of the Carter Corporation and many of Chandler-Groves' service stations also had Carter contracts.

Pursuant to its notice the Carter Carburetor Corporation cancelled its contracts and reduced the available discounts to about 19 service stations which refused to discontinue dealing in Chandler-Groves products. As a result of the choice with which the service station dealers were confronted many of them cancelled their contracts with Chandler-Groves and returned the Chandler-Groves stock in April and May 1937. Some of the stations which had contracts with Chandler-Groves were thereby induced to breach the terms of their sales contracts with Chandler-Groves to prominently display the advertising material of Chandler-Groves and, without returning their Chandler-Groves stock, kept such stock out of sight and ceased to promote the sale thereof.

The Carter Carburetor Corporation entered into or renewed contracts for the sale of its products with more than 900 service stations on the condition or understanding that they would not use or deal in any competing carburetor, and fixed the prices charged for its products and discounts from such prices to approximately 7,000 service stations on the condition or understanding that the purchasers would not deal in competitive products. This was done in the regular course of its business.

EFFECT

The effect of the above practices, contracts, and the conditions and understandings was to substantially lessen competition and tend to create a monopoly in the sale and distribution of carburetors and carburetor parts in interstate commerce. By such practices Carter Carburetor Corporation induced, coerced, and compelled a large number of automobile-service stations throughout the United States to refuse to deal in or purchase the products of Chandler-Groves Company and to cancel and violate existing sales agreements with said competitor. This closed to said competitor a substantial number of actual and potential service-station outlets for its products and diverted business and trade from it, and has prevented such service stations from dealing in a full line of standard carburetors and parts. This practice, which was directed at any new competition, directly affected and lessened potential competition in the original equipment field, since an automobile manufacturer is naturally reluctant to adopt as standard equipment a competing carburetor which cannot take care of its part of the usual 90-day warranty and cannot provide the purchaser of the automobile with adequate and expert carburetor station service.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist from such monopolistic practices is submitted herewith, marked "F. T. C. Ex. No. 81–G."

January 17, 1939 — Bakery and Packaged Food Products—Biscuits
(CA–3 FTCA) — National Biscuit Company. Docket No. 3607

STATEMENT OF FACTS

National Biscuit Company is a New Jersey corporation with its office and principal place of business in New York. It sells bakery and packaged food products, including over 500 varieties of biscuits. The largest company of its kind in the

United States, it has factories in more than 21 different States, and with sales branches in approximately 257 cities through which it maintains an extensive sales and delivery organization, selling and delivering directly to retailers by motortrucks.

Of its competitors, many smaller concerns do not have localized delivery facilities and consequently are largely dependent upon jobbers and wholesalers for marketing outlets.

MONOPOLISTIC PRACTICES

The National Biscuit Company entered into and performed agreements with certain jobbers and wholesalers to pay them a percentage or discount on sales by the company to certain allocated groups of retailers when such jobbers and wholesalers performed little or no service in connection with the sales. In return, the wholesalers and jobbers agreed not to deal in competitive products.

Many customer and noncustomer wholesalers and jobbers received these discounts and percentages upon such understandings and agreements. The purposes were to prevent the wholesalers and jobbers from dealing in the products of competitors of the National Biscuit Company and to prevent retail dealers in competitive products from receiving the customary and ordinary services of jobbers or wholesalers.

EFFECT

These practices tended to greatly curtail the services of jobbers and wholesalers to competitors of National Biscuit Company in the marketing of their products so long as the jobbers and wholesalers continued to receive compensation from National Biscuit Company, the largest and most dominant factor in the industry, all resulting to the prejudice and injury of the public and the National Biscuit Company's competitors.

A copy of the Commission's findings as to the facts, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81-H."

December 12, 1938 CONTAINERS—METAL—CLOSURE PARTS—PATENT LICENSES
(FTCA-5) AMERICAN FLANGE AND MAMUFACTURING COMPANY,
(Ca-3) INC. DOCKET NO. 3391

STATEMENT OF FACTS

The American Flange and Manufacturing Company was an Illinois corporation with its principal office in Chicago, Ill., and manufactured and sold "Tri-Sure" closure parts and seals for metal containers, such as oil drums. These closure parts consisted of a threaded flange and a metal plug fitting into the flange. These products were manufactured and sold by this company to numerous metal-drum manufacturers, who applied them to the drums to provide an opening through which the drum might be filled and emptied, and a stopper for such opening. The containers usually were sold by the manufacturers to concerns which filled them with oil, paint, and other liquid products marketed by the latter. The seals were used to seal the closure parts against tampering, leakage, etc., and were sold by the American Flange and Manufacturing Company largely to filler customers who purchased the drums from the drum manufacturers.

MONOPOLISTIC PRACTICES

The American Flange and Manufacturing Company held patents on these flanges, plugs, and seals, as well as patents on them as used in combination with metal drums. It also held patents on certain dies and tools which were used in applying "Tri-Sure" closure structures and sealing caps to metal containers. These dies and tools were leased by this company to purchasers of its closure parts.

The American Flange and Manufacturing Company pursued a policy of soliciting both drum manufacturers and filler customers, buying its closure parts, to enter into a so-called license and service agreement. This agreement licensed these customers to use the patented tools and dies in applying "Tri-Sure" closure parts to metal containers. In consideration of this license for the use of such tools, the customer acknowledged the validity of the American Flange Company's patents on applying tools and dies and agreed not to infringe or contest such patents. These provisions of the agreement were not challenged by the Commission's complaint, findings, or order.

However, the terms of the agreement in question also requried the customer buying "Tri-Sure" closure flanges and seals outright as an ordinary purchase and sale transaction to acknowledge the valitidy of the patents under which such products, so sold, were manufactured by the American Flange and Manufacturing Company, and such customer entering into the agreement was bound by it not to infringe or contest such patents. In addition to the patents which this company relied on, in protecting its manufactured closure structures, there were included among the patents enumerated in the agreement patents which it owned but did not use in the manufacture of its closure parts, as well as patents on combinations of its closure parts with metal drums, and pending patent applications on which no patents had been issued. The agreement listed about 50 patents and 15 patent applications altogether.

In the agreement the American Flange and Manufacturing Company agreed to indemnify customers against suits for infringement arising from their use of its products whieh might be instituted against them.

EFFECT

The Commission found that the effect of such use of this company's policy of using its licensing and service agreements may have been to induce purchasers to buy "Tri-Sure" products to an extent which they might not have done in the absence of such agreements, and to lessen the sale of competing products; to obtain from customers acknowledgment of the validity of and an agreement not to infringe or contest certain patents and patent applications owned by the American Flange and Manufacturing Company, without assurance as to their validity or without the means of obtaining such assurance; to obtain from customers an acknowledgment and agreement not to infringe or contest the validity of patents which this company owned but did not use or rely on in the manufacture and sale of its products; to induce customers to accept a license under its patents for closure parts, some of which were sold outright by the American Flange and Manufacturing Company, with knowledge that they were to be used in metal containers by the purchasers, and to induce purchasers to assist the company in making more effective its monopolies under such patents.

The Commission concluded that the American Flange and Manufacturing Company's use of the agreement, insofar as it required customers to acknowledge the validity of, or to agree not to contest or infringe, patents covering products sold outright by respondent to its customers, pending patent applications and patents which it did not use in connection with the manufacture and sale of such patents, was an unfair method of competition in violation of section 5 of the Federal Trade Commission Act.

The Commission, in issuing its order, took the position that the sale of this company's patented articles to its customers was to be distinguished from the leasing of its patented applying tools to them. The Commission's order does not interfere with the American Flange and Manufacturing Company in licensing the use of its patented applying tools, but it does not permit the company to induce its customers to accept licenses for the use of patents on products which it sells outright to them.

VIOLATION OF SECTION 3

The American Flange and Manufacturing Company's original license and service agreement further provided that if a customer, during any 6 months' period, should purchase "Tri-Sure" closures amounting to 80 percent of his total requirements for that period, he would be granted a so-called quantity discount of 10 percent.

This provision was later modified by this company to the following effect:

"We will consider that you have qualified for our quantity discount when, at the end of 6 months' periods you inform us by letter that during the period you have considered our flange and plug your standard, have recommended them to your customers without discrimination, and used them where you could."

It was the Commission's conclusion that these discount provisions violated section 3 of the Clayton Act, as being the allowance of a discount on a condition which tended to induce purchasers not to deal in competing products.

A copy of the Commission's findings, conclusion, and order to cease and desist is herewith submitted, marked "F. T. C. Ex. No. 81-I."

PENDING COMPLAINTS

The following is a list of those cases which the Commission thinks should be brought to the attention of the committee in which no orders to cease and desist have issued, but in which the formal complaints of the Commission have been issued and served, and which cases are now pending for trial.

These cases are of the same type as the cases heretofore described in which orders to cease and desist have been issued, in that the complaints charge respondents with acts and practices alleged to involve unlawful restraints of trade.

The acts and practices charged are of the same general type as the cases in which orders have issued. The practices include combinations and conspiracies, cometimes through associations, to confine trade to various groups or members of associations; the allocation and apportionment of sales territories; discrimination among customers; the use of single or multiple basing-point systems of delivered prices; zone basing-point systems; the maintenance of minimum resale prices; horizontal price fixing; concerted and cooperative action and agreements enforced by boycotts or threats of boycotts; combined refusal to deal, and other coercive action, all unlawfully lessening and suppressing competition and tending toward monopoly.

The complaint in each case is based on investigational files and records which led the Commission to believe that there might have been a violation of law. The cases, however, are in various stages of procedure, either awaiting answer, on trial, or ready for trial. The complaints themselves, of course, are not evidence, and to present at this time the evidentiary facts forming the basis for their issuance might conceivably lead to embarrassment of the Commision and the parties complained against in the proper conduct of the trial. For these reasons only the complaints are submitted herewith marked as exhibits to this report, as indicated in the following table. This table also shows the date when, and the act under which, each complaint was issued, the commodity, and the Commission's docket number.

Act	Date	Docket	Commodity	Exhibit
FTCA	Apr. 16, 1936	Fashion Originators Guild of America, Inc., et al. Docket No. 2769.	Clothing—Fabrics	F. T. C. Ex. No. 85.
FTCA	Oct. 14, 1936	National Standard Parts Association et al. Docket No. 2942.	Automobile Accessories.	F. T. C. Ex. No. 86.
FTCA, RPA	Nov. 6, 1936	Bourjois, Incorporated, et al. Docket No. 2972.	Toilet Preparations	F. T. C. Ex. No. 87.
FTCA, RPA	do	Richard Hudnut et al. Docket No. 2973.	do	F. T. C. Ex. No. 88.
FTCA, RPA	do	Elmo, Incorporated, et al. Docket No. 2974.	do	F. T. C. Ex. No. 89.
FTCA, RPA	do	Coty, Inc., et al. Docket No. 2975.	do	F. T. C. Ex. No. 90.
FTCA, RPA	Dec. 19, 1936	Charles of the Ritz, Inc. Docket No. 3017.	do	F. T. C. Ex. No. 91.
FTCA	Dec. 23, 1936	Card Clothing Manufacturers' Association et al. Docket No. 3019.	Card Clothing	F. T. C. Ex. No. 92.
FTCA	Dec. 29, 1936	The Sponge Institute et al. Docket No. 3025.	Sponges	F. T. C. Ex. No. 93.
FTCA, RPA	Mar. 26, 1937	Cast Iron Soil Pipe Association et al. Docket No. 3091.	Pipe—Cast Iron Soil	F. T. C. Ex. No. 94.
FTCA	Mar. 29, 1937	Scientific Apparatus Makers of America et al. Docket No. 3092.	Paper—Reproduction—Scientific Supplies.	F. T. C. Ex. No. 95.
FTCA, RPA	May 15, 1937	Elizabeth Arden, Inc., et al. Docket No. 3133.	Toilet Preparations	F. T. C. Ex. No. 96.
FTCA	May 20, 1937	Hershey Chocolate Corporation et al. Docket No. 3134.	Candy	F. T. C. Ex. No. 97.
CA	June 12, 1937	Schenley Distillers Corporation. Docket No. 3150.	Beverages—Whiskey—Gin.	F. T. C. Ex. No. 98.
FTCA, RPA	June 15, 1937	General Motors Corporation et al. Docket No. 3152.	Automobiles—Accessories.	F. T. C. Ex. No. 99.
FTCA, RPA	July 2, 1937	Cement Institute et al. Docket No. 3167.	Cement	F. T. C. Ex. No. 100.
FTCA	Aug. 5, 1937	Daniel A. Brennan et al. Docket No. 3196.	Fasteners, Paper	F. T. C. Ex. No. 101.
CA	Nov. 3, 1937	Sperry Corporation. Docket No. 3259.	Instruments, Nautical—Aircraft.	F. T. C. Ex. No. 102.
FTCA	Jan. 3, 1938	Standard Container Manufacturers' Association, Inc., et al. Docket No. 3289.	Containers, Wooden	F. T. C. Ex. No. 103.

Act	Date	Docket	Commodity	Exhibit
FTCA. RPA	Feb. 11, 1938	E. B. Muller & Company et al. Docket No. 3224.	Chicory	F. T. C. Ex. No. 105.
FTCA.	Mar. 9, 1938	Steel Office Furniture Institute et al. Docket No. 3319.	Furniture, Office—Steel.	F. T. C. Ex. No. 106.
FTCA.	Apr. 29, 1938	Johnson & Johnson et al. Docket No. 3393.	Surgical Supplies	F. T. C. Ex. No. 108.
FTCA.	May 5, 1938	Milton S. Kronheim & Son, Inc., et al. Docket No. 3400.	Beverages, Spirituous.	F. T. C. Ex. No. 110.
FTCA	May 9, 1938	Star Tobacco Company. Docket No. 3142.	Tobacco Products and Candy.	F. T. C. Ex. No. 111.
FTCA.	June 15, 1938	The Hardwood Institute et al. Docket No. 3418.	Lumber, Hardwood	F. T. C. Ex. No. 113.
CA	July 19, 1938	Gerrard Company, Inc. et al. Docket No. 3498.	Machines, Wire-tying.	F. T. C. Ex. No. 115.
FTCA.	Aug. 24, 1938	United States Maltsters Association et al. Docket No. 3555.	Malt	F. T. C. Ex. No. 118.
FTCA.	Aug. 25, 1938	American Veneer Package Association Docket. No. 3556.	Containers, Wooden	F. T. C. Ex. No. 119.
FTCA.	Aug. 26, 1938	Chicago Medical Book Company et al. Docket No. 3557.	Books, Medical	F. T. C. Ex. No. 120.
FTCA.	do	W. B. Saunders Company et al. Docket No. 3558.	do	F. T. C. Ex. No. 121.
FTCA.	Sept. 16, 1938	Pine Hill Lime & Stone Company, et al. Docket No. 3591.	Lime, Chemical—Agricultural.	F. T. C. Ex. No. 122.
FTCA. CA	Sept. 23, 1938	The Brunswick-Balke-Collender Company. Docket No. 3604.	Sporting Goods—Bowling.	F. T. C. Ex. No. 123.
FTCA.	Oct. 18, 1938	Phil J. Bliffert, and Certain Building Supply Companies. Docket No. 3631.	Building Supplies	F. T. C. Ex. No. 124-A.
FTCA.	Nov. 1, 1938	Joseph Dixon Crucible Co., et al. Docket No. 3643.	Lead Pencils	F. T. C. Ex. No. 124-B.
FTCA. CA-3	Nov. 30, 1938	R. T. Vanderbilt Co., Inc., and Standard Mineral Co., Inc Docket No. 3656.	Pyrophyllite	F. T. C. Ex. No. 124-C.
FTCA.	Dec. 10, 1938	R. M. Hollingshead Corporation. Docket No. 3661.	Automobile Chemicals.	F. T. C. Ex. No. 124-D.
CA-3	Jan. 16, 1939	Signode Steel Strapping Company. Docket No. 3688.	Flat Steel Strapping	F. T. C. Ex. No. 124-E.
FTCA.	Jan. 19, 1939	Power and Gang Mower Manufacturers' Association, et al. Docket No. 3689.	Lawn Mowers, Power.	F. T. C. Ex. No. 124-F.
FTCA.	Jan. 24, 1939	Mueller Company, et al. Docket No. 3690.	Corporation Stops and Curb Stops.	F. T. C. Ex. No. 124-G.

PART II (A)

Discussion of Court Decisions and a Summary of Formal Action Taken by the Federal Trade Commission in Cases Arising Under Sections 7 and 8 of the Clayton Act

INTRODUCTORY

The Sherman Act of 1890 (26 Stat. 209; U. S. C., title 15, sec. 1) made contracts, combinations, or conspiracies in restraint of interstate trade or commerce illegal.

While the Sherman Act as interpreted by the United States Supreme Court was sufficient to break up certain combinations brought about by the purchase of the capital stock of competitors, mergers, consolidations, etc., where such acquisitions or mergers constituted monopolies or combinations in unreasonable restraint of trade, it was generally recognized that the result of decrees under the Sherman Act was not sufficient adequately to protect the public interest and, consequently, Congress deemed that there was need of further legislation to check corporate acquisitions, mergers, and interlocking directorates before they had resulted in monopoly.

In 1914 the Clayton Act was passed by Congress, sections 7 and 8 of which were intended to supplement the Sherman Act in this respect. In the language of Judge Evans, speaking for the United States Circuit Court of Appeals for the Seventh Circuit in the *Swift Case* (8 Fed. 2d 595):

"Congress was dealing with business consolidations of large size. It was endeavoring to prevent the creation of trusts and monopolies. Corporations are the instrumentalities commonly used by those engaged in large enterprises. They lend themselves handily to activities of large proportions. Their control can be readily acquired. * * * Must Congress act only when the child has grown to the stature of a giant? If authority exists to curb—or to dissolve—a corporation when it has reached the trust stage, may Congress not take steps to arrest the corporation's growth before the final stage has been reached? * * * As before stated, the Clayton Act (38 Stat. 730) supplemented the Sherman Law, the practical enforcement of which was found difficult and often resulted in hardships to innocent parties. The section under consideration sought by means, which the Congress deemed expedient and effective, to prevent a condition which the Sherman Law was designed to overcome when once it existed. * * * If competing corporations may not consolidate, it naturally follows that it will be difficult for one corporation ever to monopolize an industry."

Authority to enforce compliance with sections 7 and 8 of the Clayton Act, by the persons respectively subject thereto, was by the act vested in the Interstate Commerce Commission, where applicable to common carriers; in the Federal Reserve Board, where applicable to banks, banking associations, and trust companies; and in the Federal Trade Commission where applicable to all other character of commerce. By said act the Attorney General was authorized to institute proceedings in equity in the several district courts of the United States to prevent and restrain any violations of the act.

Briefly, section 7 prohibits the acquisition by one corporation, engaged in commerce,[1] of the capital stock of another corporation, engaged also in commerce, where the effect of such acquisition "may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce." Section 7 also prohibits the acquisition by a holding company of the capital stock of two or more corporations engaged in commerce where the effect of such acquisition "may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired," or to restrain commerce or tend to create a monopoly as provided above.

Section 8 of the Clayton Act prohibits the existence of interlocking directors in two or more competing corporations (other than banks and common carriers)

[1] "Commerce" is defined in the Clayton Act as "interstate commerce."

engaged in commerce when either of them has capital, surplus, and undivided profits aggregating more than a million dollars, where elimination of competition by agreement between them would be a violation of any of the provisions of the antitrust laws.

The act further directs that whenever the Federal Trade Commission has reason to believe that any person is violating or has violated the provisions of sections 7 and 8, it shall issue and serve upon such person its complaint to be followed by its order requiring him to cease and desist from further violation if, after the taking of testimony, the Commission shall be of the opinion that any of the provisions of these sections have been or are being violated. In the case of a violation of section 7, the Commission is directed to require the offending corporation to "divest itself of the stock held." In case of a violation of section 8, the order requires the company to "rid itself of the directors chosen" contrary to the provisions of that section.

Three formal complaints were issued by the Commission under section 8 (Docket Nos. 457, 1180, and 1182), copies of which are submitted as exhibits to this report, marked "F. T. C. Ex. Nos. 125 to 127," inclusive. The case known as Docket No. 457 was dismissed following the resignation of the director who held office in both companies. This case was against the Western Meat Company of San Francisco and in which, a year before, the Supreme Court had confirmed an order of the Commission involving violation of section 7 of the Clayton Act. The cases known as Dockets Nos. 1180 and 1182 were dismissed because it was found that there was no interstate commerce and no public interest.

In carrying out this mandate, the Commission has issued 60 formal complaints involving section 7 of the Clayton Act. After trial of these cases, orders of divestiture were issued in 11 cases, 8 of which have been reviewed by the United States Circuit Court of Appeals. In 6 of these cases the Circuit Court of Appeals sustained the Commission's order; in 4 of them the Supreme Court of the United States reversed the United States Circuit Court of Appeals and set aside the Commission's order; and in 1 of them sustained the Circuit Court's affirmance of the Commission's order. One order, which was not reviewed by the Supreme Court, has been made ineffective by the action of the United States Circuit Court of Appeals in allowing the respondent to acquire the assets under a judgment.

In the one case, where the Supreme Court sustained the Commission's order (*Western Meat Co.* v. *Federal Trade Commission*, 272 U. S. 554), an attempt was made by the company to acquire the assets under a judgment, but before the matter was presented to the Supreme Court an agreement was entered into allowing the respondent to divest itself of the stock and assets of a third party.

In still another case, where an order is outstanding, the Commission recognized the futility of requiring the respondent to dispossess itself of the stock, when it might, under the law, acquire the assets, and took no action where the respondent acquired the assets.

As will be seen from the digest of these cases, as set forth herein, the inability of the Commission to more effectively enforce these two sections of the Clayton Act has been due either to the inadequacy of the language of the statute, or to the narrow interpretation placed on the statute by the Courts.

Standard Oil Co. of New York.—The first complaint of importance charging violation of section 7 was issued by the Commission against Standard Oil Co. of New York (Docket No. 92), on April 15, 1918. This complaint alleged that section 7 had been violated through the acquisition by Standard Oil Co. of the capital stock of Magnolia Petroleum Company, a Texas joint-stock association, which marketed petroleum products in the States of Texas, Arkansas, and Oklahoma. Because the Magnolia was not a corporation and since the evidence showed that there was no existing competition between it and the Standard Oil Co., the Commission dismissed this complaint. A copy of the Commission's complaint in this case is submitted, marked "F. T. C. Ex. No. 128."

Tobacco Products Corporation.—The next important case was against Tobacco Products Corporation, et al. (Docket No. 205), in which complaint was issued October 18, 1918. Involved here was the acquisition of the capital stock of the Melachrino Tobacco Trading Company and a number of other cigarette-manufacturing concerns. However, it appeared that the respondent controlled only about one-half of 1 percent of the smoking-tobacco business of the country and 2⅗₀ of 1 percent of all other tobacco business, and it was argued that the effect of such acquisition might tend to maintain and stimulate competition in the interest of the public against larger and more powerful concerns, such as the American Tobacco Company. The Commission dismissed this complaint, a copy of which is herewith submitted, marked "F. T. C. Ex. No. 129."

Aluminum Company of America.—The third important complaint issued by the Commission was against the Aluminum Company of America (Docket No. 248), issued February 6, 1919. In that case the Commission issued its order on March 9, 1921, requiring the respondent to divest itself of the capital stock of the Aluminum Rolling Mill Company, which it had organized to take over the rolling-mill business of the Cleveland Metal Products Company. (See F. T. C. Ex. No. 130). This order was upheld by the United States Circuit Court of Appeals for the Third Circuit on June 1, 1922 (284 Fed. 401). A petition for a writ of certiorari was denied by the Supreme Court. The application of the Federal Trade Commission to the said Circuit Court of Appeals for a modification of the decree affirming the Commission's order, so that the decree would enjoin the Aluminum Company from acquiring any of the physical assets of the Aluminum Rolling Mill Company, was denied June 24, 1924, solely on the inability of the Federal Trade Commission to establish fraud in connection with an indebtedness on a judgment for which the Aluminum Company was proceeding to recover. This denial permitted the Aluminum Company to take over the assets of the Rolling Mill Company under the said judgment and thus the effectiveness of the Commission's order was destroyed (299 Fed. 361).

Bordens Farm Products Company, Inc.—On February 6, 1919, the Commission also issued its complaint against Bordens Farm Products Company, Inc., under section 7 of the Clayton Act (Docket No. 250). The complaint charged the unlawful acquisition by Bordens of the capital stock of Alexander Campbell Milk Company, of Brooklyn, N. Y. Both companies bought and sold fluid milk. By March 1921 neither the stock nor the corporation acquired by Bordens was any longer in existence and it was concluded by the Chief Counsel for the Commission that there was nothing upon which an order of the Commission could operate, and hence there was no effective remedy possible under the statute; that the Commission could not organize a new corporation and require the respondent to transfer to it the stock and properties of the acquired company; and that there had been very little competition in interstate commerce between the two corporations. It was also considered by the Chief Counsel that in order for there to be a violation of the statute the corporations must be competitive in a substantial sense; i. e., a mere negligible amount of competition would not be sufficient in the absence of an attempt to monopolize and control the market. On July 3, 1922, the Commission dismissed the complaint without stating the reason for dismissal. A copy of the Commission's complaint issued February 6, 1919, is submitted as an exhibit to this report, marked "F. T. C. Ex. No. 131."

MEAT PACKING INDUSTRY

Following the Commission's investigation, in 1918, of the meat-packing industry, a number of complaints were issued against the meat packers including Wilson and Company, Dockets Nos. 449 and 450; Cudahy Packing Company, Docket No. 451; Morris and Company, Docket No. 452; Swift & Company, Dockets Nos. 453 and 454; Armour & Company, Dockets Nos. 351, 455, and 531; and Western Meat Company, Dockets Nos. 456, and 457 (sec. 8). Two of these cases reached the United States Supreme Court—Swift & Company, Docket No. 453; and Western Meat Company, Docket No. 456.

The Swift Case.—The Commission's complaint against Swift & Company, Docket No. 453, was issued November 24, 1919, and alleged that the respondent had violated section 7 of the Clayton Act in the acquisition of the capital stock, in 1917, of the Moultrie Packing Company, Moultrie, Ga., and the Andalusia Packing Company, Andalusia, Ala. The Commission issued its findings and order of divestiture on August 3, 1922, and its modified findings and order on November 17, 1922. Swift & Company filed a petition to review the Commission's order with the United States Circuit Court of Appeals for the Seventh Circuit in October 1922. That court, on February 16, 1925, denied respondent's petition to set aside the Commission's order (8 Fed. 2d. 595). A copy of the Commission's findings and order in the *Swift & Company case, supra,* are attached as an exhibit to this report, marked "F. T. C. Ex. No. 132." The other complaints against the meat packers just above described are also submitted herewith, marked "F. T. C. Ex. Nos. 133 to 141," inclusive.

On September 29, 1925, Swift & Company, after an unsuccessful attempt for rehearing in the lower court, filed a petition for certiorari with the United States Supreme Court. The writ of certiorari was granted and the matter was argued before the United States Supreme Court in conjunction with two other cases which had reached the Court through other lower courts, namely, the Western Meat Company, Docket No. 456; and the Thatcher Manufacturing Company, Docket No. 738.

On November 23, 1926, the majority of the Supreme Court, through Mr. Justice McReynolds, set aside the Commission's order in the *Swift Case* (272 U. S. 554), on the ground that, as all property and business of the two competing companies was acquired prior to the filing of the Commission's complaint, the Commission was without authority to require one who had secured actual title and possession of physical property before proceedings were begun against it to dispose of the same although secured through an unlawful purchase of stock. The Commission was denied a rehearing.

A strong dissenting opinion was written by Mr. Justice Brandeis and concurred in by Chief Justice Taft, Mr. Justice Holmes, and Mr. Justice Stone. In the opinion of these four dissenting Justices, section 7 of the Clayton Act was not only to prevent the peculiar evils resulting from an acquisition of capital stock but, where the company took a transfer of the assets prior to the commencement of the Commission's proceeding, the Commission had power to require a retransfer of the assets so as to render effective the divestiture of the stock.

From the foregoing, it will be seen that by the narrow margin of one Justice the purpose and intent of the Clayton Act, as indicated by the comments of the sponsors of the bill, were defeated, and the offending corporation was allowed to take advantage of its own illegal act, thus laying the foundation for the complete emasculation of the statute in a later decision.

The Western Meat Company case.—In the *Western Meat Company case, supra* (Docket No. 456), the Commission's complaint, issued November 24, 1919, charged a violation of section 7 of the Clayton Act by the acquisition of the capital stock of the Nevada Packing Company, Reno, Nev. In this case the Western Meat Company had not yet acquired the assets of the Nevada Packing Company but, after its acquisition of the issued and outstanding capital stock, the Western Meat Company operated and controlled the Nevada Packing Company's packing plant and business to the entire elimination and suppression of the competition which had theretofore existed between the two. The Commission, in its order, required it to divest itself of the capital stock of the Nevada Packing Company, so as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof, and so as neither directly nor indirectly to retain any of the fruits of the acquisition of the capital stock of the Nevada Packing Company.[1]

An appeal was taken by the Western Meat Company, on July 27, 1923, from the Commission's order, to the United States Circuit Court of Appeals for the Ninth Circuit, which court, on September 2, 1924, denied the petition (1 Fed. 2d 95). It was contended by conusel for the Western Meat Company in a petition for rehearing that the Commission's order was too broad and exceeded its powers under the statute. The court granted a rehearing on November 24, 1924, with respect to that portion of the Commission's order requiring the divestment of the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof, etc. On February 17, 1925, the court held that the Commission had no authority other than the authority to command the defending corporation to desist from holding stock in any corporation in violation of section 7,

[1] The case before the Commission is reported in 5 F. T. C. 417.

and that the Commission's order was too broad, and directed that the Commission's order be modified (4 Fed. 2d 223).

Upon certiorari, the United States Supreme Court, on November 23, 1926, opinion delivered by Mr. Justice McReynolds, at the same time the *Swift* and *Thatcher cases* were decided, held that while the Commission might not go beyond the words of the statute properly construed, these words must be read in the light of the general purpose of the statute and applied with a view to effectuating such purpose, namely, the preservation of established competition. The court then held that the divestment of the stock must be actual and complete and might not be effected by using the control resulting from the acquisition to secure title to the possessions of the acquired company and then to dissolve it (272 U. S. 554).

On May 2, 1927, the United States Circuit Court of Appeals for the Ninth Circuit entered its order on mandate of the Supreme Court, carrying into effect the Commission's order.

The effectiveness of the Commission's order was challenged, however, in later proceedings, when the Western Meat Company, following the decision in the *Aluminum case, supra*, secured the assets of the Nevada Packing Company in a judgment on an indebtedness and then sold all the capital stock of the packing company to a third party for a nominal sum. The Commission, on March 13, 1929, filed a petition in the United States Circuit Court of Appeals for the Ninth Circuit, objecting to the report made by the Western Meat Company, setting forth the foregoing steps and, after argument, that court held, on June 24, 1929, that the respondent had complied with the decree, and denied the Commission's application (33 Fed. 2d 824).

On September 3, 1929, the Commission again filed a petition for writ of certiorari with the United States Supreme Court, and its writ was granted (280 U. S. 545). Briefs were filed before that Court on the point raised, the Western Meat Company relying upon the Aluminum Company decision, supra. In the meantime, before the case was argued, the Western Meat Company, on June 6, 1930, filed a supplemental report of compliance, showing that the assets had been transferred to a third party, this agreement having been entered into with the consent and approval of the Commission. The Court ordered the supplemental report approved, and disposed of the proceeding, on May 19, 1930, by dismissing the writ of certiorari and granting the mandate on motion of Solicitor General Thatcher for the petitioner (281 U. S. 771).

Three Other Meat Packer Cases.—The other packer cases were disposed of generally in the light of the decision of the Supreme Court in the *Swift Case*, although some were dismissed on other grounds, as, for instance, in the cases against Wilson & Company, Dockets Nos. 449 and 450, the property of the acquired corporations was sold under receivership; in the case of Cudahy Packing Company, Docket No. 451, the complaint was dismissed because the acquisitions took place prior to the passage of the Clayton Act; in the case of Morris & Company, Docket No. 452, the complaint was dismissed because Morris & Company had sold out to Armour, and the sale was approved by the Secretary of Agriculture under the Packers and Stockyards Act, approved August 15, 1921 (42 Stat. 2, 159); and in the case of Swift & Company, Docket No. 454, the complaint was dismissed because there was insufficient competition between the two corporations.

The Thatcher Case.—The next important complaint issued by the Commission in its attempt to enforce the Clayton Act was against the Thatcher Company, Docket No. 738, issued March 1, 1921, and amended July 18, 1922. The respondent had taken over the assets and dissolved the several acquired corporations before the commencement of the Commission's proceeding. When the respondent declined to comply with the Commission's order to divest itself of assets it had acquired pursuant to, and through, its stock acquisition, the Commission petitioned the United States Circuit Court of Appeals for the Third Circuit for enforcement of its order. That court approved, and directed the enforcement of, the Commission's order, except as to one of the acquired companies (5 Fed. 2d 615). The Supreme Court of the United States granted the Commission's petition for a writ of certiorari and this case was argued before that Court, together with the *Swift* and *Western Meat Cases, supra*. On November 23, 1926, the

Supreme Court held that the Commission was without authority to enter the order it had entered in the case, and that the act had no application to the ownership of a competitor's property and business obtained prior to any action by the Commission, even though this was brought about through stock unlawfully held. The Court observed that if purchase of property had produced an unlawful status, a remedy was provided through the courts. The Commission's petition for rehearing was denied (272 U. S. 554).

Standard Oil Company of New Jersey.—In the case of Standard Oil Company of New Jersey, Docket No. 964, complaint was issued on February 1, 1923, charging the acquisition by Standard Oil Company of the capital stock of the Humble Oil and Refining Company, a large producer of crude oil and refined products, with refineries located in Texas. It was engaged in the sale of its finished products in the States of Oklahoma, Arkansas, Texas, and Louisiana. On January 26, 1926, the Commission dismissed its complaint in this case because there was no substantial competition between the two corporations. It was reasoned that there could therefore be no substantial reduction of competition as the result of the acquisition, a view similar to the view of the Supreme Court as later expressed in the opinion of Mr. Justice Sutherland in the case of *International Shoe Company* v. *Federal Trade Commission* (280 U. S. 291), on January 6, 1930. The *International Shoe Case* will be discussed later herein. A copy of the Commission's complaint against the Standard Oil Company of New Jersey is submitted herewith as an exhibit to this report marked "F. T. C. Ex. No. 142."

Illinois Glass Company.—On April 9, 1923, the Commission issued its complaint against the Illinois Glass Company (Docket No. 1009, F. T. C. Ex. No. 143). This company was one of the largest manufacturers of glass bottles in the country and was the result of the numerous mergers of competing organizations made over a period of approximately twenty years. This complaint was dismissed in October 1925. The merger was the result of acquisition of assets rather than of capital stock.

International Shoe Company.—In the Commission's complaint against International Shoe Company, one of the largest shoe manufacturers in the country, Docket No. 1023, issued May 18, 1923, the respondent was charged with the acquisition of the capital stock of the W. H. McElwain Company, of Boston, Mass. The Commission, after taking testimony, issued its order on November 25, 1925, requiring the respondent to divest itself of the capital stock of the acquired company and, on June 2, 1926, directed that the enforcement of its order be suspended until the *Thatcher*, *Swift*, and *Western Meat Cases*, *supra*, were decided by the Supreme Court.

On May 31, 1928, the International Shoe Company filed a motion with the United States Circuit Court of Appeals for the First Circuit, asking that the Commission's complaint be judged insufficient in law. That court, on November 27, 1928, affirmed the Commission's order (29 Fed. 2d 518).

On February 25, 1929, the International Shoe Company filed its petition for writ of certiorari with the Supreme Court, which was denied on April 15, 1929 (279 U. S. 849). On May 9, 1929, the International Shoe Company filed a petition for rehearing and, on October 17, 1929, the writ of certiorari was granted (279 U. S. 832). The matter was argued before the Supreme Court and, on January 6, 1930, that Court, speaking through Mr. Justice Sutherland, reversed the decision of the Circuit Court of Appeals, Justices Stone, Holmes, and Brandeis dissenting, and Mr. Justice Stone filing a dissenting opinion (280 U. S. 291). The proceedings before the Commission are reported in 9 F. T. C. 441.

The two principal reasons for setting aside the Commission's order were: (1) There never was substantial competition between the two corporations, and, therefore, no foundation for the charge of substantial lessening of competition; and (2) the McElwain Company was in such financial condition that it was necessary to liquidate it, and, therefore, the prosnect for future competition is eliminated.

In discussing the first proposition, the Court recognized that both companies sold a line of men's dress shoes, comparable in price, and to some degree in quality, but, it was pointed out, the McElwain shoes appealed more to city trade and the International shoes to the small-town trade; the McElwain shows were sold generally to wholesalers and large retailers, while the International sold principally to dealers in small communities. The Court found that in 95 percent of the business of the respondent no competition existed between it and the McElwain Company. The Court then laid down the proposition, theretofore held applicable to the Sherman Act, "that the standard of legality was the absence or presence of prejudice to the public interest by unduly restraining competition or unduly obstructing the due course of trade," and pointed out that when this rule is applied as section 7 cases, the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, "that is to say, to such a degree as will injuriously affect the public." The Court then continued the application of the rule to the facts in the case by pointing out such acquisition would not produce the forbidden result if there were no preexisting substantial competition to be affected "for the public interest is not concerned in the lessening of competition which, to begin with, is itself without real substance."

On the second ground the Court recognized that the financial condition of the McElwain Company had reached the point where it could not pay its debts and that its officials sought to prevent further loss and bankruptcy by selling out to the International Shoe Company. The Court held that, under these circumstances, where the purpose was not to lessen competition but to mitigate serious injury, acquisition was not, in contemplation of law, prejudicial to the public and did not substantially lessen competition or restrain commerce within the meaning of the Clayton Act.

While the *International Shoe Case* was pending, that is, between 1924 and 1930, the enforcement of section 7 of the Clayton Act was much curtailed. During that period of time a few complaints were issued, but most of them were dismissed, some before and some after the decision in the *International Shoe Case.*

Motor Wheel Corporation and Hayes Wheel Company.—Among the more important cases where complaints were issued were the Motor Wheel Corporation, Docket No. 1215, issued August 6, 1924, and the Hayes Wheel Company, Jackson, Mich., Docket No. 1219, in which complaint issued August 12, 1924. The former complaint was dismissed in December 1928 and the latter on October 19, 1926. In both cases the respondents had acquired the assets after the Commission had issued its complaint. Copies of these two complaints are submitted as exhibits to this report, marked "F. T. C. Ex. Nos. 144 and 145," respectively.

Allied Chemical and Dye Corporation.—Another important case during that period was a complaint against Allied Chemical and Dye Corporation, Docket No. 1247, in which complaint issued on November 28, 1924. This respondent is, of course, recognized as one of the largest industrial chemical concerns in the country, and it was alleged to have violated section 7 of the Clayton Act by the acquisition of the Barrett Company, the General Chemical Company, National Aniline and Chemical Company, Inc., The Solvay Process Company, and The Semet Solvay Company. The Commission dismissed the complaint in May 1927. It appeared from the Commission's investigational files that the competition between the various corporations acquired was not substantial and that independent dye manufacturers had no difficulty in purchasing materials required in the manufacture of dyes. A copy of this complaint is herewith submitted, marked "F. T. C. Ex. No. 146."

Fisk Rubber Company.—Another important complaint was against the Fisk Rubber Company, Docket No. 1248, which was issued December 9, 1924. The respondent was charged with violation of section 7 of the Clayton Act in the acquisition, in 1916, of 51 percent of the capital stock of the Federal Rubber Company. Investigation showed that in 1921 the respondent had taken over the physical assets of the Federal Rubber Company. Another reason for dismissal was that there was probably very little competition between the two concerns. In April 1926 the Commission dismissed its complaint. A copy of the Commission's complaint in this case is submitted herewith, marked "F. T. C. Ex. No. 147."

Midland Steel Products Co.—In February 1925 the Commission issued its complaint against Midland Steel Products Co., Docket No. 1291, charging the acquisition of two of its competitors in Cleveland and Detroit, namely, the Parish &

Bingham Corporation and the Detroit Pressed Steel Company. It later appearing that the assets of the two concerns had been acquired by the Midland Steel Products Co. in exchange for its stock, and that there was no stock acquisition involved, the Commission dismissed its complaint in February 1926. A copy of this complaint is herewith submitted, marked "F. T. C. Ex. No. 148."

Wickwire-Spencer Steel Corporation.—The Commission issued a complaint against the Wickwire-Spencer Steel Corporation, Docket No. 1298, in March 1925, charging it with violation of section 7 of the Clayton Act by the acquisition, in 1922, of the capital stock of the American Wire Fabrics Corporation. This complaint was dismissed in October 1926 without prejudice to the Commission's resuming prosecution because the Commission was awaiting an interpretation of section 7 in the cases that were then pending in the Supreme Court of the United States. The respondent was the result of a merger of the Wickwire-Spencer Steel Corporation and the American Wire Fabrics Company. The former company was in a precarious financial condition, and that, apparently, was the reason for the merger. A copy of this complaint is submitted as an exhibit to this report, marked "F. T. C. Ex. No. 149."

Continental Baking Corporation.—On December 19, 1925, the Commission issued a complaint under section 7, against Continental Baking Corporation, Docket No. 1358. This corporation was charged with acquiring 25 corporations operating 85 bakeries throughout the United States. The complaint was dismissed on April 7, 1926, on the ground that the subject matter thereof was being included by the Department of Justice in its District Court proceeding against the Ward Food Products Corporation, and others engaged in the baking industry, under the Sherman and Clayton Acts, alleging a combination and conspiracy to monopolize interstate commerce by acquisition of stock control of competing companies and by other means. On April 3, 1926, a consent decree was entered by Judge Rose, dissolving the Ward Food Products Corporation and enjoining the other acts complained of, but the case was by the said consent decree dismissed as to the Continental Baking Corporation on the ground that the Commission was proceeding against that corporation for violation of section 7 of the Clayton Act. A copy of the Commission's complaint in this case is herewith submitted, marked "F. T. C. Ex. No. 150," and a copy of the consent decree entered by the District Court of the United States for the District of Maryland, on April 3, 1926, is also submitted, marked as "F. T. C. Ex. No. 151."

Consolidated Cigar Corporation.—The Commission issued a complaint against the Consolidated Cigar Corporation, Docket No. 1451, on April 5, 1927, charging it with violation of section 7 of the Clayton Act in the acquisition, in 1920, of the capital stock of the 44 Cigar Company, and in the acquisition, in 1926, of the capital stock of the G. H. P. Cigar Company. The complaint was dismissed by the Commission, on January 22, 1930, about 2 weeks after the Supreme Court rendered its decision in the *International Shoe Case, supra.* It appeared from the record that the two corporations acquired by the Consolidated Cigar Corporation were not very large when compared with the entire industry, although the respondent was a very substantial concern, with factories in a number of States. A copy of the Commission's complaint in Docket No. 1451 is submitted herewith, marked "F. T. C. Ex. No. 152."

V. Vivaudou, Inc.—In May 1927 the Commission issued a complaint against V. Vivaudou, Inc., Docket No. 1464, charging violation of section 7 of the Clayton Act in the acquisition of the capital stock, in 1925, of the Alfred H. Smith Company and, in 1926, of Parfumerie Melba, Inc. On April 28, 1930 the Commission issued its order, directing V. Vivaudou, Inc. to divest itself of its stockholdings in those two companies. (See F. T. C. Ex. No. 152–A.) V. Vivaudou, Inc., petitioned the United States Circuit Court of Appeals for the Second Circuit for review. That court, on November 2, 1931, reversed the Commission's order (54

Fed. 2d. 273) on the ground that the competition between the corporations involved was not of sufficient substance to affect the public interest. A comparison was made of the quantity of business transacted by the corporations involved with the total volume in the industry. It based its decision squarely on the International Shoe decision.

Arrow-Hart & Hegeman, Inc.—In March 1928 the Commission issued a complaint against Arrow-Hart & Hegeman, Inc., Docket No. 1498, and a supplemental complaint against the Arrow-Hart & Hegeman Electric Company on June 29, 1929. In that case the original complaint alleged that the original respondents, Arrow-Hart & Hegeman, Inc., had acquired all the capital stock of two competing electrical device manufacturers, namely, the Arrow Electric company and Hart & Hegeman Manufacturing Company, both of Hartford, Conn. The supplemental complaint alleged that before the taking of testimony was begun on December 1, 1928, the original respondent caused a merger to take place under the laws of the State of Connecticut whereby the assets of the two operating companies were merged and the original respondent was dissolved.

On July 6, 1932, the Commission ordered the Arrow-Hart & Hegeman Electric Company to divest itself of the stock of the two operating companies and also of the plant and properties received through the merger of the competing operating companies. This order was affirmed by the United States Circuit Court of Appeals for the Second Circuit May 29, 1933 (65 Fed. 2d. 336).

On March 12, 1934, the Supreme Court, by a five-four decision (Messrs. Justices Stone, Hughes, Brandeis, and Cardozo dissenting) reversed the Circuit Court of Appeals, holding that the Commission lacked authority to issue any order against the petitioner requiring it to divest itself of stock held contrary to the terms of the act. The Court, speaking through Mr. Justice Roberts, stated:

"The statute does not forbid the acquirement of property, or the merger of corporations pursuant to State laws, nor does it provide any machinery for compelling a divestiture of assets acquired by purchase or otherwise, or the distribution of physical property brought into a single ownership by merger.

"If, instead of resorting to the holding company device, the shareholders of Arrow and Hart & Hegeman had caused a merger, this action would not have been a violation of the act. And if, prior to complaint by the Commission, the holding company, in virtue of its status as sole stockholder of the two operating companies, had caused a conveyance of their assets to it, the Commission would have been without power to set aside the transfers or to compel a reconveyance (*Thatcher Mfg. Company* v. *Federal Trade Commission*, 272 U. S. 554, 560, 561).

"Clearly, also, if the holding company had, before complaint filed, divested itself of the shares of either or both of the manufacturing companies, the Commission would have been without jurisdiction. And it might with impunity, prior to complaint, have distributed the shares it held pro rata amongst its stockholders. The fact that in such case the same group of stockholders would have owned shares in both companies, whereas theretofore some owned stock in one corporation only, and some held stock solely in the other, would not have operated to give the Commission jurisdiction. For if the holding corporation had effectually divested itself of the stock, the Commission could not deal with a condition thereafter developing although thought by it to threaten results contrary to the intent of the act. Compare *National Harness etc. Association* v. *Federal Trade Commission* (268 Fed. 705); *Chamber of Commerce* v. *Federal Trade Commission* (280 Fed. 45).

"Moreover, the holding company could have ousted the Commission's jurisdiction after complaint filed, by divesting itself of the shares, for that was all the Commission could order. And if it had so divested itself the transferees of the shares could immediately have brought about a corporate merger without violating the Clayton Act. We think that is precisely the legal effect of what was done in the present case. The holding company divested itself of the shares, and thereafter the owners of these common shares united with the holders of the preferred shares to bring about a merger" (291 U. S. 598).

It will be seen from the foregoing decision that the death knell of the effectual enforcement of section 7 of the Clayton Act by the Commission was sounded. Corporations desiring to merge no longer feared the inteference of the Commission. A copy of the Commission's order to cease and desist in this case is submitted herewith, marked "F. T. C. Ex. No. 153."

Temple Anthracite Coal Company.—Another complaint issued by the Commission in this period of time was the Temple Anthracite Coal Company, Docket No. 1537, issued October 11, 1928. In that case, the respondent was charged with the acquisition of the stock of the Temple Coal Company, of Scranton, Pa., and the East Bear Ridge Colliery, also of Scranton. The Commission's order was set aside by the Circuit Court of Appeals for the Third Circuit in July 1931, on the ground that there was no competition between the two mining companies prior to the acquisition of the stock, due to the fact that both companies sold their coal to the same selling agencies. Judge Wooley dissented from the majority of the court on the proposition that competition might still exist where common ownership resulted from the acquisition (51 Fed. 2d. 656).

Purity Bakeries Corporation.—The Commission, on December 22, 1930, dismissed its complaint against the Purity Bakeries Corporation, Docket No. 1588, which had been issued on March 25, 1929. The Purity Corporation was charged with acquiring bakery companies in Minnesota, Michigan, Tennessee, and Kentucky. The percentage of competition between these various corporations was rather small. The dismissal was based on the International Shoe decision. A copy of the Commission's complaint in this case is submitted, marked "F. T. C. Ex. No. 154."

Continental Steel Corporation.—The Commission, in September 1931, dismissed its complaint against the Continental Steel Corporation, Docket No. 1589, on the ground that the competition between it and the corporations it acquired would not exceed 1 percent of the business of the concerns involved. (See F. T. C. Ex. No. 155.)

Crown Overall Manufacturing Company.—The Commission, on November 9, 1931, dismissed its complaint against the Crown Overall Manufacturing Company, Docket No. 1676, because the respondent had acquired the assets of the corporation whose stock had been acquired soon after the issuance of the complaint. (See F. T. C. Ex. No. 156.)

McKesson & Robbins, Inc.—Probably the most important case to be dismissed by the Commission since the decision in the *International Shoe Case* is that against McKesson & Robbins, Inc., Docket No. 1689. The case was quite similar in its acts to the *Continental Baking Case* and the *Purity Baking Case*, in that it involved a number of wholesale drug houses scattered throughout the country. The extent of the competition between them was very small, but the control by the combination of the wholesale drug business in the aggregate throughout the country was quite substantial. (See F. T. C. Ex. No. 157.)

Vanadium-Alloys Steel Company.—There is still outstanding an order issued February 3, 1934, against the Vanadium-Alloys Steel Company, Latrobe, Pa., a tool steel manufacturer, Docket No. 1694, involving the acquisition of the capital stock of the Colonial Steel Company. The effectiveness of the Commission's order, however, is considerably dissipated by the action of the respondent in taking over the assets of the Colonial Steel Company in the fall of 1936. In view of the decision of the Supreme Court in the *Arrow-Hart & Hegeman case, supra*, the Commission has taken no further action in this case. A copy of the Commission's order is submitted, marked "F. T. C. Ex. No. 158."

Philip Morris Consolidated, Inc.—The Commission dismissed its complaint against Philip Morris Consolidated, Inc., a cigarette manufacturer, Docket No. 1705, in December 1931, upon the recommendation of the Chief Counsel, in whose opinion the evidence showed no tendency toward monopoly, no restraint of trade growing out of the acquisition, nor any proof of the lessening of competition between the two companies whose stock had been acquired. (See F. T. C. Ex. No. 159.)

Charles Freshman Company, Inc.—The Commission dismissed its complaint against the Charles Freshman Company, Inc., a radio manufacturer, Docket No. 1706, in March 1930, because of the precarious financial position of the Freed-Eisemann Corporation, the acquired corporation. (See F. T. C. Ex. No. 160.)

National Pastry Products Corporation.—The Commission dismissed its complaint against National Pastry Products Corporation, Docket No. 1760, on November 11, 1931, in which respondent is charged with acquisition of a number of ice cream cone manufacturers, because of the showing that there was no substantial lessening of competition between the corporations and no tendency to create a monopoly. (See F. T. C. Ex. No. 161.)

Borg-Warner Corporation.—The Commission dismissed its complaint against the Borg-Warner Corporation, Docket No. 1915, on September 29, 1932. The respondent was charged with acquiring the Long Manufacturing Company, a manufacturer of automobile clutches and radiators, and also the Detroit Gear & Machine Company, a manufacturer of automobile gears. It was contended by counsel for respondent that the complaint should be dismissed in the light of the *International Shoe case, supra,* because there was no substantial competition between the corporations before the acquisition. Borg-Warner Corporation now occupies a dominant position in the manufacture of clutches and transmissions for automobiles. (See F. T. C. Ex. No. 162.)

Crown Zellerbach Corporation.—The Commission dismissed its complaint against the Crown Zellerbach Corporation, Docket No. 2135, in May 1935, on the ground that there was no existence of a monopoly. The case involved the stock merger of the Crown Willamette Paper Company, Portland, Oreg., and the Zellerbach Corporation, San Francisco, Calif. The adverse economic conditions in the paper industry on the Pacific coast probably had a great deal to do with the Commission's decision in this matter. It was developed in the testimony that the Swedish paper interests had been shipping considerable newsprint paper to the Pacific coast at low prices, which had taken business from the respondent during recent years, and had interfered with its control of the newsprint industry on the Pacific coast. There were also other close questions of fact and law involved in the case, particularly with respect to whether or not there was any competition between the corporations prior to the acquisition. (See F. T. C. Ex. No. 163.)

Van Kannel Revolving Door Company.—The Commission, on April 22, 1936, dismissed its complaint against the Van Kannel Revolving Door Company, charging it with acquisition of the Atchison Revolving Door Company, Docket No. 2381, because of the financial condition of the respondent and also the acquired corporation, and because an order of divestment would, no doubt, work a distinct hardship upon the respondent and probably force it out of business. (See F. T. C. Ex. No. 164.)

Sterling Products, Inc.—The Commission dismissed its complaint against Sterling Products, Inc., Docket No. 2502, on February 11, 1937, for the reason that the evidence showed that the purchase by the respondent corporation of the capital stock of the competing company, the R. L. Watkins Company, did not result in a substantial lessening of competition or restraint of trade. (See F. T. C. Ex. No. 165.)

Laird & Company.—The Commission dismissed its complaint against Laird & Company, Scobeyville, N. J., Docket No. 2754, in June 1936, on the authority of the *Arrow-Hart & Hegeman Case,* for the reason that subsequent to the issuance of the complaint, but prior to the taking of testimony, the respondent purchased all the assets of the acquired corporation, the Hyland Distilling Company, Haskell. N. J., which was then dissolved. (See F. T. C. Ex. No. 166.)

Schenley Distillers Corporation.—The Commission still has pending its case against the Schenley Distillers Corporation, Docket No. 3150, in which complaint was issued June 12, 1937, although at the opening session of the first hearing on the charges in the complaint counsel for the respondent announced that the respondent had acquired all the assets of the Bernheim Distilling Company, the corporation whose stock had been previously acquired. Trial counsel was directed to take further testimony with respect to the effect of the acquisition. (See F. T. C. Ex. No. 167.)

CONCLUSION

There has been prepared for the convenience of the Committee a digest of the facts, issues, findings, orders, and court decisions in all of the cases in which complaints were issued by the Commission under sections 7 and 8 of the Clayton Act including the cases referred to in the preceding discussion. This digest is marked "F. T. C. Ex. No. 168" and is for the use of the Committee in case it desires more detailed information, respecting such cases. The digest is indexed by the names of the companies and the different commodities in alphabetical order.

PART II (B)

Informal Investigations Under Section 7 of the Clayton Act

INTRODUCTORY

This part of the report deals with those situations into which a preliminary inquiry was made by the Commission and, as a result thereof, the matter was dropped for want of authority to take further action under section 7 of the Clayton Act. There are several reasons why the Commission lacked authority to act in the situations mentioned. These reasons will be discussed later in this memorandum, and cases will be cited in connection therewith. The most important one, and one concerning which the Commission has repeatedly urged an amendment to the section, is that the acquisition was of assets rather than of stock. In many instances the files pertaining to the cases contain copies of the written agreements between the parties or companies involved, or other papers of an evidentiary nature which have been prepared, and photostatic copies of which are submitted as exhibits to this report, marked for identification as "F. T. C. Exhibits Nos. 136 to 159," inclusive. Attention must first be given to the number of such cases and to the extent and importance of the consolidations involved therein.

NUMBER AND EXTENT OF ACQUISITIONS AND CONSOLIDATIONS

From the latter part of 1932 until July of 1938 the Commission made inquiry into 134 situations which appeared violative of section 7, but which were, upon investigation, dismissed for various reasons without further action by the Commission (4 of the 134 were dismissed prior to 1932, but are included in the study because of their importance in this connection). Of these, 13 proved to involve no acquisition but were merely rumors and indications of acquisitions which were investigated and dismissed. The others were situations in which acquisition had taken place, but in such a manner and under such circumstances as led the Commission to believe no action was warranted. The latter are the cases with which this part of the report is concerned.

The 121 acquisitions covered by this study combined authorized capital of the acquiring companies having a stated par value of approximately $4,000,000,000, and no par value shares numbering approximately 136,000,000, with a total authorized capital of the acquired companies having a stated par value of approximately $200,000,000, and no par shares numbering approximately 9,000,000. The acquiring companies had total assets of approximately $8,000,000,000, while the acquired companies had assets totaling approximately $600,000,000. Approximate sales of the acquiring companies amounted to $2,500,000,000, while the acquired companies' approximate sales amounted to $500,000,000. These figures, while quite impressive in their own right, may be added to, since in a few instances the figures involved in the acquisitions were not immediately available. The figures indicate, as was actually the fact in most cases, that the acquisitions involved the absorption of relatively small companies by very large companies.

IMPORTANT INDUSTRIES IN WHICH ACQUISITIONS AND MERGERS HAVE TAKEN PLACE

Steel.—In the steel industry, including those companies engaged in the manufacture of finished steel products, there were either acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $2,302,545,900, and no par shares numbering approximately 28,234,504, absorbed companies having a total authorized capital of a stated par value of approximately $109,133,900, and no par shares numbering approximately 952,500. Total assets of the acquiring companies, amounting to approximately $3,141,850,000, were combined with total assets of the acquired companies, amounting to approximately $217,450,000. Total sales of the acquiring companies, amounting to approximately $649,630,000, were combined with total sales of the acquired companies, amounting to approximately $90,256,000.

Automotive.—In the automotive industry including manufacturers of automobile parts and accessories, there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $135,043,800, and no par shares numbering approximately 7,333,000, absorbed companies having a total authorized capital of approximately $7,590,000, and no par shares numbering approximately 1,022,100. Total assets of the acquiring companies, amounting to approximately $377,396,000, were combined with total assets of the acquired companies, amounting to approximately $27,739,268. Total sales of the acquiring companies, amounting to approximately $197,893,000, were combined with total sales of the acquired companies amounting to approximately $28,112,000.

Petroleum.—In the petroleum industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $513,601,200, and no-par shares numbering approximately 21,000,000, absorbed companies having a total authorized capital of a stated par value of approximately $8,100,000. Total assets of the acquiring companies, amounting to approximately $832,200,000, were combined with total assets of the acquired companies, amounting to approximately $42,000,000. Total sales of the acquiring companies amounted to approximately $446,400,000.

Railway Equipment.—In the railway-equipment industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $37,500,000, and no-par shares numbering approximately 4,475,000, absorbed companies having a total authorized capital of a stated par value of approximately $24,629,500, and no par shares numbering approximately 2,044,000. Total assets of the acquiring companies, amounting to approximately $466,100,000, were combined with total assets of the acquired companies, amounting to approximately $52,000,000. Total sales of the acquiring companies, amounting to approximately $25,400,000, were combined with total sales of the acquired companies, amounting to approximately $1,800,000.

Explosives.—In the explosives industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $340,080,000, and no-par shares numbering approximately 1,450,000, absorbed companies having a total authorized capital of a stated par value of approximately $6,250,000, and no-par shares numbering approximately 967,000. Total assets of the acquiring companies, amounting to approximately $674,966,000, were combined with total assets of the acquired companies, amounting to approximately $20,000,000. Total sales of the acquiring companies, amounting to approximately $66,450,000, were combined with total sales of the acquired companies, amounting to approximately $8,000,000.

Copper.—In the copper industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $150,000,000, and no par shares numbering approximately 12,000,000, absorbed companies having a total authorized capital of a stated par value of approximately $1,000,000, and no par shares numbering approximately 300,000. Total assets of the acquiring companies, amounting to approximately $659,488,000, were combined with total assets of the acquired companies, amounting to approximately $18,000,000. Total sales of the acquiring companies amounted to approximately $36,000,000.

Electric Household Appliances.—Companies engaged in the manufacture, sale, and distribution of electric household appliances, having a total authorized capital of a stated par value of approximately $29,397,463, and no-par shares numbering approximately 2,930,000, either by acquisition or consolidation obtained control of companies having a total authorized capital of a stated par value of approximately $535,000, and no-par shares numbering approximately 2,000,000. Total assets of the acquiring companies, amounting to approximately $109,635,765, were combined with total assets of the acquired companies, amounting to approximately $26,962,000. Total sales of the acquiring companies, amounting to approximately $95,575,000, were combined with total sales of the acquired companies, amounting to approximately $38,330,000.

Glass.—In the glass industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $39,190,000, and no-par shares numbering approximately 1,810,000, absorbed companies having a total authorized capital of a stated par value of approximately $3,580,000, and no-par shares numbering approximately 90,250. Total assets of the acquiring companies, amounting to approximately $91,530,000, were combined with total assets of the acquired companies, amounting to approximately $15,600,000. Total sales of the acquiring companies, amounting to approximately $34,730,000 were combined with total sales of the acquired companies, amounting to approximately $19,200,000.

Industrial Chemicals Industry.—In the industrial-chemicals industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $17,500,000, and no-par shares numbering approximately 1,150,000, absorbed companies having a total authorized capital of a stated par value of approximately $3,500,000, and no-par shares numbering approximately 555,636. Total assets of the acquiring companies, amounting to approximately $110,280,000, were combined with total assets of the acquired companies, amounting to approximately $12,190,000. Total sales of the acquiring companies, amounting to approximately $8,450,000, were combined with total sales of the acquired companies, amounting to approximately $10,500,000.

Building Materials.—In the building-materials industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $378,700,000, and no-par shares numbering approximately 2,124,693, absorbed companies having a total authorized capital of a stated par value of approximately $2,800,000, and no-par shares numbering approximately 481,000. Total assets of the acquiring companies, amounting to approximately $378,468,000, were combined with total assets of the acquired companies, amounting to approximately $5,855,000. Total sales of the acquiring companies, amounting to approximately $181,200,000, were combined with total sales of the acquired companies, amounting to approximately $2,876,000.

Motion Picture.—In the motion-picture industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of 2,966,650 no-par shares, absorbed companies having a total authorized capital of a stated par value of approximately $1,000,000 and no-par shares numbering approximately 100. Total assets of the acquiring companies, amounting to approximately $46,800,000, were combined with total assets of the acquired companies, amounting to approximately $4,100,000. Total sales of the acquiring companies, amounting to approximately $36,000,000, were combined with total sales of the acquired companies, amounting to approximately $8,200,000.

Oxygen and Acetylene Gas—Companies engaged in the manufacture, sale, and distribution of oxygen and acetylene gas, having a total authorized capital of a stated par value of approximately $1,000,000, and no-par shares numbering approximately 3,400,000, either by acquisition or consolidation obtained control of companies having a total authorized capital of a stated par value of approximately $1,850,000, and no par shares numbering approximately 11,000. Total assets of the acquiring companies, amounting to approximately $49,200,000, were combined with total assets of the acquired companies, amounting to approximately $2,444,500. Total sales of the acquiring companies, amounting to approximately $30,900,000, were combined with total sales of the acquired companies, amounting to approximately $1,748,000.

Tobacco.—In the tobacco industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $2,650,000, absorbed companies having a total authorized capital of a stated par value of approximately $4,500,000. Total assets of the acquiring companies, amounting to approximately $3,700,000, were combined with total assets of the acquired companies, amounting to approximately $10,600,000. Total sales of the acquiring companies, amounting to approximately $629,000, were combined with total sales of the acquired companies, amounting to approximately $20,500,000.

Bakery and Food Products.—Companies engaged in the manufacture, sale, and distribution of bakery and food products, having a total authorized capital of a stated par value of approximately $10,500,000, and no-par shares numbering approximately 13,550,000, either by acquisition or consolidation obtained control of companies having a total authorized capital of a stated par value of approximately $560,000, and no-par shares numbering approximately 4,000. Total assets of the acquiring companies, amounting to approximately $203,099,000, were combined with total assets of the acquired companies, amounting to approximately $2,563,000. Total sales of the acquiring companies, amounting to approximately $308,300,000, were combined with total sales of the acquired companies, amounting to approximately $7,476,000.

Fruit Auction.—Companies engaged in the fruit-auction business, having a total authorized capital of a stated par value of approximately $10,000,000, and no par shares numbering approximately 500,000, either by acquisition or consolidation obtained control of companies having a total authorized capital of a stated par value of approximately $1,500,000. Total assets of the acquiring companies amounted to approximately $20,632,354. Total sales of the acquiring companies, amounting to approximately $30,700,000, were combined with total sales of the acquired companies, amounting to approximately $26,000,000.

Fuel and Ice.—In the fuel and ice industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $36,000,000, and no par shares numbering approximately 3,000,000, absorbed companies having a total authorized capital of a stated par value of approximately $2,950,000, and no par shares numbering approximately 207,500. Total assets of the acquiring companies, amounting to approximately $69,300,000, were combined with total assets of the acquired companies, amounting to approximately $10,700,000. Total sales of the acquiring companies, amounting to approximately $31,700,000, were combined with total sales of the acquired companies, amounting to approximately $4,080,000.

Distilled Spirits.—In the distilled-spirits industry there were acquisitions or consolidations as a result of which the acquiring companies, having a total authorized capital of a stated par value of approximately $26,110,480, and no par shares numbering approximately 2,929,587, absorbed companies having a total authorized capital of a stated par value of approximately $901,250, and no par shares numbering approximately 60,000. Total assets of the acquiring companies, amounting to approximately $79,000,000, were combined with total assets of the acquired companies, amounting to approximately $7,130,000. Total sales of the acquiring companies amounting to approximately $63,690,000, were combined with total sales of the acquired companies, amounting to approximately $1,581,000.

Miscellaneous.—Companies engaged in the manufacture, sale, and distribution of various kinds of products which do not readily fall within any classification by industry are grouped under the heading of miscellaneous industries. The acquiring companies grouped in this collective field had total authorized capital of the stated par value of $59,380,950 and no par shares numbering approximately 2,350,000. Total assets of the acquiring companies amounted to approximately $68,117,700, and total sales amounted to approximately $56,004,000. The acquired companies had total authorized capital of the stated par value of approximately $2,060,000, and no par shares numbering approximately 58,110. Total assets of the acquired companies amounted to approximately $2,807,200, and total sales amounted to approximately $10,903,100.

SUBSTANTIVE RESTRICTIONS OF SECTION 7 BY LEGISLATIVE INTENT

In 57 cases one of the principal reasons for the Commission's dropping the matter after making a preliminary investigation was the fact that the assets, and not the stock, of the acquired companies were purchased. Section 7 does not prohibit acquisition of physical assets and properties. The reason the section was never intended to prohibit such asset acquisition was undoubtedly that the usual method of acquisition at the time section 7 was enacted was through obtaining control of the capital stock. By reason of this limitation a way has been left open to accomplish the same result which the section sought to prohibit. A few cases which were dismissed for the reason that they involved asset acquisition are summarized herein.

Robert Gair Company, Inc. (*File 17-7-843*).—This company was one of the largest manufacturers of paper and fiberboard boxes and other containers in the country. During the period 1932 to 1934, inclusive, the company acquired the assets and properties of several corporations engaged in a similar line of business. The facts indicate that there was pre-existing competition between each of these companies and the Gair Company. In the same period the Robert Gair Company, Inc., acquired the capital stock of three large companies engaged in the same line of business. It was found that due to the location of the acquired companies there was only a small percentage of competition with the Gair Company. The procedure adopted in the acquisition of the businesses of the companies acquired by the Robert Gair Company precluded jurisdiction by the Commission, although the facts show preexisting competition and a substantial enhancement of the Gair Company's business. (See F. T. C. Ex. No. 169.)

The American Cyanamid Company (*File 17-7-844*).—This company was one of the largest manufacturers of heavy chemicals. The company also manufactured nitrocellulose, fuses, blasting powders, fuse caps, and other explosives. In September 1933 the company acquired all the assets of the General Explosives Company, for which cash and stock of the acquiring company were paid. In October 1933 American Cyanamid Company acquired the assets of the Maryland Chemical Company, Inc. Both of the acquired companies were engaged in the manufacture of products similar to those manufactured and sold by the acquiring company. Since the acquisition was of assets and property, the Commission had no authority in tke matter. The files were closed without further action and were referred to the Department of Justice for such action as might seem advisable under the Sherman Act.

The United States Gypsum Company (*File 17-7-846*).—The United States Gypsum Company was organized in 1920 as the result of the consolidation of 35 different producers of gypsum. In subsequent years the company has grown, through the acquisition of a number of other concerns engaged in the business of manufacturing similar and allied products. The company now occupies an outstanding position in the manufacture and sale of asphalt shingles and roofing, lime products, gypsum products and various other builders' supplies. In July 1934 the United States Gypsum Company acquired the plant and other assets of the Star Roof Corporation. Star Roof Corporation was engaged in the manufacture and sale of roofing similar to that produced by the United States Gypsum Company. The roofing products of the two companies were sold on the Pacific coast in competition with each other. The Commission dismissed the matter for the reason that control of the Star Roof Corporation was brought about through purchase of assets rather than through the acquisition of stock. (See F. T. C. Ex. No. 170.)

Standard Oil Company (*Indiana*) (*File 17-8-8538*).—This company one of the largest, if not the largest, companies in the country engaged in the production and distribution of petroleum products. The company controlled a number of subsidiaries engaged in every phase of the petroleum industry. On July 29, 1935, a Mr. Wright Morrow, of Houston, Tex., acquired all the stock of the Yount-Lee Oil Company. Prior to the acquisition, Yount-Lee Oil Company was engaged in the operation of petroleum producing properties in Texas and Louisiana. On the following day Mr. Morrow sold all the assets and properties of the Yount-Lee Oil Company to the Stanolind Oil and Gas Company, a subsidiary of the Standard Oil Company (Indiana). The inference is that the whole transaction was sponsored by Standard Oil Company (Indiana). In view of the fact that the acquisition of the Yount-Lee Oil Company by Stanolind Oil and Gas Company was one of assets, and since no evidence was secured to establish the fact that the Standard Oil Company interests acquired the capital stock of the Yount-Lee Oil Company indirectly through Wright Morrow, the Commission dismissed the case. (See F. T. C. Ex. No. 171.)

The Fox Film Corporation (File 17-8-8550).—The Fox Film Corporation was both an operating and holding company. The company controlled subsidiaries engaged in every branch of the motion-picture industry. In July 1935 the Fox Film Corporation acquired all the property, assets, and business of Twentieth Century Pictures, Inc. After the acquisition, a new name—Twentieth Century Fox Film Corporation—was adopted for the two companies. The facts show that prior to the acquisition competition existed between the two companies, but due to the fact that the acquisition was of assets and property the Commission was without power to act under section 7 of the Clayton Act. (See F. T. C. Ex. No. 172.)

The Owens-Illinois Glass Company (File 17-10-2321).—The Owens-Illinois Glass Company was recognized as the world's largest manufacturer of bottles. The company was the result of a merger of a number of bottle manufacturers. In December 1935 the Owens-Illinois Glass Company acquired the assets and business of the Libbey Glass Manufacturing Company. The acquisition represented a $5,000,000 transaction, and gave Owens-Illinois the largest thin-blown glass plant in the world. In January 1936 Owens-Illinois Glass Company acquired all the assets of the Tin Decorating Company of Baltimore. In March 1936 the Owens-Illinois Glass Company acquired all the outstanding shares of the Enterprise Can Company. A study of the acquisitions involved in this case failed to indicate any preexisting competition between the Tin Decorating Company and Owens-Illinois, and between the Enterprise Can Company and Owens-Illinois. The acquisition of the Libbey Glass Company was effected through purchase of assets. For these reasons it was believed that the Commission had no authority to act. However, the transactions substantially enhanced the position of the Owens-Illinois Glass Company in the manufacture of a varied line of glass and metal containers. (See F. T. C. Ex. No. 173.)

Thompson Products, Inc. (File 17-10-2457).—This company was one of the largest manufacturers of valves for automobile motors. The company also manufactured valve tappets, valve seats, pistons, piston pins, and other similar hardened-steel products. In November 1935 Thompson Products, Inc., acquired substantially all the assets and properties of the Toledo Steel Products Company, which company was also engaged in the manufacture of valves and other hardened-steel products. It seems that the two companies were in substantial competition prior to the acquisition. A very important part of the business of each was the manufacture of poppet valves. The acquisition placed Thompson Products, Inc., in an outstanding position in this field. Due to the nature of the acquisition, the Commission was precluded from taking any action in the matter. (See F. T. C. Ex. No. 174.)

Republic Steel Corporation (File 17-11-2807).—This company was recognized as the third largest producer of steel in the United States. The company was reported to convert a greater percentage of its steel output into highly finished products and manufactured articles than any other of the large steel companies. Pursuant to an agreement dated March 2, 1937, Republic Steel Corporation purchased the entire property, assets, and business of the Gulf States Steel

Company. The Gulf States Steel Company was a relatively small unit. However, it was reported to rank as the second largest steel producer in the South, with well integrated operations. It seems that from time to time Republic Steel Corporation acquired blocks of stock of the Gulf States Steel Company. Its consistent buying program was evidently intended to eventually effect the acquisition of the Gulf States Steel Company; however, at no time prior to the acquisition did Republic hold a controlling interest in Gulf. For this reason it was the opinion of the Chief Counsel of the Commission that the acquisition was of assets rather than of capital stock and that the Commission was without authority to act in the matter. (See F. T. C. Ex. No. 175.)

Distillers Corporation-Seagrams, Ltd., (*File 17-11-3082*).—This company was incorporated in 1928, in Canada. The Company is a holding company and, through American subsidiaries distills, blends, and markets in the United States rye, bourbon, and blended whiskies. Pursuant to an agreement dated August 5, 1937, Durham Distillers, Inc., a subsidiary of Distillers Corporation-Seagrams, acquired all of the property and assets, as a going business, of Carstairs Bros. Distilling Company, Inc. The acquisition in this case was important in that Distillers Corporation-Seagrams was already one of the largest manufacturers and distributors of whiskies in the world. While Carstairs Bros. Company was not a very large concern, still it was added to an already very large corporation. Due to the nature of the acquisition, the Commission dismissed the matter without further action. (See F. T. C. Ex. No. 176.)

Drug, Inc. (*File 1-5619*).—This company was organized in 1928 for the purpose of consolidating a large number of manufacturers and distributors of drug-store merchandise and accessories. Subsequent to 1928, the time of incorporation, Drug, Inc., acquired the capital stock of several companies, and also the assets of several other companies. A study of the acquisition disclosed that those corporations whose capital stock was acquired by Drug, Inc., were not previously in competition with companies controlled by Drug, Inc. The other acquisitions involved the purchase of assets. For these reasons the Chief Examiner of the Commission concluded that the Commission was without authority to act in the matter. (See F. T. C. Ex. No. 177.)

ᴿ STRICTIONS OF SECTION 7 DUE TO COURT DECISIONS

The International Shoe Co. Case.—By judicial interpretation many limitations other than those inherent to section 7 have been imposed upon the Commission's authority to act thereunder; in fact, it is believed that the effectiveness of this section has been completely emasculated as the result of court decisions. Among other things, the section clearly states "that no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition (732) *between the corporation whose stock is so acquired and the corporation making the acquisition, or* to restrain such commerce in any section or community, *or* tend to create a monopoly of any line of commerce." [Italics supplied.]

Consider the courts' interpretation of this provision in the light of a few decided cases.

The Commission, on November 25, 1925, issued an order against International Shoe Company, the largest manufacturer of leather shoes in the United States, requiring it to dispossess itself of the capital stock of the McElwain Shoe Company, a New England manufacturer of shoes. The Commission's order was affirmed by the United States Circuit Court of Appeals, First Circuit, on November 27, 1928 (29 Fed. 2d. 518). The Supreme Court of the United States reversed the lower court on January 6, 1930 (280 U. S. 291). It held, with Justices Stone, Holmes, and Brandeis dissenting, that because the shoes made by the acquiring and acquired corporations differed in appearance and workmanship and appealed to the tastes of entirely different classes of consumers, there was no substantial competition between the two companies as to the great bulk of their business. The court was of the opinion that mere acquisition by one corporation of the stock of a competitor, even though it result in the lessening of some competition, is not forbidden; that the act deal only with such acquisitions as would probably result in lessening competition in the industry to a substantial degree, that is, to such a degree as will *injuriously affect the public.* Such a decision applies no more than the Sherman Law test, and the test of *competition between the two companies* is disregarded.

Another point in the *International Shoe Company Case* involved the financial distress of the McElwain Company. It was pointe out that a company in a state of near bankruptcy, as was the McElwain Company, is in no position to offer substantial competition to competing companies. Other Federal courts have adopted the test as to competition as laid down in the *International Shoe Company Case.*

In the *Temple Anthracite Coal Company Case* (51 Fed. 2d. 656) and in the *V. Vivaudou Company Case* (54 Fed. 2d. 273), the decisions rested squarely upon the *International Shoe Company Case.* In the *Temple Anthracite Coal Company Case* Justice Woolley, in a dissenting opinion, gave the best criticism of the test of competition laid down in the *International Shoe Company Case* in a statement in which he said, "In arriving at the conclusion that the evidence sustains the order of the Commission, I have kept in view the fact, at different times lost sight of in this case, that we are not concerned with the lessening of competition between these two companies and other companies in the industry, but are concerned with the *lessening of competition between the two companies themselves.*" [Italics supplied.]

In the light of the decision in the *International Shoe Case,* the Commission did not issue complaints in 77 cases during the period covered by this report, where the lack of substantial competition was one of the principal reasons for dismissal. A few of these cases are mentioned herein.

The Minneapolis-Honeywell Regulator Company (*File 17-7-859*).—This company was one of the largest manufacturers of temperature-regulating devices and automatic controls for oil- and gas-heating systems. On December 31, 1934, the Minneapolis-Honeywell Regulator Company acquired the entire outstanding issue of common stock of the Brown Instrument Company. The Brown Instrument Company was engaged in the manufacture of products very similar to those manufactured by the Minneapolis-Honeywell Company. The acquisition of the Brown Company has placed Minneapolis-Honeywell in a very outstanding position in the field. Upon preliminary inquiry by the Commission, a great part of the products of these two companies were found to be used by different classes of consumers. For this reason it was believed that the competition between the two companies would be held insubstantial in the light of the International Shoe Decision. It is evident from the nature of the products that the two companies could have been in very substantial competition. (See F. T. C. Ex. No. 178.)

The Inland Steel Company (*File 17-8-8542*).—This company was one of the larger independent manufacturers of steel and steel products. The company controlled a number of subsidiaries engaged in the mining and production of iron ore and in the fabrication of steel products. In 1935 Inland Steel Company acquired Joseph T. Ryerson & Son, Inc., which company was engaged in the sale and distribution of heavy iron and steel products. It was believed that the competition would not be held substantial since Inland was a producer of steel selling at wholesale and Ryerson was a distributor of steel selling at retail. The acquisition, however, has added to and rounded out the operations of the Inland Steel Company. Competition in the *sale* of the steel products might easily be lessened. (See F. T. C. Ex. No. 179.)

The Borg-Warner Corporation (*File 17-8-8551*).—This company was a holding company controlling a number of subsidiaries engaged in the manufacture of a varied line of automobile parts, household equipment, specialty steel, and fabricated-steel products. Since its organization in 1928 the company has acquired the capital stock of a number of concerns, each of which was long established and outstand ng in its field. Several of the acquisitions were the subject of inquiry by the Commission. In June 1935 the Borg-Warner Corporation acquired all the issued and outstanding capital of the Calumet Steel Company. The Calumet

Company, prior to acquisition by Borg-Warner, engaged in the manufacture of steel bars and other steel forms. Competition was believed to be insubstantial (*International Shoe Case*) for the reason that Borg-Warner manufactured specialty products from steel, while Calumet Steel Company was engaged in the production of unfabricated steel. The acquisition has enhanced the position of the Borg-Warner Company to a very great extent. (See F. T. C. Ex. No. 180.)

The Anchor Cap Corporation (*File 17-11-2523*).—This company was the outstanding manufacturer of caps and seals for all kinds of bottles and for glass and tin containers. The company controlled subsidiaries engaged in the manufacture of bottles and other glassware. In July 1934 the Anchor Cap Corporation acquired all the outstanding stock of the Salem Glass Works. The Salem Glass Works manufactured pharmaceutical glassware and bottles for charged and mineral waters. The Capstan Glass Company, a subsidiary of Anchor Cap Corporation, was engaged in the manufacture of bottles and glassware which were used as food containers, and which products were similar to the products manufactured by the Salem Glass Works. Due to the fact that the products of the two companies were dissimilar in their uses, it was believed that competition between the two companies was insubstantial. (See F. T. C. Ex. No. 181.)

Ground Gripper Shoe Company, Inc. (*File 1-5673*).—This company was engaged in the manufacture of what is known as "corrective footwear." In 1928 the Ground Gripper Shoe Company, Inc., acquired the Kahler Shoe Company, the Cantilever Corporation, Wm. Henne & Company, and the Crittenden Company, which four companies were also engaged in the manufacture of corrective footwear. As a result of investigation of the acquisitions, it was found that each company manufactured different types of corrective footwear. No action was taken since there was no substantial competition, as competition is defined in the International Shoe Case. However, the acquisition has placed the Ground Gripper Company in a very outstanding position in the corrective-footwear field.

In view of the decision in the International Shoe Case, the Commission did not issue complaints in eight cases during the period covered by this report for the reason that one, or all, of the companies involved in the acquisition was, or were, in a state of financial distress. One or two such instances are summarized herein.

The Goodyear Tire & Rubber Company (*File 17-7-863*).—This company was the outstanding manufacturer of automobile tires, tubes, and other rubber products in the United States. In May 1935 the Goodyear Company offered to buy, upon a reorganization basis, the Kelly-Springfield Tire Company, which company had been in receivership since December 1934. Conferences between the Goodyear Company and the stock and noteholders of the Kelly-Springfield Company, who also had a plan of reorganization, resulted in an acceptance of a compromise plan whereby Goodyear acquired the Kelly-Springfield Company. From the statement of facts it was concluded that the Goodyear Tire & Rubber Company acquired the entire business of the Kelly-Springfield Tire Company through bankruptcy proceeding. For this reason the Chief Counsel was of the opinion that the Commission had no authority to act in the matter. (See F. T. C. Ex. No. 182.)

Consolidated Oil Corporation (*File 17-10-2326*).—This company was a New York corporation engaged in the production and sale of petroleum products. On April 12, 1934, Consolidated Oil Corporation purchased the outstanding capital stock of the Independent Oil and Gas Company at a bankruptcy sale of the Producers and Refiners Corporation, which corporation had formerly held all the stock of the Independent Company. On October 15, 1934, while the Richfield Oil Corporation of California was in bankruptcy and in the process of reorganization, the Consolidated Corporation made an offer to purchase the stock and accounts of Richfield Oil Corporation of New York, a subsidiary of the California Corporation. On November 15, 1934, the Court accepted the offer. In view of the financial conditions of the acquired companies, the Chief Counsel was of the opinion that there was no violation of the Clayton Act. (See F. T. C. Ex. No. 183.)

Swift and Thatcher Cases.—On November 23, 1926, the United States Supreme Court decided the *Swift & Company* and *Thatcher Manufacturing Company cases* (272 U. S. 554). The Court held, in those two cases, that the Commission had no power to order divestiture of property to which title and possession was secured before the Commission had issued a complaint, even where the property was acquired through the exercise of voting control of capital stock which had been illegally acquired.

The decision of the Supreme Court in the *Swift* and *Thatcher Cases* was carried a step farther when the Court, on March 12, 1934, decided the *Arrow-Hart & Hegeman Case* (291 U. S. 587). In that case the Court held that a holding company by divesting itself of capital stock before the issuance of the Commission's order but subsequent to the Commission's complaint, ousted the Commission from authority to act in the matter. The Court also held in that case that section 7 of the Clayton Act did not forbid the acquisition of property by mergers made pursuant to State laws or by mergers made by shareholders in lieu of a holding company. The point was made that the Commission is an administrative body possessing only power conveyed by statute, and hence its jurisdiction is confined to ordering disposition of illegally acquired stock.

In the light of the decision of the Supreme Court in the *Swift* and *Thatcher Cases*, the Commission did not issue complaints in nine cases during the period 1932 to July 1938. Some of the cases are summarized in this report.

Phelps Dodge Corporation (*File 17–7–867*).—This company was one of the three largest copper-producing companies in the United States. The company, through its subsidiaries, engaged in the mining, smelting, and refining of copper. The company also had subsidiaries engaged in the fabrication of all kinds of copper products. In February 1935 the Phelps Dodge Corporation acquired virtually all the outstanding stock of the United Verde Copper Company. After acquisition of the capital stock, all the United Verde property and assets were sold and transferred to Phelps Dodge Corporation. The facts show that, just prior to the acquisition, Phelps Dodge Corporation was the leading copper producer in the Arizona Copper region, with United Verde ranking second. As the result of the acquisition, Phelps Dodge has obtained a dominant hold on the copper production in that section. However, as regards copper production in the United States as a whole, the company obtained no monopoly. In the light of the *Swift case*, the Chief Counsel was of the opinion that the Commission had no authority to act in the matter.

The National Gypsum Company (*File 17–10–2327*).—This company was incorporated in Delaware in 1925. As a result of a program of expansion, beginning in 1928, the company had become one of the largest in the United States offering a group of related lime, gypsum, and insulation products. As of October 7, 1935, the National Gypsum Company acquired a controlling interest in the capital stock of the Universal Gypsum and Lime Company. On December 30, 1935, the assets and business of the Universal Gypsum and Lime Company were merged with the assets and business of the National Gypsum Company. Prior to the acquisition, the two companies involved were in substantial competition in the sale of their products. The Chief Counsel was of the opinion that due to the merger of assets the Commission had been deprived of authority to act in the matter. (See F. T. C. Ex. No. 184.)

General American Transportation Corporation (*File 17–10–3248*).—This company was engaged in the leasing of tank cars for the transportation of gasoline and other liquids. From time to time General American Transportation Corporation acquired the capital stock of the Pennsylvania-Conley Tank Car Company, until in 1930 all the issued common stock of the Conley Company was in the hands of the General American Corporation. At the time inquiry was made into the matter, the General American Corporation had acquired all the assets of the Pennsylvania-Conley Company. In view of this fact the Chief Counsel was of the opinion that the Commission had no authority to act. (See F. T. C. Ex. No. 185.)

Consolidated Biscuit Company (File 17–11–2240).—This company was one of the largest companies engaged in the manufacture and sale of crackers and other bakery products. The company marketed its products through both wholesale and retail channels. In June 1936 the Consolidated Biscuit Company acquired all the outstanding capital stock of Thinshell Products, Inc. The Thinshell Company was engaged in practically the same line of business. There is evidence that competition did exist between the two companies. However, after acquisition by Consolidated of the capital stock of Thinshell Products, Inc., the assets and all properties of the Thinshell Company were transferred to Consolidated, and Thinshell was dissolved. For this reason the Chief Counsel was of the opinion that the Commission had no authority to act in this matter. (See F. T. C. Ex. No. 186.)

Arrow-Hart & Hegeman Case.—In the *Arrow-Hart & Hegerman Case*, as previously mentioned herein, it was decided that section 7 did not forbid mergers made pursuant to State law. Since this decision (March 12, 1934), the Commission has not issued complaints in nine cases in which mergers of competing companies were consummated under State law. A few of the cases are summarized herein.

The Allegheny Steel Company (File 17–11–2226).—This company was engaged in the operation of open hearth and electric furnaces, break-down mills, annealing furnaces, and in the production of various kinds of alloy steels in the forms of sheets, billets, and bars. The company was one of the largest engaged in this business. On July 27, 1936, the Allegheny Steel Company and the West Leechburg Steel Company were merged in accordance with the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania. There was some distinction to be made in the products of the two companies, and for that reason the Chief Examiner was of the opinion that the products were not in substantial competition, as competition is defined in the *International Shoe Case.* Another reason for dismissing the case concerned the merger of the two corporations under State law (*Arrow-Hart & Hegeman Case*). The result of the merger undoubtedly enhanced the position of the Allegheny Steel Company in the industry and eliminated *possible* competition between the companies. (See F. T. C. Ex. No. 187.)

Vortex Cup Company and Individual Drinking Cup Company, Inc. (File 17–11–1915).—These companies were engaged in the manufacture and sale of paper cups manufactured under extensive patents. In January 1936 the two companies were merged in accordance with the Business Corporation Law of the Commonwealth of Pennsylvania and the General Corporation Law of the State of Delaware. The two companies were evidently in competition in the sale of their products; however, the products were sold in different price ranges. In view of this distinction in quality of the two products, it was believed that competition between them would be held insubstantial. The point of merger under State law also entered into the disposition of the case. In view of the outstanding position of the new corporation, the matter was referred to the Department of Justice for such action as that Department might deem advisable under the Sherman Act. (See F. T. C. Ex. No. 188.)

Leslie-California Salt Company (File 17–11–2416).—This company was a producer and refiner of salt used for every purpose. Its principal products were refined vacuum salt and dried processed salt. Pursuant to an agreement dated September 18, 1936, the Leslie-California Salt Company and the Arden Salt Company were merged in accordance with section 59 of the General Corporation Law of the State of Delaware and in accordance with the Civil Code of the State of California. It appears that the two companies were in competition in the production and sale of wet crude salt. In the case of Leslie-California Salt Company, this product constituted about 15 percent of its sales, while in the case of the Arden Salt Company, the product constituted its entire production. In view of the method of consolidation and the relatively small percentage of competition between the companies, the Chief Examiner was of the opinion that the Commission had no authority to act in the matter. (See F. T. C. Ex. No. 189.)

Corning Glass Works (*File 17–11–2808*).—This company was engaged in the manufacture of electrical bulbs and tubing, laboratory and scientific apparatus, railroad-and marine-signal glassware, gauge glass, aviation and optical glassware, and other scientific-glass products. In November 1936 Corning Glass Works was consolidated with the McBeth-Evans Glass Company under the provisions of the Stock Corporation Law of the State of New York and the Business Corporation Law of the Commonwealth of Pennsylvania. An analysis of the companies' sales indicated that approximately 10 percent of Corning's sales were competitive with those of McBeth-Evans and that approximately 15 percent of McBeth-Evans' sales were competitive with those of Corning. Due to the nature of the consolidation, and the relatively small percentage of competition, the matter was believed to be without the authority of the Commission. (See F. T. C. Ex. No. 190.)

Alva Carpet and Rug Company (*File 17–11–2886*).—This company was engaged in the manufacture of velvet-jute and velvet-wool rugs. The Parker-Wylie Carpet Manufacturing Company was engaged in the manufacture of axminister and jute rugs. On March 23, 1937, the two companies were merged under the name of General Carpet Corporation, according to the provisions of the Pennsylvania Business Corporation Law. The individual products of these two corporations were unlike in type and character and, therefore, were believed to be noncompetitive in the light of the decision in the *International Shoe Case.* For this reason, and also for the reason that the merger was made under State law, the matter was believed to be without the authority of the Commission. (See F. R. C. Ex. No. 191.)

CASES REFERRED TO THE DEPARTMENT OF JUSTICE FOR CONSIDERATION UNDER THE PROVISION OF THE SHERMAN ACT

Eleven of the cases with which this part of the report is concerned were referred to the Department of Justice for such action as that Department might consider advisable under the Sherman Act, or for other reasons. A few such instances are summarized herein.

DiGiorgio Fruit Corporation (*File 17–7–789*).—This corporation was recognized as the second largest company of its kind in the world, being superseded only the the United Fruit Company. The Connolly Auction Company, one of the subsidiaries of the DiGiorgio Company, was engaged in the fruit-auction business in the city of New York. On January 1, 1933, the Connolly Company entered into an agreement with the Independent Fruit Auction Corporation whereby the Independent Fruit Auction Corporation would carry on Connolly's auction business from the period January 1, 1933, to December 31, 1942. Independent was to pay Connolly a flat sum of $100,000 per year, and the profits of Independent in excess of a certain amount were to be shared with Connolly. Connolly agreed to finance Independent for an amount limited by the contract. The agreement in no way provided for the acquisition of either capital stock or assets of the Connolly Auction Company. The arrangement between the two auction companies gave the DiGiorgio Fruit Corporation approximately 85 percent of all the commission auction business in the New York area. Later a new corporation was organized under the laws of the State of New York. The object of the organization of the new corporation was to take over the business of the two concerns, Independent and Connolly. The DiGiorgio Fruit Corporation owned all of the stock of the new corporation. How DiGirogio acquired Independent's stock in the new corporation is not known. After an investigation by the Commission, the Chief Counsel was of the opinion that, if there was a violation of the law, it was only for the Department of Justice to investigate under the Sherman Act. The files were accordingly referred to that Department.

Owens-Illinois Glass Company (*File 17–7–814*).—This company has been recognized as the world's largest manufacturer of bottles. In January 1933 Owens-Illinois Glass Company contracted to acquire the entire assets of the Hemingray Glass Company of Muncie, Ind., a manufacturer of glass insulators, and the O'Neil Machine Company, makers of bottle-blowing machines of the vacuum type. At the same time it also acquired substantial stock interests in the Container Corporation of America and National Distillers Products Corporation, which company was engaged in the manufacture and sale of spirits, ethyl alcohol, and denatured alcohol. The Chief Examiner did not conduct an extended investigation of the matter because of the fact that as to the bottle companies the assets were acquired, and as to the other acquisitions there was apparently no competition. He recognized the tendency toward monopoly, but did not feel justified in instituting investigation without direction of the Commission. The Commission directed that the papers in this file be transferred to the Department of Justice.

Outboard Motors Corporation (*File 17-11-2040*).—This corporation was one of the largest companies engaged in the manufacture of outboard boat motors. In 1935 the company was controlled by three men, namely, Stephen F. Briggs, H. N. Stratton, and Ralph Evinrude. In November 1935 Stephen F. Briggs purchased approximately 85 percent of the capital stock of the Johnson Motor Company. The Johnson Motor Company was also one of the largest companies engaged in the manufacture of outboard boat motors. Following, or incident to, the purchase of the stock of the Johnson Motor Company, Mr. Briggs sold a part of the stock to Mr. Evinrude and the H. N. Stratton family, retaining for himself approximately 54 percent of the said Johnson stock. At the time of the acquisition, Mr. Briggs was a substantial stockholder, director, and chairman of the board of directors of the Outboard Motors Corporation. Following the purchase of the capital stock of the Johnson Motor Company, Mr. Briggs resigned as chairman and director of the Outboard Motors Corporation, but retained his stock holdings therein. It was the opinion of the examining attorney that the very close association of Briggs, Stratton, and Evinrude in the Johnson Motor Company and the Outboard Motors Corporation might warrant consideration by the Department of Justice as a possible violation of the Sherman Act, inasmuch as it appeared that the two companies controlled a very large percentage of the outboard boat motors production. The file was, accordingly, referred to that Department.

Three Rivers Glass Company (*File 17-11-2365*).—The Three Rivers Glass Company was a small glass container manufacturing company located at Three Rivers, Tex., and operating principally in the States of Texas, Louisiana, Oklahoma, and New Mexico. The company was also able to ship its products by boat from Corpus Christi, Tex., to New York at very low water rates and thereby able to sell at reduced competitive prices on the Atlantic seaboard. In the years 1929 and 1930 the company did a gross business in excess of one-half million dollars per year. At that time the company had just begun a program of expansion. All indications were that the business would grow and would be fairly successful in competing with the larger companies in the sale of their products in the territories in which Three Rivers operated. Late in 1930 the bottom dropped out of the business with a tremendous falling off in sales of bottles, the principal product of the company. As a result, the company was required to take large losses on inventory. In that year the company also lost heavily in bad accounts. In March 1932 the company defaulted in interest payments on its first-mortgage notes and, in November of that year, was placed in the hands of receivers. Attempts were made to reorganize the company, and an application for an R. F. C. loan was made. However, a number of the company's noteholders and other creditors refused to subordinate their claims to the R. F. C., which Corporation had worked out a plan of reorganization for the Three Rivers Company whereby the company might reasonably have been expected to pull through its difficulties.

The unwillingness on the part of the noteholders formed the basis of the application for complaint herein involved. Charles R. Tips, president of the Three Rivers Glass Company, accused certain of the large glass manufacturing companies, the names of which were unknown to him, of buying in Three Rivers Glass Company's first-mortgage notes through an agent who refused to disclose his principal, in an attempt to force liquidation of the company. An investigation of the matter was made by the Commission. In the course of the investigation, Mr. George A. Ball, vice president of Ball Brothers Company, and Leonidas L. Bracken, Mr. Ball's attorney, were interviewed on the subject. At this interview, both Mr. Ball and Mr. Bracken admitted that Ball had purchased the notes of the Three Rivers Glass Company, face value, $120,000, for the sum of $30,000, and that William C. Church, acting as agent for Ball, negotiated the deal. It was also admitted by Mr. Ball that he contemplated purchasing the assets of the Three Rivers Glass Company at the receivers' sale which had been ordered by the court (according to information obtained from the Department of Justice the purchase was effected by Ball).

Due to the nature of the acquisition and the manner in which the purchase was accomplished, it was believed that the Commission had no authority to act in the matter. Accordingly the Commission's file was closed without prejudice to the right to reopen the same if and when warranted by the facts. The files were then referred to the Department of Justice for consideration as a possible violation of the Sherman Anti-Trust Law.

There is submitted herewith, as F. T. C. Exhibit No. 192, a complete digest of all informal cases involving possible violation of section 7 of the Clayton Act where no formal action was taken by the Commission. The digest shows the nature and facts relating to the acquisition and the nature of the business and the disposition of the case.

This digest has been indexed by companies and by commodities. Appended thereto is a chart consisting of six sheets, listing the names of the acquiring companies grouped as to industries. Opposite the name of each company, where the figures were available, is shown the stated par value of its authorized capital, number of par shares, assets, and sales, together with like information pertaining to the company which it acquired. Also, on the same line is shown the nature of the acquisition, whether of assets or stock, and the reasons for disposal of the case. This analysis makes comprehensive the gist of the more detailed digest.

PART III

Available Economic Material

INTRODUCTORY

On July 6, 1938, the Federal Trade Commission prepared a compilation of data available in its files for the use of the Temporary National Economic Committee. The compilation included a list of economic material which is described briefly in the following pages. The reports and investigations upon which they were based were made in accordance with the powers granted to the Commission in section 6 of its organic act.

The résumé has been limited to a brief outline covering the origin and scope of the investigations, methods used in conducting same, and an indication as to the principal conclusions and recommendations, particularly in those instances where legislation has been recommended. Copies of the reports have been identified as exhibits and are transmitted. With regard to the report on Utility Corporations, which consisted of 84 volumes, together with 7 accompanying volumes of exhibits and 11 special reports, only the summary reports have been submitted. All volumes are, however, available for submission if desired by the Committee.

AGRICULTURAL IMPLEMENT AND MACHINERY INDUSTRY

On June 24, 1936, the United States Congress, through Public Resolution No. 130 (74th Cong., 2d sess.), directed the Federal Trade Commission to investigate and report on (1) the costs, selling prices, profits, distribution methods, and any any unfair trade practices or monopolistic tendencies in the manufacture of farm machinery; (2) the distributors' costs, selling prices, profits, and margins entering into the prices paid by farmers; (3) the facts relative to price movements of farm implements and machines since 1914; (4) a comparison of the price movement of farm implements and machinery of somewhat comparable material and labor; (5) the extent and basis of concentration of control of manufacture and distribution of farm implements and machines in the hands of particular manufacturers; (6) any developments and tendencies in the direction of monopoly and concentration of ownership or control of the means of manufacture, sale, or distribution; and (7) the facts, for the 3 years preceding the adoption of the resolution, regarding violations of the antitrust laws, including the nature, extent, and effects thereof. The investigation was divided into two parts. Part I covered the economic basis of the industry, the growth and organization of the principal corporations engaged in manufacturing farm implements and machinery, the organization of these corporations for production and distribution, and the cooperative activities of manufacturers and distributors affecting competition. Part II dealt with investments, earnings, rates of return, domestic prices and price trends of farm implements and machinery, costs of production of particular farm implements and machines, a comparison of foreign with domestic prices, and a study of manufacturers, wholesalers, and retailers' bids in connection with Government purchases of farm implements and machines.

The inquiry into the farm implement and machinery industry covered all branches of the industry and all of the major activities of the manufacturers. The comprehensive scope of the inquiry called for the collection of a mass of data concerning all branches of the industry. Consequently, the Commission prepared and sent out to manufacturers and dealers four sets of report forms covering manufacturers' costs of implements, investments, and profits; wholesalers' investments, costs, profits, prices, and distribution methods; retail dealers' investments, costs, profits, prices, and methods of distribution; and an organization report giving officers, directors, principal stockholders, kinds of stocks issued, together with States and date of incorporation. In addition to the use of these schedules, representative farmers were asked to report their experiences in the purchase of farm implements, as for example, prices paid; in case he had not purchased as many implements as needed, the reason therefor; the farmer's opinion of the relative durability and efficiency of the present implements and machines as compared with earlier models; interest charges for implements purchased on time, etc.

Representatives of the Commission carefully examined the accounting records of 11 large manufacturers of farm implements and machines. They also attempted to obtain information direct from certain retail dealers, but it was discovered that this method was too expensive, and it was necessary to confine this phase of the investigation to reports furnished by dealers. These were not entirely satisfactory, due to the variety of items other than farm machinery carried by the retail dealers and the inadequacy of their accounting records. A considerable amount of correspondence was required to secure adequate reports. An examination was made of the minutes and correspondence files of the manufacturers' and retail dealers' associations and of the larger manufacturing companies. The Commission further inquired into specific complaints made by farmers, dealers, and smaller manufacturers.

The companies reporting to the Commission manufactured and sold over 95 percent of farm implements made and sold in this country. The total investment of the International Harvester Company in the United States exceeded 55 percent of the combined investments of 62 companies reporting for the year 1936. The next particularly large company was Deere & Co., whose investment for 1936 was about 19 percent of the total. International Harvester Company's sales of farm machinery during 1936, exclusive of motortrucks and binder twine, amounted to over 41 percent of the farm-machinery sales of all reporting companies combined. Deere & Co.'s sales were equal to about 21½ percent of the total. Compared with these two companies, the sales of nearly all of the other reporting companies were small.

A study was made of 28 important implements and machines sold for use in the United States in 1936, and it was found that from 4 to 8 of the largest farm-machinery manufacturers made from 50 to 100 percent of each of 21 of the 28 implements. For 13 of the 20 implements for which concentration was greatest, International Harvester Company and Deere & Co. made more than half of the total in the United States. For 17 of the 20 implements in which concentration was greatest, International Harvester Company was the largest producer, and for 16 of them Deere & Co. was the second largest producer.

The dominance and price leadership by these companies was the result of their size and financial strength, which was brought about very largely through mergers, acquisition of control of former competing manufacturers, and the purchase of the plants and other assets of competing, and other, farm-implement companies. This growth in size and leadership facilitated the control of large companies over their dealer outlets and enabled the large companies to require their dealers to handle their respective lines exclusively. The Commission's study indicated that this policy of exclusive, dealing, or full-line forcing, was often brought about through pressure upon dealers by manufacturers to prevent them from handling products of competing manufacturers.

The concnetration of production resulted in the establishment of a price level by the dominant manufacturers, which all manufacturers had to observe in the sale of farm implements. The small companies could not sell their products for more than the established prices of similar products of the large companies, and they hesitated to sell for less than the established prices for fear of setting up a price war in the industry in which their larger and financially stronger rivals would have all the advantages. As a result of this situation the small companies awaited the announcement of prices by the leading manufacturers before making their own at the beginning of the season and followed the price changes of the large companies during the selling season. The years of depression saw sharp reductions in employment and production throughout the industry, but only slight reductions in prices.

The average net profits of the International Harvester Company during the 4 years of business recovery, 1934–37, closely approached the average net profits of this company during the 4-year period from 1927 to 1930, a period of the greatest business activity in the history of the Nation. On the other hand, the average annual cash income of the farmer for the period 1934–37 was approximately 23.58 percent less than it was for the period 1927–30.

In view of the fact that the manufacturers of farm machinery performed the great bulk of the wholesaling function, a relatively large proportion of the farmer's dollar represented manufacturer's realization. Freight rarely consumed as much as 7 cents and sometimes less than 1 cent of the farmer's dollar. Retail distributor's gross margins were usually less than 25 cents and often less than 20 cents, which left 75 and 78 cents and, sometimes, as much as 80 cents of the farmer's dollar for manufacturer's realizations. It has been found that there are very few, if any, commodities in which the manufacturer receives such a large proportion of the farmer's dollar.

Approximately 100 manufacturers of farm machinery formed a trade association known as the Farm Equipment Institute. The most active and influential members of the Institute were the large manufacturers who were also the largest contributors to its support. The Institute advertised in farm, trade, and technical magazines and prepared special articles for trade and farm papers, and press statements for city and country newspapers. In addition, it prepared pamphlets and other material for general distribution to educational institutions, banks, farmers, and farmers' organizations. The Institute prepared and submitted to members certain recommendations regarding the standardization of implements and the equipment to be furnished as "regular" or "extra." It was shown that this was intended to, and to some extent did, limit competition.

In the past, the mail-order house had not been particularly important in the field of dealer competition because only a small percentage of dealer sales and repair service could be given by mail. However, in recent years the mail-order houses set up chains of local retail stores, many of which sell farm implements.

The most common complaints among retail dealers were to the effect that manufacturers had set up more retail dealers than were needed to supply the total farmer trade; that certain manufacturers had set up their own retail outlets in some sections of the country in competition with independent dealers who constituted the principal outlets of the same manufacturers; that dealers were forced to take more machines than they were able to sell, as a result of which there was an excessive amount of selling below manufacturers' suggested retail prices; and that the dealer, whose contract was subject to cancellation at any time, was often left with stock which he had no reasonable chance to sell except at a great loss.

In its general conclusions, the Commission summed up briefly the factors that indicated the existence of a serious monopolistic condition in the farm-machinery industry. Among these were the large advances in the majority of farm-machinery prices as compared with prices of other manufactured products since the origin of the International Harvester Company; the profits of that company, particularly in 1937, when its net profit exceeded that of 1929; rigidity of farm-machinery prices during the depression; rapid recovery of farm-machinery prices after 1933; the increase of farm-machinery prices in 1938 in the face of the high earnings of 1937; exchange of price lists among manufacturers; coercion of dealers; and the slight decline of farm-machinery prices during the depression as compared with a sharp decline of production and employment.

Inasmuch as the high degree of concentration found in the farm-machinery industry had been the result of the acquisition of the capital stock or the assets of competitors prior to enactment of the Clayton Act and, thereafter, in the purchase of assets of competitors rather than in the purchase of their capital stock, the Commission made the following recommendation:

"That section 7 of the Clayton Act be amended so as to make it unlawful for any corporation, directly or indirectly, through a holding company subsidiary, or otherwise, to acquire any of the stock or assets of a competing corporation when either of said corporations is engaged in interstate commerce; provided, this prohibition shall not apply where the corporations involved control, in the aggregate, less than 10 percent of the total output of any industry or branch thereof in the United States, or of the sale of the commodity as to which the corporations are in competition, unless the effect of such a quisition may be to restrain competition or tend to create a monopoly in any line of commerce."[1]

On June 6, 1938, the Commission submitted to the Congress its report on the Agricultural Implement and Machinery Industry. It was published as House Document No. 702 (75th Cong., 3d sess.). A copy of the report, consisting of 1,176 printed pages, is attached hereto as Exhibit F. T. C. 193.

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[1] On December 19, 1938, the Wall Street Journal reported that price reductions on practically the complete line of light farm implements were being made in the 1939 dealer contracts. It asserted that, except for combines, prices on all implements had been reduced since October 1938. The reduction on light machinery was shown as approximately 10 percent, while the average cut was estimated as slightly less than 4 percent. In a discussion of the financial condition of the manufacturers, it was estimated that there was a decline of between 25 and 30 percent in the volume for the industry as a whole. It further called attention to the fact that one manufacturer whose fiscal year ended on October 31 had reported a sales drop of only 11½ percent, while its decline in profits was in excess of 50 percent. Thus, we have a picture of price increases in the face of high earnings shortly before the Commission transmitted its report to the Congress, and price reductions in the face of declining volume and earnings shortly after that report was made public. This situation was likewise the subject of comment in Business Week, December 24, 1938.

AGRICULTURAL INCOME

This inquiry was made by direction of Congress under Public Resolution No. 61 (74th Cong., 1st sess.), approved August 27, 1935, and amended by Public Resoluton No. 86 (74th Cong. 2d sess.), approved May 1, 1936. The resolution, as amended, authorized and directed the Federal Trade Commission to investigate and report the extent of decline in agricultural income in recent years; the increase or decrease for the same years of the income of the principal corporations or other principal sellers engaged in handling or processing certain essential farm commodities; the distribution of the consumer's dollar paid for those commodities, as between farmers, processors, and distributors; the growth of capitalization and assets of principal corporations and their costs, profits, investments, and rates of return; the avoidance of taxes by such corporation or their officers; the extent of control or monopoly in the handling or processing of those commodities and the methods and devices used for obtaining and maintaining such control or monopoly; the extent to which any fraudulent, dishonest, unfair, and indirect methods are employed in the grading, warehousing, and transportation of those commodities, and the prevalence of producer-cooperative organizations and their effects on producer and consumer. The Commission was also directed to report its conclusions and recommendations growing out of the inquiry.

An interim report was made on December 26, 1935, and printed as House Document No. 380 (74th Cong., 2d sess.), and the final report, Principal Farm Products, Agricultural Income Inquiry, was submitted to the Congress March 2, 1937. The summary and conclusions and recommendations of the final report were printed as Senate Document No. 54 (75th Cong., 1st sess.).

Principal farm products covered.—Principal farm products covered in the investigation were wheat, cotton, tobacco, potatoes, livestock, and milk. Wheat reflected the greatest decline in gross income to farmers from 1929 to 1932. In 1932 gross income from wheat amounted to only about 29 percent of the gross income of 1929. Milk showed the smallest decline, but the gross income of farmers from that commodity in 1932 was only 54.3 percent of that in 1929. The sharpest recovery in the gross income of farmers from the low year of 1932 was in tobacco. By 1934 the income from tobacco production aggregated 78.5 percent of that in 1929.

Generally speaking, the gross income represented by sales by the principal manufacturers, processors, and distributors of these products fell off less than the gross income of farmers from their production, and the recovery from the low point of the period by the manufacturers, processors, and distributors reached a higher percentage of the 1929 figure than was true of the gross income of the farmer-producers of these products.

Division of the consumer's dollar.—The report shows how the consumer's dollar was divided between distributor, processor, and farmer in the prices paid for butter, fluid milk, wheat flour, wheat bread, cigarettes, beef, veal, and pork during the period covered by the inquiry. Butter, as contrasted with bread, a product involving relatively large processing costs, showed a high percentage of the consumer's dollar going to the farmer. In 1934 in 51 cities the weighted average retail price of butter, graded 92 score or better, was 31.5 cents per pound. Of this retail price, wholesale and retail distributors received a combined average gross margin of about 25 percent, manufacturers about 16 percent, and producers about 59 percent. In 1935 in 51 cities the weighted average retail price of white wheat flour bread was 8.3 cents per pound. Retail distributors received about 19 percent of this price as their average gross margin, bakeries 56 percent, flour millers 7 percent, wheat middlemen and transportation agencies 5 percent, and gross proceeds of wheat farmers were about 13 percent.

Tobacco group's concentration of control.—The inquiry disclosed that 13 tobacco manufacturers sold in 1 year more than 97 percent of the cigarettes, more than 90 percent of the smoking tobacco, upward of 75 percent of the chewing tobacco, and in excess of 98 percent of the snuff produced in the United States in 1934. The report discusses methods by which the larger companies obtained commanding positions in their respective industries, which were shown to have been by acquisition of competing firms, or by expansion, or by both.

Rates of return on investment.—Rates of return on investment for the period covered, 1929 to 1935, inclusive, earned by the reporting tobacco manufacturers, the biscuit and cracker companies, and the chain grocery companies, are shown in the report. The annual averages were 15.8 percent for tobacco manufacturers, 14.6 percent for biscuit and cracker companies, and 16.4 percent for chain groceries. Milk processors and distributors, wholesale baking companies, and wheat middlemen showed higher rates of return during the first 3 years of the period than for the last 3 years. Average annual returns for the entire period were 9.57 percent for the milk companies, 8.76 percent for the bakers, and 10.59 percent for the wheat middlemen. Returns to wheat processors, wholesale flour distributors, and chain drug store companies (large distributors of tobacco products) were substantial for all years except 1932 and averaged 7.76 percent, 9.61 percent, and 8.29 percent for these respective groups. Reporting meat packers had an average rate of return of 4.28 percent; shoe manufacturers, 4.77 percent; leaf-tobacco middlemen, 7.44 percent; tobacco wholesalers and jobbers, 4.43 percent; cotton processors, 1.52 percent, with losses in some individual years. Tanning and leather companies sustained a loss, averaging for the period 1.89 annually, and chain tobacco stores a loss averaging 1.37 percent annually.

Conditions in terminal grain markets.—Inquiry made into conditions of merchandising grain in the terminal markets showed that many of the practices which were the subject of criticism by the Commission in earlier investigations of terminal grain markets still existed. One of these is the control of railroad-owned terminal elevators, leased by large merchandisers of grain at low rentals, giving the lessees an undue competitive advantage over other grain merchandisers in the purchase and handling of grain, with the result that such large merchandisers practically dominate both the cash and futures markets.

Recommendations of the Commission

In its conclusions and recommendations with respect to the grain trade, the report said that correction of conditions described therein could not be left to the trade itself, and that Federal legislation should be enacted providing, among other things:

1. That all deliveries of grain on futures contracts shall be made from public warehouses:
   (*a*) Licensed by Federal authority;
   (*b*) Subject to Federal regulation; and
   (*c*) Not owned, operated, or controlled, directly or indirectly by any person, firm, or any other organization directly or indirectly dealing in grain.
2. That all deliveries of grain on any futures contracts shall be subject to:
   (*a*) Federal grading and inspection; and
   (*b*) Federal regulation of the delivery of grain on such contracts.

In respect to cotton merchandising, the report, after showing that cotton merchants and spinners generally regard the operations of the futures market under southern deliveries with satisfaction, recommended further study of the system of southern deliveries to ascertain whether legislation should be enacted providing for making the contract more merchantable.

The report cited the unbalanced relations between industry and agriculture and suggested that making available to the public of reliable and adequate information concerning the large industrial corporations would constitute an important step toward correcting this condition.

Concerning the value of cooperative associations, the report explained that although an exact measure of their value in dollars and cents would be difficult to obtain, the Commission desired to add to the vast body of opinion its own conclusion that true cooperative associations have been of great value to the producers of farm products, and that such cooperatives have significantly increased the bargaining strength of producers and reduced the spread between producers and consumers' prices.

The inquiry disclosed, in several of the industries, a high degree of monopolistic control, frequently due to methods contrary to the letter or spirit of the law. In this connection, the Commission, in its report, renewed its recommendation for amendment of section 7 of the Clayton Act, which now prohibits the acquisition by one corporation engaged in commerce of stock in a competing corporation so engaged where the effect may be to substantially lessen competition between such corporations. The Commission recommended an amendment to prohibit acquisition of assets, not only indirectly through use of stock unlawfully acquired, but also direct acquisition of assets independently of stock acquisition. Under a decision of the Supreme Court, the Commission cannot effect the separation of units acquired through purchase of capital stock if, following the stock acquisition, but prior to service of the Commission's formal complaint, assets of the companies whose stock has been acquired are merged.

Additional recommendations were made by the Commission as a further check to monopolistic tendencies.

Legal Studies of Tobacco and Potato Marketing

Legal studies of the extent of possible concentration of control and of monopoly, and of any methods and devices used to gain such control, were made with regard to tobacco and potatoes.

Tobacco.—The investigation failed to disclose that any one company had a monopoly in the manufacturing, processing, warehousing, distribution, or marketing of leaf tobacco or tobacco products. Considerable concentration of control was found, however. Five buyers of leaf tobacco, two of which primarily represent English companies, generally purchased about 75 percent of the total domestic production and their purchases are largely concentrated in the auction belts. Three companies and, to a less extent, a fourth, substantially control the manufacture of cigarettes of the most popular price class, and are also important factors in the manufacture of smoking and chewing tobacco. Three other companies control about 97 percent of the total snuff business.

No substantial price fixing or price agreements in the marketing of leaf tobacco were found except in the minimum sale prices established for dealers in Connecticut shade-grown tobacco pursuant to an Agricultural Adjustment Administration marketing agreement.

Information obtained during the inquiry indicated that competition in the cigarette industry might be increased by popular cigarettes selling in various price ranges and that new or more important competition in manufacturing would result in increased competition in the purchase of leaf tobacco. The opinion was expressed that the uniform internal-revenue tax of $3 per thousand on small cigarettes has tended to restrict the manufacture and sale of 10-cent cigarettes, the most active and substantial new competition that has manifested itself in the industry in many years. The Commission therefore recommended that Congress consider the advisability of levying a graduated tax on cigarettes in lieu of the present uniform tax.

Potatoes.—Processing of potatoes is so limited in volume as to be of little consequence. No close approach to monopoly was found in their warehousing, distribution, or marketing. Excessive production, financing charges, and local marketing fees are exacted in certain instances, but remedies are available to the majority of growers affected through production credit associations organized pursuant to the Farm Credit Act of 1933, and by collective action among producers.

Fresh Fruits and Vegetables

Reports to Congress Contain Commission's Recommendations.—Public Resolution No. 61, amended by Public Resolution No. 112, (74th Cong., 2d sess.), approved June 20, 1936, authorized and directed the Commission to make further investigation with respect to agricultural income from table and juice grapes, fresh fruits and vegetables, and to make both interim and final reports. The interim report was submitted February 1, 1937, and printed as Senate Document No. 17 (75th Cong., 1st sess.), and the final report was submitted June 10, 1937.

Under the resolution, the scope of this investigation was generally the same as that of agricultural income.

Decline in farmers' gross income: The Commission's final report shows that the farmers' gross income from the production of fruits and vegetables declined in 1932 to 51.84 percent of the 1929 gross income. This was the lowest point reached during the 7-year period, 1929 to 1935, inclusive. By 1935 it had recovered to 70.02 percent of the 1929 level. The sales of no group of the reporting processors and distributors of fruits and vegetables, either fresh or processed, fell during the 7-year period to as low a percentage of its 1929 sales as did the farmers' gross income in relation to its 1929 level, nor failed to exceed the percentage of recovery reached by the gross income of the farmer.[1]

Monopoly and control: In the matter of monopoly and control, the inquiry on fruits and vegetables disclosed significant proportions of the national production of certain kinds of fruits and vegetables handled by only a few of the large corporations and cooperative associations, such as the California Fruit Growers' Exchange, Florida Citrus Exchange, Mutual Orange Distributors, and Lake Wales Citrus Growers' Association. The most important chain-store system in the distribution of fresh fruits and vegetables is The Great Atlantic & Pacific Tea Co.

Distribution of the consumer's dollar: The distribution of the consumer's dollar paid for five fresh fruits and five fresh vegetables handled by chain grocery stores is shown in the report. The fruits are (1) table grapes, (2) Florida and California oranges, (3) Florida grapefruit, (4) Pacific Northwest apples, and (5) Georgia and Carolina peaches. The vegetables are (1) Maine, Virginia, Maryland, and Idaho potatoes, (2) Texas onions, (3) Texas and Florida cabbage, (4) Florida and California tomatoes, and (5) Iceberg lettuce from the Pacific coast. Of the consumer's dollar paid for the five fresh fruits combined, for those markets and producing areas for which the information was obtained, the growers' proceeds were 29.4 cents, distributors' gross margins were 35.33 cents, and transportation and all other costs, including packing and loading, absorbed the remainder of the dollar. The retail margin alone amounted to 31.14 cents and transportation costs, including icing and heating, to 20.21 cents. For the five fresh vegetables, growers' proceeds were 34.78 cents, distributors' margins, 32.10 cents, and transportation and all other costs, 33.12 cents. The retail margin alone was 27.26 cents and transportation was 22.82 cents.

Rates of return on investment: For all groups of companies comprising the processors and wholesale distributors, the rates of return on investment were lowest in 1932, and for the groups comprising the chain-store distributors they were lowest in 1935. Relatively high rates of return, however, were earned by chain-store distributors.

Producer cooperative groups: Producers' marketing cooperative associations are important in the distribution of some fresh fruits. In 1934 they marketed almost 62 percent of the total cranberry production of the United States, 57 percent of all citrus fruits, 28 percent of the dried prunes, 16 percent of the grapes, and 7.5 percent of the apples. For some vegetables the percentages are substantial and, for particular commercial producing areas for both fruits and vegetables, the proportions are large. Processing and bargaining cooperatives are of less importance in the fruit and vegetable industry. Marketing cooperatives were found to be most successful for products having relatively long marketing seasons, making possible the permanent employment of skilled marketing personnel, and for products, the commercial production of which is largely concentrated in, at most, a few highly specialized producing areas.

Many aspects of the marketing of fresh fruits and vegetables are discussed in the report, including marketing by large organizations, production, financing, shipping by truck, character and adequacy of terminal market facilities, terminal-market inspection, terminal-market cartage, loss and damage claims, and sale of fruits at auction.

Racketeering practices in terminal markets: The report shows that monopolistic and racketeering practices in the carting of fruits and vegetables exist in several of the larger terminal markets, particularly in New York, Philadelphia, and Chicago. An analysis of the facilities and conditions existing in a limited number of the larger terminal markets shows that, although many of the facilities have been modernized, there has been a marked lack of scientific planning. Many unfair practices have developed in the terminal inspection service in recent years, particularly as it affects loss and damage claims.

Large marketing organizations: Five concerns, other than cooperative associations, distribute fresh fruits and vegetables on a national or very wide scale. Three of these, the Atlantic Commission Co., Wesco Foods Co., and Tri-Way Produce Co., are subsidiaries of chain grocery stores while the other two, American Fruit Growers, Inc., and Nash-Finch Co., are independently owned. The subsidiaries of the chain-store companies follow substantially identical methods in

[1] Sales of industrial concerns were compared with gross cash incomes of farmers because the net incomes of farmers from production of fruits and vegetables are not computed by the Department of Agriculture and therefore could not be compared with net operating profit of manufacturers, processors, and distributors.

the purchase of fruits and vegetables. They buy from growers and shippers as well as from terminal-market receivers and distribute some tonnage to the independent trade in addition to that sold to their parent companies. Prior to the passage of the Robinson-Patman Act in 1936, chain-buying subsidiaries customarily obtained a brokerage, or its equivalent in the form of a price reduction, from their principal shippers. This practice has been discontinued, but each of these companies, to a greater or lesser extent, receives discounts or price reductions in lieu of brokerage in purchases from principal shipping connections.

Conclusions and Recommendations.—In the Commission's conclusions, it was set forth that certain practices in the carting of agricultural products in New York, Chicago, and Philadelphia amount to illegal agreements in restraint of trade and in violation of the antitrust acts; and that the activities of the agents of the teamsters' union in Chicago, Cleveland, and Philadelphia in interfering with outside trucks were in violation of the Federal Anti-Racketeering Act. As to these practices, the Commission has made its evidence available to the Department of Justice.

The report recommended that the Perishable Agricultural Commodities Act be amended to authorize and direct the Secretary of Agriculture to make complete condition inspections for the purpose of determining the extent of damage and insofar as practicable the cause of such damage on all cars of the more perishable commodities arriving in the principal terminal markets.

It also recommended that the Interstate Commerce Commission be authorized and directed to require the claim division of the Association of American Railroads to furnish periodically, for the information of all inerested persons, certain data concerning tonnage or number of carloads of each kind of fresh fruits and vegetables and of melons delivered by each railroad to each of the principal terminal markets, and the average amount of claims paid by each of these railroads per carload of each of these perishable commodities delivered in the various terminal markets.

Amendment of the Interstate Commerce Act was also recommended to empower the Interstate Commerce Commission to prescribe certain rules and regulations governing the filing, investigation, and payment of all loss and damage claims in the shipment of perishable commodities.

CHAIN STORES

On May 12, 1928, the United States Senate, through Senate Resolution No. 224 (70th Cong., 1st sess.), directed that the Federal Trade Commission—

> undertake an inquiry into the chain-store system of marketing and distribution as conducted by manufacturing, wholesaling, retailing, or other types of chain stores and to ascertain and report to the Senate (1) the extent to which such consolidations have been effected in violation of the antitrust laws, if at all; (2) the extent to which consolidations or combinations of such organizations are susceptible to regulation under the Federal Trade Commission Act or the antitrust laws, if at all; and (3) what legislation, if any, should be enacted for the purpose of regulating and controlling chain-store distribution.

In response to this resolution, a detailed investigation was made, which included the use of both questionnaires and field agents. The data procured in this manner was assembled and transmitted to the Senate in 33 factual reports, covering various phases of chain-store operation. All of these were printed as Senate documents. The scope of the study is indicated by the following list of titles:

Title	Senate Document No.
Seventy-Second Congress, First Session:	
Cooperative Grocery Chains	12
Wholesale Business of Retail Chains	29
Sources of Chain-Store Merchandise	30
Scope of the Chain-Store Inquiry	31
Chain-Store Leaders and Loss Leaders	51
Cooperative Drug and Hardware Chains	82
Growth and Development of Chain Stores	100

Title	Senate Document No.
Seventy-Second Congress, Second Session:	
Chain-Store Private Brands	142
Short Weighing and Over Weighing in Chain and Independent Grocery Stores	153
Sizes of Stores of Retail Chains	156
Quality of Canned Vegetables and Fruits (under Brands of Manufacturers, Chains, and other Distributors)	170
Gross Profit and Average Sale per Store of Retail Chains	178
Seventy-Third Congress, First Session:	
Chain-Store Manufacturing	13
Sales, Costs, and Profits of Retail Chains	40
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Grocery	62
Prices and Margins of Chain and Independent Distributors, Memphis—Grocery	69
Seventy-Third Congress, Second Session:	
Prices and Margins of Chain and Independent Distributors, Detroit—Grocery	81
Chain-Store Wages	82
Chain-Store Advertising	84
Chain-Store Price Policies	85
Special Discounts and Allowances to Chain and Independent Distributors—Tobacco Trade	86
Invested Capital and Rates of Return of Retail Chains	87
Prices and Margins of Chain and Independent Distributors, Cincinnati—Grocery	88
Special Discounts and Allowances to Chain and Independent Distributors—Grocery Trade	89
Service Features in Chain Stores	91
The Chain Store in the Small Town	93
Special Discounts and Allowances to Chain and Independent Distributors—Drug Trade	94
Prices and Margins of Chain and Independent Distributors, Cincinnati—Drug	95
Prices and Margins of Chain and Independent Distributors, Detroit—Drugs	96
Prices and Margins of Chain and Independent Distributors, Memphis—Drugs	97
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Drug	98
Miscellaneous Financial Results of Retail Chains	99
State Distribution of Chain Stores	130
Seventy-Fourth Congress, First Session: Final Report on the Chain Store Investigation	4

On December 14, 1934, the Commission transmitted to the Senate its final report on the chain-store investigation, covering approximately 100 printed pages, in which it summarized the facts and presented its conclusions and recommendations based upon the factual data obtained during the inquiry.

The study indicated that the chief advantage enjoyed by the chain store was its lower selling prices to consumers. These were attributable to a variety of factors, chief among which were special discounts and allowances to chains, use of loss leaders, and, in some localities, the more extensive use of short and less extensive use of overweighing by chains as compared with independents. Among other factors contributing to lower prices by the chains were less service to customers, lower wages in some localities, elimination of wholesale selling expense, handling of private brands upon which there were wider profit margins, profits from wholesaling, ability to use newspaper advertising profitably, and the advantage of being able to average the profit results obtained from stores in various localities.

The Commission discussed, but did not recommend, certain proposals, including the graduated chain-store tax, exemption of cooperatives from the operation of the antitrust laws and from taxation, and the suggestion that manufacturers might be requested to file with the Commission special prices or discounts to chain stores. The Commission, in its final report on the Chain-Store Investigation, made the following statement with regard to recommendations for legislation:

"If the public policy thought to have been expressed in section 7 of the Clayton Act is to be revived and pursued to any real accomplishment, it is obvious that the act requires substantial amendment. The amendments indicated under the circumstances fall into two categories: First, such as would make section 7 effective to the extent of its original intent; second, such as would extend it beyond its original intent in order to make it a more effective obstacle to the trend toward monopoly. If the first course be adopted, it could be accomplished by an amendment of section 11 authorizing the Commission to order the divestiture of physical assets acquired as the result of an unlawful stock acquisition and regardless of whether complaint is filed before or after the assets are acquired. Such an amendment would restore to the section something of its supposed original intent and effectiveness and would but establish what a strong minority of the Supreme Court on several occasions have stated is already a correct interpretation of the law. The Commission recommends such amendment in the event its recommendation for amendment of section 7 is not acceptable.

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"The fact that important consolidations of competing corporations have been consummated through acquisition of physical properties rather than stock suggests the second type of amendment. To the extent that acquisition or consolidation of assets tends to create monopoly or substantially lessen competition it might logically be prohibited to the same extent that stock acquisitions and consolidations are prohibited and on the same grounds.

"Section 7 now declares that stock acquisitions are unlawful—

" 'where the effect of such acquisition may be to substantially lessen competition *between the corporation whose stock is so acquired and the corporation making the acquisition*, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.'

"A vital part of the section is in the words above italicized. As previously quoted from the opinion of one of the Federal Circuit Courts of Appeal,

" 'if competing corporations may not consolidate, it naturally follows that it will be difficult for one corporation ever to monopolize an industry.'

"Unless that portion of the section be made effective, the remaining effects prohibited may be interpreted as substantially equivalent to those forbidden by the Sherman Act, though the words 'may be' and 'tend to create' import a different intention on the part of Congress which the courts have previously recognized. The theory that size and power alone do not constitute monopoly under the Sherman Act seems bound, however, to affect interpretation of another statute aimed at tendency toward monopoly, on the legal doctrine of *pari materia*.

"The Supreme Court seems to narrow construction of the word 'competition' between the acquiring and the acquired corporation. In *International Shoe Co.* v. *Federal Trade Commission* (280 U. S. 291) the court held that the competition between the corporations must be substantial and that the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree. This last decision may possibly be interpreted to make the effect on competition in general the test and not the effect on competition between the two corporations. The court also, in its requirement of substantial competition, incidentally held that the competition must be actual as distinguished from potential. However, in numerous other cases, construing laws against monopoly and restraint of trade, the courts have held potential competition a legitimate object of legislative protection. (*U. S.* v. *Patterson*, 59 Fed. 280 at 283; *U. S.* v. *Colgate & Co.*, 250 U. S. 300 at 307; *Aluminum Co. of America* v. *F. T. C.*, 284 Fed. 401 at 408; *F. T. C.* v. *Klesner*, 280 U. S. 19 at 28; *F. T. C.* v. *Raladam Co.*, 283 U. S. 643 at 649, and 651.)

"We respectfully recommend amendments to sections 7 and 11 of the Clayton Act as follows:

"1. That the first two paragraphs of section 7 be amended to read:

" 'That no corporation engaged in commerce shall acquire, directly or indirectly, the whole, or a controlling interest in the voting stock or other share capital or the whole of, or a major part of the assets of another corporation engaged also in commerce and in competition with the acquiring corporation.

" 'No corporation engaged in commerce shall acquire, directly or indirectly any part of the stock or other share capital or any part of the assets of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock or assets is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.

" 'No corporation shall acquire, by merger, consolidation or otherwise, directly or indirectly, the whole of, or a controlling interest in the voting stock or other share capital, or the whole of, or a major part of the assets of two or more corporations engaged also in commerce and in competition with each other.

" 'That no corporation shall acquire, by merger, consolidation or otherwise, directly or indirectly, any part of the stock or other share capital or any part of the assets of two or more corporations engaged in commerce where the effect of such acquisition, or of the use of such stock by the voting or granting of proxies or otherwise, may be too substantially lessen competition between such corporations, or any of them, whose stock or other share capital or assets is so acquired, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.'

"2. That there be inserted as the fifth paragraph of section 7 the following:

" 'After the issunce of a complaint charging a corporation with having violated the provisions of paragraphs 1, 2, 3, or 4 of this section, as amended, and prior to the dismissal of such complaint or the entry of an order as provided for in section

11 of this Act, no other corporation shall acquire from such corporation all or any part of the capital stock or assets charged in such complaint to have been acquired in violation of paragraphs 1, 2, 3, or 4 of this section as amended.'

"3. That the second paragraph of section 11 be amended by inserting in the twenty-first line thereof after the word 'stock' the words 'or assets.'

"In the discussion of the legal status of special prices to chain stores by manufacturers (ch. IV, sec. 4) the uncertainities and difficulties of enforcing section 2 of the Clayton Act were pointed out at some length. The conclusion was reached that most of those uncertainties and difficulties grew out of the various provisos which narrowed the scope of the original prohibition to an indeterminate degree. A simple solution for the uncertainties and difficulties of enforcement would be to prohibit unfair and unjust discrimination in price and leave it to the enforcement agency, subject to review by the courts, to apply that principle to particular cases and situations. The soundness of and extent to which the present provisos would constitute valid defenses would thus become a judicial and not a legislative matter.

"The Commission therefore recommends that section 2 of the Clayton Act be amended to read as follows:

" 'It shall be unlawful for any person engaged in commerce, in any transaction in or affecting such commerce, either directly or indirectly, to discriminate unfairly or unjustly in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States.'

"In the discussion of the legal status of special prices to chain stores by manufacturers (ch. IV, sec. 4) it was also stated that unless the price discrimination permitted 'on account of' quantity shall make 'only due allowance' therefor, section 2 of the Clayton Act may be readily evaded by making a small difference in quantity the occasion for a large difference in price. If the section is to have any vitality it must either be interpreted and enforced to that effect or it should be amended to that effect.

"The Commission further recommends that at the end of section 11 a new paragraph be added to read as follows:

" 'If any clause, sentence, paragraph, or part of the amendments herein contained to sections 2, 7, or 11 of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said separate and several amendments to said sections, but shall be confined in its operation to the clause, sentence, paragraph, or part of said separate and several amendments to said sections directly involved in the controversy in which such judgment shall have been rendered.'

"A recommendation for amendment of the Federal Trade Commission Act seems essential as shown by results of the chain-store investigation; namely, first, that the prohibition of unfair methods of competition in section 5 of the act be broadened so as to include unfair or deceptive acts and practices in interstate commerce, and, second, so that unfair methods, acts, and practices may be reached when they unfairly affect interstate commerce, regardless of whether the offender is engaged in commerce or the acts are done in the course of commerce.

"Wherefore, we respectfully recommend that the first two paragraphs of section 5 of the Federal Trade Commission Act be amended so as to read as follows:

" 'Unfair methods of competition in *or affecting* commerce *and unfair or deceptive acts and practices in or affecting commerce* are declared unlawful.

" 'The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition *in or affecting commerce and unfair or deceptive acts and practices in* or affecting commerce.'

"The Commission is giving consideration to still other amendments of its organic act and of other statutory provisions committed to it for enforcement, but since these do not grow out of the chain-store investigation as such they are reserved for presentation in another connection."

Amendments to section 2 of the Clayton Act and section 5 of the Federal Trade Commission Act have already covered, in large part, two of these recommendations.

Copies of the Commission's reports on Chain Stores, consisting of five volumes, are transmitted as Exhibits F. T. C. 195–A to 195–E, inclusive. The conclusions and recommendations are contained in chapter VII of the final report which appears in volume V.

COMPETITION AND PROFITS IN BREAD AND FLOUR

On February 16, 1924, the United States Senate approved a resolution (S. Res. No. 163) directing the Federal Trade Commission to investigate the production, distribution, transportation, and sale of flour and bread, and to report costs and profits at each stage of the process of production and distribution, the extent and methods of price fixing, price maintenance, and price discrimination, the developments in the direction of monopoly, and other evidence indicating restraints of trade.

Preliminary reports in partial response to the resolution were submitted to the Senate on May 3, 1926, and on February 11, 1927, and the final report was submitted on January 11, 1928. This was published as Senate Document 98 (70th Cong., 1st sess.) and consists of approximately 500 printed pages.

The three lines of inquiry pursued in the investigation related to the handling of wheat from producer to flour mill, flour milling, and bread baking. Schedules were used for obtaining information from country elevators on gross margins for handling wheat. Requests for information were also made to terminal elevator operators at Minneapolis, Kansas City, and St. Louis but, with the exception of three companies, they refused to comply with the requests. In developing information relating to the production and distribution of flour, costs and profits of milling companies were obtained by schedule or from the books of the companies by the Commission's accountants. Several of the largest milling companies either refused to cooperate or rendered very limited cooperation. The phase of the inquiry which related to bread baking was conducted by means of schedules, personal interviews, correspondence, and by the examination of correspondence files of the baking associations and companies. Statistics and other data available in the various Government agencies were also used.

The study established that during the period from 1922 to 1924, consumers paid an average price of 8.549 cents for a pound of bread. This was divided as follows: To the farmer, 1.145 cents; to the miller, 0.406 of a cent; to the baker, 5.110 cents; to the grocer, 1.279 cents; for transportation and handling of wheat and flour, 0.609 of a cent.

It was found that, in 1925, 57 companies, including 3 chain-store systems, operating 278 plants, produced and sold more than 30 percent of the estimated total commercial production.

The facts procured established that bakers in several localities, acting through established associations or through informal groups, entered into agreements to advance prices, or to terminate price wars. The practice of granting free goods which, in effect, constituted a price cut was also made the subject of attack by these organizations.

Wholesale bakers earned comparatively high profits during the years 1920 to 1925. The return on total baking investment, as shown on the companies' books or as reported to the Commission, was 14.9 percent before payment of Federal taxes. After revision of the investment figure by the Commission, the rate of return thereon averaged in excess of 25 percent.

Because of the numerous consolidations which had taken place in the baking industry and the advantages allegedly flowing from them, a comparison was undertaken of the costs of single-plant and multiple-plant units. This phase of the study established that in various size groups the costs for the large plants were appreciably lower than for the small plants. It was definitely shown, however, that this difference was not attributable entirely to size, since very low cost plants were found in each of the size groups, and a number of small plants showed as low costs as the largest.

With regard to the flour-milling industry, it was shown that, although abundant potential competition existed, frequent efforts were made to restict same by attempts to limit production, by exchange of information on selling prices, by attempts to establish definite differentials applicable to different size packages or containers, by agreements or cooperation regarding the forward delivery of flour and carrying charges, and by otherwise attempting to regulate the terms and conditions governing the sale of flour.

A copy of the Commission's report is attached hereto as Exhibit F. T. C. 196. It contains no recommendations for legislation; nor is there any chapter or section devoted to general conclusions other than those which appear in the letter of submittal at pages XXIII to XXIX, inclusive.

COOPERATIVE MARKETING

On March 17, 1925, the United States Senate, through Resolution No. 34 (69th Cong., special session of the Senate), directed that the Federal Trade Commission investigate the growth and importance of cooperative associations, their costs of marketing and distribution as compared with costs of other types of distributors, and any interference with the formation or operation of cooperatives by trade associations, or others, which might be in violation of the antitrust laws. The preamble of the resolution indicated that same was concerned principally with the marketing of farm products. Investigation was confined primarily to agricultural cooperatives.

From the records of the Department of Agriculture, Bureau of Internal Revenue, and State reports, names were procured of cooperative and other agricultural associations to which a preliminary schedule was sent. The first schedule, calling for general information with regard to organization, capitalization, sales, membership, financing, marketing, etc., was sent to 13,500 groups. Responses were received from 5,761. Of this number, approximately 4,000 were usable. Three hundred and twenty-five of the more important associations, including the large-scale federated and centralized cooperative associations, exchanges, and selling agencies, were then contacted by the Commission's representatives and detailed data procured concerning their operations. A second schedule was sent out to more than 3,900 associations and cooperative groups, and replies to same were received from about 1,550. The data procured in the manner indicated formed the basis for the study. The report itself consisted of two parts. Part I covered the growth and importance of cooperative associations, and part II contained a comparison of costs, prices, and practices of cooperatives and competitors. Consideration was given to cooperatives engaged in the marketing of dairy products, grain, livestock, cotton, fruit, tobacco, wool, poultry and eggs, nuts, rice, and vegetables.

It was found that although the cooperative movement had started in this country about 1841, it had remained pretty much local in character until the end of the nineteenth century, when it underwent considerable development and broadening on the Pacific coast. It did not attain any appreciable importance in other sections of the country until after the World War. Consequently, at the time the study was made, the groups other than those on the Pacific coast were comparatively new, and it was difficult to reach definite conclusions concerning their actual or potential accomplishments. It was found that, in general, the California groups had been successful in their operations; that in other parts of the country varying degrees of success had been enjoyed by cooperatives engaged in the handling of grain, wool, livestock, and tobacco. In those industries where the employment of cooperative methods was warranted, it was found that the success or failure of the cooperative depended largely upon its ability to attract competent management and the soundness of its finances.

Some evidence was found of opposition to cooperatives by private interests whose business was being affected by their development. These were not, however, of a very serious nature, and it appeared that the existing antitrust laws and the Federal Trade Commission Act afforded ample protection against practices of that nature. In the final analysis, credit appeared to be the primary problem both for the cooperatives and for the farmers whose products they sold. Lack of production credit forced the farmers to market at harvest time, thereby materially lessening the effectiveness of the cooperatives in their attempts to develop orderly marketing.

The phase of the study which dealt with comparative costs of cooperatives and their competitors proved to be extremely difficult, largely because of the problems involved in obtaining comparable data. An attempt was made, however, to cover 10 commodities handled by important associations. Even in these the results were not entirely satisfactory, due to variations in the services rendered with regard to grading, standardization, etc., and to the further fact that the advent of a cooperative frequently causes a decided improvement in the treatment of producers by non-cooperatives. The entire study indicated that the outstanding weakness in the cooperative movement was the lack of adequate permanent and temporary capital. The opinion was further expressed that some means should be provided whereby cooperatives could procure necessary loans at reasonable interest rates.

The Commission's report was submitted to the Senate on April 30, 1928, and was published as Senate Document No. 95 (70th Cong., 1st sess.). It consisted of 721 printed pages. A copy of same is attached hereto as Exhibit F. T. C. 197.

HOUSE FURNISHINGS INDUSTRIES

The United States Senate, on January 4, 1922, directed the Federal Trade Commission to investigate and report on the causes of factory, wholesale and retail price conditions in the principal branches of the house furnishing goods industry. Particular attention was to be given to unfair practices, trade restraints, combinations, etc. The inquiry covered the years 1920, 1921, and, in part, 1922, and included three major industry groups—household furniture, household stoves, and kitchen furnishings and domestic appliances.

Household furniture.—The first of the reports submitted to the Senate was on Household Furniture. It consisted of nearly 500 printed pages and went forward to the Senate on January 17, 1923. With regard to this phase of the inquiry, insofar as it was practicable, every manufacturer and wholesaler, and a large number of retailers were given an opportunity to report the financial results of their operations and to furnish data pertaining to their organization and method of doing business. The report on margins, expenses, profits, and return on investment was based on returns from 299 manufacturers, 22 wholesalers, and 560 retailers. Information was obtained by the use of schedules and directly from the books of the various companies by the Commission's accountants. Schedules calling for financial statements, organization, and methods of selling went to 758 furniture manufacturers, 447 wholesalers, and 2,775 retailers. A schedule calling for information regarding costs, freight, discounts, and selling prices went to 1,200 wholesalers and retailers of 250 selected items manufactured by 31 concerns.

The report on Household Furniture, which made up volume I of the general report, consisted of two parts. Part I dealt with Prices and Profits of Manufacturers and Dealers; and part II related to Competitive Conditions in the industry. The Commission's findings as to part I were summed up as follows:

> (1) Wholesale prices of household furniture in 1920 reached a higher peak than most commodities and subsequently declined more gradually and without approaching so near the pre-war level.
>
> (2) Furniture manufacturers, however, reduced their prices more in absolute amount than the decline in the prices of raw materials, relatively more than wages, and both absolutely and relatively more than they reduced their total cost.
>
> (3) Retailers also reduced prices, and by the early part of 1922 probably in as great proportion as the manuafcturers, but reluctant to cut prices on large stocks of high-priced furniture their price reductions lagged about a half year behind.
>
> (4) Representative data for 299 furniture manufacturers and 424 specialized retailers gave average rates of profit on investment in 1920 of 28.2 per cent for manufacturers and 22 percent for retailers; and in 1921, 8.4 percent for both manufacturers and retailers.
>
> (5) Out of the consumer's dollar the net profit for the dealer in 1920 averaged 13 cents; in 1921, 7 cents; for the manufacturer it averaged 8 cents in 1920 and 4 cents in 1921.
>
> (6) Most retailing of furniture in 1920 and 1921 was on the installment plan and installment prices averaged probably at least 16 percent above cash prices. Installment stores generally had higher operating expenses but made considerably higher profits on the investment than those doing primarily a cash business.

The findings as to part II, regarding Competitive Conditions, were:

> (1) The principal manufacturers' associations, whose members produce the bulk of the country's furniture, have restricted competition by means of resolutions tending to concerted price policy, by price comparison meetings, and by the adoption of minimum "selling values" (prices).
>
> (2) Leading furniture manufacturers' associations have jointly employed an expert to price articles of furniture for their members on a theoretical cost basis which tended to uniformity of prices.
>
> (3) Various retail organizations have frequently interfered with the sale of furniture by manufacturers to consumers and to so-called illegitimate dealers by means of concerted complaints of members to offending manufacturers and by the publication of the "Buyers' Guide" and "Tattle Tales."

(4) In the autumn of 1920 the leading manufacturers' associations, following a conference with the organized retailers who insisted that they should have time to dispose of their high-priced stocks, advised their members to defer making reductions in factory prices.

(5) Although a movement for "truth in furniture" has recently been started, which includes many manufacturers and dealers, furniture, both as to materials and workmanship, is often misrepresented in a manner to deceive the public.

A copy of the report on Household Furniture is attached hereto as Exhibit F. T. C. 198-A.

Household Stoves.—The second of the house-furnishings industries reported on was stoves and ranges for household use. This study, in general, followed the same outline as volume I, the first section being devoted to manufacturers', wholesalers', and retailers' prices and the investment profits and other operating results of stove manufacturers, while the second section dealt with competitive conditions in the stove-manufacturing industry. Financial reports were obtained from 78 stove manufacturers, and price data from 75 manufacturers. The financial reports obtained from wholesalers and retailers were not used because of the variety of items other than stoves handled by them. However, selling price and purchase-cost quotations secured from 15 wholesalers and 260 retailers were used.

With regard to prices, it was shown that manufacturers' prices increased about 140 percent from January 1916 to January 1920. During 1921 prices increased to figures about 176 percent above the pre-war level, but dropped off to 120 percent above that level by December of 1922. This was approximately double the increase in general commodity prices. The fluctuation in retail prices was not as great on either the upward or downward movement. Prices in October 1922 were only 11 percent below the peak prices of 1920.

During 1920 the profits of 78 stove manufacturers averaged 16.9 percent on investment. In 1921, profits dropped to 1.1 percent, due to reduced volume without corresponding reductions in costs. The profit experiences of individual producers varied widely during 1920. These ranged from a loss of 14.7 percent to a profit of 67 percent; and in 1921, from a loss of 32.4 percent to a profit of 45.8 percent. Retailers' mark-up during 1920 averaged 42.8 percent; and in 1921, 39.6 percent. The mark-up of individual retailers in a group of 260 used in making up this average ranged from 30 to 54 percent.

It was found that there existed in this industry one national and numerous local associations, and that certain of the activities of some of these associations were evidently in restraint of trade. Price lists were exchanged and notification of price changes sent out either directly or through the various associations. Price cutters were criticized and often urged to increase their prices. The matter of prices was a live subject at many of the association meetings, and evidence was found of informal understandings as to common price policies. It was also noted that general price movements immediately followed association meetings. This was true both during the upward swing of 1920 and the downward price movemovements of 1921 and 1922. In the latter period it appeared that efforts were made at the association meetings to prevent drastic price cuts and to keep the downward price movement as orderly as possible in the fact of depressed business conditions.

On the basis of the information developed, the consumer's dollar spent for stoves during the years 1920 and 1921 was divided as follows:

	1920	1921
Raw materials	23.8	23.4
Other manufacturing costs	35.8	43.8
Manufacturers' profit	7.5	1.0
Manufacturers' freight	2.9	3.4
Retailers' expenses and profit	30.0	28.4

The report on Household Stoves, consisting of nearly 200 printed pages, was transmitted to the Senate on October 1, 1923. A copy of same is attached hereto as Exhibit F. T. C. 198-B.

Kitchen Furnishings and Domestic Appliances.—The third subdivision of the housefurnishings-industries study covered kitchen furnishings and domestic appliances. Particular attention was given to competitive conditions in the washing-machine, vacuum-cleaner, refrigerator, sewing-machine, broom and brush, and aluminum industries, and also the retail hardward dealers' associations. The Commission's agents held interviews with officials of the associations and a large number of manufacturers, and examined the correspondence and records of these companies and groups. Information was also procured through the medium of questionnaires. Considerable study was made of the patent situation, particularly with regard to pooling of patents in the washing-machine, vacuum-cleaner, and sewing-machine industries. Data were procured with regard to the selling prices of manufacturers, wholesalers, and retailers, and the purchase cost of wholesalers and retailers. In connection with this phase of the study, approximately 700 schedules were sent to manufacturers and about 2,500 to wholesale and retail dealers. Usable reports were procured from 165 manufacturers, 86 wholesalers, and 503 retailers. Information was obtained from manufacturers concerning balance sheets, profit-and-loss statements, and related data for 1921 and 1922, and same was used for determining investment income and rate of profit for those years. Usable reports of this nature were received from 138 manufacturers of various articles of kitchenware and domestic appliances.

The basic vacuum-cleaner patent, known as the Kenney patent, was issued in 1907. During its existence an agreement between the owners and their licensees prevented the granting of additional licenses without the consent of three-quarters of the licensees. Upon the expiration of the patent, in 1924, efforts were made to pool the patents in this industry, but these attempts were abandoned when the attorneys advised that same were probably illegal. In the washing-machine industry it was found that a complete and comprehensive system of patent pooling existed. However, the basic patent expired in 1921 and, while there were numerous threats of infringement suits subsequent thereto, there appear to have been no suits actually instituted. A comparison of profits in these 2 industries shows that, in 1920, 11 vacuum-cleaner manufacturers received an average return on investment of 36.2 percent as compared with a return of 22 percent for 35 washing-machine manufacturers, and that in 1921 the vacuum-cleaner producers obtained a return of 20.6 percent, while the washing-machine manufacturers were incurring a loss of approximately one-half of 1 percent.

With regard to refrigerators, definite evidence was procured of price fixing through the National Refrigerator Manufacturers Association. It was indicated that steps along this line were taken as early as 1918 and continued down to 1920, when an expert was employed to coordinate and direct the price activities of the industry. The books of 17 of the more important refrigerator manufacturers showed earnings on the averaged investment in 1920 of 15.2 percent and, in 1921, of 4.1 percent.

It was found that in the sewing-machine industry one company, Singer Manufacturing Company, in 1921 produced approximately 72 percent of the total domestic production. The Singer company acquired this dominant position during the operation of the patent pool in this industry, which was prior to 1877, and subsequently strengthened its position by acquiring its largest competitor. At the time of the study, there were 7 so-called independent companies, none of which was equipped to manufacture a complete machine. Despite this fact, they appear to have been successful in furnishing substantial competition for the dominant company. With regard to prices, it was found that the retail prices of sewing machines in August 1920 were approximately 86 percent higher than in 1914, and that by January 1921 they had dropped to a point about 63 percent higher than the 1914 price. The average retail mark-up on sewing machines was high as compared with other housefurnishings, but there were wide variations among different makes. In January 1920, these ranged from a low of 29.3 percent to a high of 88.9 percent. The average, however, was 80.7 percent. The rate of return on investment was not very high. As figured for four companies, including the Singer, it amounted to 14 percent in 1920 on an averaged investment of $53,000,000, and 4.6 percent in 1921 on an averaged investment of $61,000,000.

The study made included a survey of finance companies, particularly with regard to financing the purchases of domestic appliances, such as washing machines, sewing machines, vacuum cleaners, and refrigerators. The operations of these companies were treated from the viewpoint of (1) the effect of the installment policy upon the price to the consumer, and (2) the gross rate of profit to the finance company. In connection with 16 specimen contracts studied in the course of the investigation, it was learned that interest deducted by the finance companies on their average investment in the contracts for the period of time involved amounted to a gross rate of return ranging from about 21 to 29 percent, depending upon the terms of the contract.

Statistics of the Aluminum Wares Association indicated that 85 percent of the total production of aluminum cooking utensils was in the hands of 11 concerns. Financial reports and other data were procured by the Commission from those concerns. During 1921 their total investment was $19,400,000 and their total sales were $22,600,000. The Aluminum Company of America, which had a monopoly in the production of aluminum, held over 30 percent of the outstanding common stock of the Aluminum Goods Manufacturing Company, the largest producer of cooking utensils. Particular attention was given to the trade practices of the Aluminum Goods Manufacturing Company, especially its policy with regard to prices, special discounts, full-line forcing, exclusive dealing, resale-price maintenance, etc.

The Commission reported that, on the basis of the facts developed by it, the Aluminum Company of America appeared to have been in repeated violation of the consent decree of 1912, especially with respect to delaying shipments of material, furnishing known defective material, discriminating in prices of crude or semifinished aluminum, and hindering competitors from enlarging their business operations. The Commission further reported that the original decree was obviously insufficient to restore competitive conditions in harmony with the antitrust laws, especially with regard to the monopolization of high-grade bauxite land.

On October 6, 1924, the Commission transmitted to the Senate its report on Kitchen Furnishings and Domestic Appliances, consisting of 345 printed pages. It was designated as volume III of the report on the House Furnishings Industry and concluded the studies of that industry. A copy of the report is attached hereto as Exhibit F. T. C. 198–C.

MILK AND MILK PRODUCTS

On June 15, 1934, the Commission was directed, through House Concurrent Resolution No. 32 (73 Cong., 2d sess.), to investigate and report on conditions in the sale and distribution of milk and other dairy products within the territorial limits of the United States. In response to this resolution, investigations were made in several of the more important milksheds throughout the eastern and midwestern sections of the country. These, for the most part, consisted of interviews with the officials of the farmers' cooperative organizations, the dealers' associations, and the larger distributors. The Commission's representatives examined the correspondence files and records of the various organizations and companies. A great many interviews were also held with farmers in the areas covered. Public hearings were conducted at Hartford, Conn., and Philadelphia, Pa., at which the producers and representatives of both the producer cooperatives and distributors were heard. A study was made of the State laws and regulations governing inspection of dairy farms and milk plants, and the weighing and testing of milk. The Commission's accountants, auditors, and economists analyzed the operating results of the principal distributors in certain selected areas. Particular attention was given to practices or policies which might substantially lessen competition or tend to create a monopoly, or which might otherwise be considered as placing a restraint upon trade or commerce in the sale or distribution of milk and other dairy products.

The first report transmitted to the Congress in response to the above resolution went forward on April 5, 1935. It covered the Connecticut and Philadelphia milksheds and was printed as House Document No. 152 (74th Cong., 1st sess.). It contained more than 100 printed pages. A copy is attached hereto as Exhibit F. T. C. 199–A. On January 8, 1936, a second report on the Connecticut and Philadelphia milksheds was transmitted to the Congress. This contained material not fully discussed in the previous report. It dealt with such matters as the determination of prices to milk producers, investments, costs and net profits of milk distributors, delivery costs, etc. This report, consisting of 125 printed pages, was published as House Document No. 387 (74th Cong., 2d sess.). A copy of same is attached hereto as Exhibit F. T. C. 199–B.

On April 15, 1936, a report on the Chicago sales area, consisting of approximately 100 printed pages, was sent to Congress and was published as House Document No. 451 (74th Cong., 2d sess.). A copy of the report is attached hereto as Exhibit F. T. C. 199–C.

On June 4, 1936, a report on the Boston, Baltimore, Cincinnati, and St. Louis milksheds was transmitted to the Congress. It consisted of 243 printed pages and was published as House Document No. 501 (74th Cong., 2d sess.). A copy of same is attached hereto as Exhibit F. T. C. 199–D.

On June 15, 1936, the Commission reported to the Congress on the Minneapolis-St. Paul area. This report contained 71 printed pages and was published as House Document No. 506 (74th Cong., 2d sess.). A copy is attached hereto as Exhibit F. T. C. 199–E.

On January 5, 1937, the Commission reported to the Congress on the operations of large dairy famers' cooperative organizations in the New York milk-sales area, and the operations of Nation-wide processors and distributors of milk and milk products with headquarters in New York City. This report contained 138 printed pages and was published as House Document No. 95 (75th Congress, 1st sess.). A copy of same is attached hereto as Exhibit F. T. C. 199–F.

On January 5, 1937, the Commission also transmitted to the Congress a report entitled "Summary Report on Conditions With Respect to the Sale and Distribution of Milk and Dairy Products." It contained a résumé of the material presented in the previous reports, together with the Commission's conclusions and recommendations. This summary consisted of 39 printed pages and was published as House Document No. 94 (75th Cong., 1st sess.). A copy of same is attached hereto as Exhibit F. T. C. 199–G.

As a result of the survey made with respect to the sale and distribution of milk and milk products, the Commission recommended, among other things, that dairy farmers organize cooperative associations on a nonprofit basis to market their milk and milk products, that each member have an equal voice in the management of cooperative organizations, that voting by proxy be eliminated, that cooperatives acquire plants and engage in the processing of milk when satisfactory markets for same are not available, and that arrangements be made between cooperatives in different areas for intermarketing among them to prevent the creation of surpluses in local areas and the attendant depressing of prices. Recommendations were also made with regard to contracts, auditing of distributors' books, reports to appropriate State and Federal agencies, and other similar details in connection with the operation of cooperatives. The Commission directed attention to the fact that the large milk-distributing companies had attained their size through acquisitions and consolidations of established business concerns, many of which had formerly been competitors. It explained that, where assets were acquired originally or where capital stock was acquired and used to complete a transfer of the assets before corrective action could be taken under section 7 of the Clayton Act, it was powerless to proceed; and stated that conditions in the milk industry emphasized the necessity of amending section 7 of the Clayton Act in accordance with the Commission's previous recommendations on the subject.

The final recommendation of the Commission was that a Federal authority be created to confer with the State authorities, with a view to bringing about uniformity of State laws relating to the production, sale, and distribution of milk and other dairy products.

OPEN-PRICE TRADE ASSOCIATIONS

On March 17, 1925, the United States Senate directed the Federal Trade Commission, through Senate Resolution No. 28 (69th Cong., special session of the Senate), to investigate and report to it with regard to open-price trade associations. Specific information was requested concerning the number and identity of such associations, their importance in the industry, the number of their members, the effect of their activities with regard to uniform price increases and the maintenance of uniform prices among their members to wholesalers or retailers, and the effects of their activities with respect to alleged violations of the antitrust laws.

In order to comply with the broad request of the Senate, it was necessary to extend this investigation to include not only open-price associations but trade associations generally, since it was found that the open-price activities frequently represented one of several functions exercised by the association. A total of 1,103 associations were included in the survey, although many of these were found to be professional groups or were engaged in activities not coming within the broad general scope of the inquiry. Questionnaires were sent out to the associations and, in general, those failing to reply were contacted by field agents.

On February 13, 1929, the Federal Trade Commission filed its report with the United States Senate. This was subsequently printed as Senate Document 226

(70th Cong., 2d sess.) and consisted of over 500 printed pages. A copy of same is attached hereto as Exhibit F. T. C. 200.

The Commission did not propose any changes in the antitrust laws, but did suggest the clarification or extension of same, in order that provision might be made for the registration of all trade associations and the filing by them of brief reports covering their activities. The principal recommendations made were that the Census Bureau be given power to compel the return of statistical data needed from all manufacturers and dealers, and that a licensing system for trade associations be established. The conclusions and recommendations of the Commission are contained in chapter IX of the report, pages 343 to 373, inclusive.

PACKER CONSENT DECREE

On December 8, 1924, the United States Senate, in Senate Resolution No. 278, requested the Federal Trade Commission to report concisely to it at the earliest possible time all information in its possession, or readily securable, concerning the history and status of the consent decree entered into in the Supreme Court of the District of Columbia on February 27, 1920, in the case of the *United States* v. *Swift & Co. et al.*, which is commonly known as the Packer Consent Decree. The Senate further requested to be advised concerning the hearings, litigation, and other action growing out of the decree and the respective effects that might be expected if the consent decree was enforced, was modified as proposed, or was annulled, together with its recommendations on the public policies involved.

In addition to summarizing the data then in its possession, the Commission requested the submission of current data by the large meat packers, the two wholesale grocers' organizations, and other interested parties. Information was also obtained from the Department of Agriculture.

On February 20, 1925, the Federal Trade Commission filed its report with the Senate, and same was published as Senate Document 219 (68th Cong., 2d sess.). In it the Commission reiterated, in substance, recommendations contained in its previous reports on the meat-packing industry made in 1918 and 1919. It was urged that steps be taken by the courts, or the Congress, to separate the packers from their ownership of stockyards and to separate the Big Five packers from their control of the meat and refrigerator cars. It was further recommended that stockyards, as well as refrigerator cars, be declared public utilities and their operation subjected to the regulation of the Interstate Commerce Commission.

A copy of the report, consisting of 44 printed pages, is attached hereto as Exhibit F. T. C. 201. The conclusions and recommendations appear therein at pages 29 to 34, inclusive.

PETROLEUM INDUSTRY—PRICES, PROFITS, AND COMPETITION

On June 3, 1926, the United States Senate, in Senate Resolution No. 31 (69th Cong., 1st sess.), directed that the Federal Trade Commission investigate and report to the Senate concerning increases in the prices of petroleum products, whether price fluctuations were the result of agreements or understandings among the oil companies, and the profits of the principal companies engaged in producing, marketing, and refining petroleum products.

In conducting the inquiry, the Commission used questionnaires, or schedules, and also had field agents conduct necessary investigational work throughout the industry. Information concerning the methods of determining and announcing prices, methods of handling local competition, and general sales policy was procured through interviews with officials of the companies and by examination of their correspondence files. The minutes of the annual meetings and of the meetings of the boards of directors were examined to ascertain the facts concerning the ownership of each of the companies and the manner in which the stock was voted, that is, by stockholders or by proxy. The various companies were required to submit on forms furnished by the Commission, information relative to the identity of their 50 largest stockholders. Brokers and trustees who came within this group were asked to identify the persons having the beneficial interest in the stocks held by them.

Data were procured concerning the ownership of oil lands, prices of crude oil, and prices of gasoline at the various stages of distribution. Personal contact was had with a representative number of wholesalers and retailers with respect to local competitive practices. Information concerning investments and profits was obtained on report forms sent out by the Commission. These went to 750 producers, 180 marketers, and 185 refiners. Data relative to the profits of interstate pipe lines were taken from the public records of investment and income filed by these companies with the Interstate Commerce Commission.

On December 12, 1927, the Commission transmitted to the Senate its report on Prices, Profits, and Competition in the Petroleum Industry. It was published as Senate Document No. 61 (70th Cong., 1st sess.). A copy of the report, consisting of 360 printed pages, is attached hereto as Exhibit F. T. C. 202.

The report reviewed briefly the changes that had occurred in the petroleum industry during the 20 years prior to 1927. At the beginning of that period domination was in the hands of one company which was controlled by a small group of men. At the close of the period, due in part to the decree of 1911, the competitive picture was greatly changed. The Standard companies then had about 45 percent of the output of refined products as compared with 80 percent at the beginning of the period. It was found that there were 11 companies each of which used more than 2 percent of the total crude refined in the United States; 5 of these companies resulted from the dissolution of the old Standard combination, and 6 were independents. The latter group took approximately 25 percent of the total production, while the former took nearly 42 percent.

Between 1920 and 1927, interstate pipe-line mileage increased from 49,000 to 75,000 miles. These formerly were controlled by the Standard interests. In 1914 the United States Supreme Court upheld the law declaring them common carriers, but high minimum quantity requirements made it difficult, if not impossible, for the independent companies to use them. In 1916 the Federal Trade Commission, in a report, recommended that these minimums be drastically reduced. In 1922 the Interstate Commerce Commission reduced the minimums from 100,000 to 10,000 barrels. Subsequent voluntary reductions extended the use of pipe lines, but the Commission found that still greater equality of opportunity in this regard appeared desirable.

It was learned that unity of control through community of interest no longer existed among the several Standard companies. Reports on nearly 10,000 large stockholders in the various companies showed that their holdings indicated no especial significance with respect to control.

At the time the investigation was made it was found that the Standard marketing companies, in general, confined their tank-wagon sales to retailers and their filling-station business to the separate territories assigned to them before the combination was dissolved. Even at that date, however, there was evidence that some of the Standard companies were extending their filling-station business into the territory of other Standard companies and also were selling to jobbers in tank-car quantities without regard to territory.

With regard to the prices of crude petroleum, the inquiry tended to establish that price movements for longer periods were substantially controlled by supply and demand conditions, but that this was not necessarily true for shorter periods, because of the influence exercised by a few larger companies and the apparent lack of competition among them.

No evidence was found of agreements or understandings among the large companies to manipulate prices on refined products. In general, the various Standard companies announced the prices, and these were followed by their competitors. Changes in tank-wagon market prices were announced to competitors usually for a day in advance through "Platt's Oilgram" service, ticker service, or by telephone. It was not found that price changes were simultaneous for the different Standard companies. All companies, at times, indulged in the practice of granting discounts and concessions from regular prices to various customers. This was a part of the sporadic local or temporary price competition that occurred in the struggle for volume which was going on constantly between the independent marketers and the Standard companies.

Other factors which were found to have a bearing upon competition in the industry were the efforts among jobbers' associations to keep their members from cutting tank-wagon and filling-station prices announced by the Standard companies, control exercised through licenses granted under the cracking process patents, restriction of production of crude oil through concerted action of producers or with the aid of public authorities, and mergers or consolidations which produced integrated units.

Returns received by the Commission indicated that, despite the increased competition, the rate of profit in all branches of the industry had also increased. For the years 1923, 1924, 1925, and the first half of 1926 the rate of profit on investment, based on the companies' own figures, ranged from an average of 2.5 percent in 1923, a year of depression in the industry, to 14.7 percent in the first half of 1926 for all crude-oil-producing companies reporting; and from 5.1 to 11.3 percent for the refining companies. Profits of the interstate pipe-line companies exceeded 17 percent in each of the years from 1921 to 1926, and averaged 20.3 percent.

In its report the Commission called attention to the growing movement to obtain some sort of production control in order to conserve crude oil, an important natural resource. It refrained from making recommendations on the subject, however, because of the fact that it was then receiving consideration by the Federal Oil Conservation Board.

PREMIUM PRICES ON ANTHRACITE

In 1916 and 1917 the Federal Trade Commission inquired into the problem of premium prices on anthracite coal. Its activities in this regard aided in reducing speculation and panic demand. In 1923 the United States Coal Commission undertook a similar study, which was carried forward by the Federal Trade Commission after the work of the Coal Commission terminated in September of that year. The results of this study were submitted to the Congress on July 6, 1935. In printed form, this report covers approximately 100 pages.

The Commission directed attention to the fact that for the period from 1914 to 1923 more than 70 percent of the anthracite coal was produced by eight large companies, all of which were owned by, or closely affiliated with, the railroads. The remaining 30 percent was produced by more than 100 independent companies, that is, companies not affiliated with railroads. In addition to the factual data submitted, consideration was also given to the activities of the Department of Justice in its efforts to disintegrate the anthracite combination, and suggestions were made regarding measures for preventing the recurrence of the high prices which had formerly prevailed. It was pointed out that, because of previously existing monopolistic control, there had not been an adequate increase of mining capacity, with the result that temporary or apparent shortage caused high premium prices at the mines and encourated the taking of excessive profits by both wholesalers and retailers. It was found that in times of such shortage wide variations in prices occurred, accompanied by speculation in coal which further enhanced the price.

Among the constructive measures suggested by the Commission were price reductions during the slack buying seasons in the spring and summer, development of more accurate statistics covering demand, a more rational buying program for municipalities and public agencies, enlargement of mine capacity, and an increase in the storage equipment of both producers and distributors. The Commission also urged that current data on production, prices, costs, and profits in the coal industry be secured and published by some Federal agency.

A copy of the Commission's report is attached hereto as Exhibit F. T. C. 203. Its conclusions and recommendations are contained in chapter III, pages 53 to 57, inclusive. A summary of the report appears at pages IX to XX, inclusive.

PRICE BASES INQUIRY

On July 27, 1927, the Federal Trade Commission, acting pursuant to section 6 of its organic act, approved a resolution directing that an investigation be undertaken and report made upon the various methods of differentiating prices with respect to location, as for example, the basing-point method, the factory-base method, and the delivered-price method.

Questionnaires were sent to several thousand manufacturers and several hundred trade associations. The information obtained in this manner formed the basis for a survey of industry as a whole in respect to selling methods, and permitted a selection of the industries whose selling methods warranted more intensive study.

Portland Cement.—In the manner indicated, Portland cement was selected for study, since it appeared to represent one of the best illustrations of the working of the multiple basing-point system. The principal sources of information were cement manufacturers and dealers, State highway commissions, Government agencies, and trade associations. Information was obtained from the mills by means of correspondence and interviews with their officials. Questionnaire letters were sent to the mills on the subject of mill-price data. A check was also made among the dealers in 27 cities and detailed information procured from their invoices with respect to date, price, quantity, point of origin, freight charges, and cash, dealer, and special discounts. Other sources of information relative to rates, historical data, etc., were the Interstate Commerce Commission, Bureau of Railway Economics, and the Department of Justice.

It was found that cement manufacturers sell their product on a multiple basing-point system. In order to arrive at an identical delivered price, it is only necessary to know the base price and the rail freight rate. The latter were compiled cooperatively and furnished to the manufacturers. Base prices were easily ascertained and generally known. Approximately 85 mills were located at basing points, and about 80 were non-basing-point mills. Although these mills are scattered generally throughout the United States, being located in 32 of the 48 States, it was learned that the individual plants frequently shipped great distances. In 1927–28 the weighted average freight rate paid per barrel was 38 cents, or about 22 percent of the average mill price. In some instances, however, the freight represented more than 50 percent of the mill price.

Investigation tended to show that under the basing-point system there was a wide divergence of net prices received by the mills. In 13 of 21 cities, where invoices were examined, delivered prices of all manufacturers were identical. In no city was there less than 81 percent of identity. At the same time, the degree of uniformity on mill net realizations was comparatively low.

During the period under consideration, delivered prices were inflexible. At Baltimore the formula price was maintained throughout 1927. In Washington, Wilmington, Philadelphia, and New York there was but one price change during that year. In a 32-month period, 1927–29, there were only 2 price changes in Minneapolis and 4 in Cleveland. These were typical of the price situation throughout the country. Base prices for 22 mills in the important Lehigh Valley producing area remained at a dead level from January 1927 to November 1930, except for about 1 month during 1929. The situation with regard to two other important producing areas, Hudson Valley and Buffington, Ind., was quite similar. The mills at Birmingham showed a rather consistently declining price curve from January 1927 to August 1929. In November 1929, however, these mills made effective a single increase of 50 cents per barrel.

Among the factors contributing to imperfect competition were the effective use made of price leadership, concentration of production in the hands of a few companies, particularly in certain sections of the United States, stringent retaliatory methods used against price cutters, collecting and disseminating operating information, compiling and distributing freight rates, and checking up violations of the industry's code of commercial practices. With regard to the freight-rate books, it was learned that these were not merely for the calculation of freight bills but contained a conversion table which made it certain that if the formula were followed, the prices of all producers at any given point would be identical. The per barrel rate shown by the conversion table was often not the actual freight rate.

The mill whose base price plus freight made the Chicago delivered price in 1927 was located near that city. It produced about 9,000,000 barrels of cement, and Chicago consumed about 3,800,000 barrels. Less than one-third of the consumption was supplied by the local mill, the remainder of its production being shipped to outside territories, much of it long distances with resultant reductions in mill net realizations. As a result of this condition, its average mill net for the year on all sales was 22½ cents per barrel less than its net on Chicago sales. Had Chicago been able to purchase at the average net price obtained by this mill, it would have effected a saving during 1927 of more than $800,000.

The basing-point system used by the cement industry has encouraged cross hauling with resultant aggregate increases in freight. On the basis of available data, the Commission estimated that in 1927 there was an average unnecessary burden per barrel of 24.3 cents which, applied to the entire production of that year, made a total of about $42,000,000. It was not suggested that this total cost burden would be eliminated by competitive mill net prices, but the belief was expressed that a substantial portion of the amount represented a loss both to consumers and to society generally.

The Commission's report on the Basing-Point Formula and Cement Prices, consisting of more than 200 printed pages, was transmitted to the Congress on March 26, 1932. A copy of same is attached hereto as Exhibit F. T. C. 204–A.

Range Boilers.—The range-boiler industry was selected for study in connection with the Price Bases Inquiry largely because it represented, in a heavy commodity industry, both a modified zone-price system and a uniform delivered price system. Data were obtained chiefly from manufacturers' price schedules issued to the trade and from manufacturers' invoices, approximately 3,000 of which were examined in the offices of the manufacturers by the Commission's agents. Information was also procured through interviews with officials of the manufacturing companies and through correspondence. The files of the manufacturers were examined particularly with regard to the granting of special discounts, or otherwise departing from published prices. Material concerning production trends was obtained from the Bureau of the Census.

The study was nearly completed by July 1933, but lack of funds and urgency of other work caused a temporary suspension. Subsequent adoption of a code of fair competition in April 1934 caused further delay, with the result that the report was not completed until 1936. A sufficient check was made, however, to establish that the industry was still operating under the zone-price formula.

From the organization of the Range Boiler Exchange in 1914 there was marked uniformity among manufacturers with regard to published delivered prices, terms of sale, freight allowances, etc. During the brief existence of the exchange, the country was divided into price zones which, with some slight changes, still existed when the study was made.

For zone A, comprising all States east of the Mississippi River, the price was f. o. b. plant, full freight allowed. There were three gateway points to the zones west of the Mississippi—Davenport, Iowa, St. Louis, Mo., and Memphis, Tenn. The price for rail shipments in zones other than zone A was the delivered price in zone A plus rail freight from the gateway point freightwise nearest to the point of destination. Other methods of calculation were used for boat-and-rail shipments and for less-than-carload shipments. These variations did not, however, alter the fact that delivered prices for destinations west of the Mississippi River were quoted by application of the basing-point principle. Each manufacturer published, from time to time, schedules showing delivered prices for zone A and freight allowances to destinations in other zones.

Of the 12 price periods studied, it was found that the 4 largest manufacturers of the most popular type boiler quoted substantially identical prices during 7 of the periods and prices that appeared to be competitive during 5 of the periods. The periods were of unequal length, 1 of the uniform price intervals lasting for almost 3 years, or approximately one-half of the entire time under study. During the time that uniform prices prevailed, the granting of special secret discounts resulted in variations from the published prices. Toward the end of the period under study there was a marked decrease in the granting of these discounts, so that, during the last interval considered, 85 percent of the shipments were made at the published delivered price. The elimination of special discounts was accompanied by greater uniformity of published prices and a marked decrease in the number of price changes. This occurred in the face of a declining demand which, under price competition, would have tended to lower prices.

Data procured established that under the system in vogue in this industry a large part of the production was shipped into territory where other plants had an advantage in freight costs. This is the same cross hauling, or cross freighting, found so prevalent in the cement industry. One of the five plants under study made more than 90 percent of its shipments into such territory. With two others, approximately 60 percent of their shipments were of this nature. In 1929 a plant in Chattanooga made only 3.28 percent of its shipments to points in Tennessee, while 28.10 percent went to points in Illinois. At the same time, the Illinois shipments of a plant located in Chicago were only about one-third those of the Chattanooga plant, although its total shipments exceeded those of the latter company. Another example of the cross haul was found in the fact that the Chattanooga plant sold more boilers in Pennsylvania than it did in Tennessee, while at the same time the Pennsylvania company sold more boilers in Tennessee than did the Chattanooga company.

On March 30, 1936, the Commission's report, consisting of 143 typewritten pages, was transmitted to the Congress. A copy of same is attached hereto as Exhibit F. T. C. 204–B.

UTILITY CORPORATIONS

On February 15, 1928, the United States Senate, through Senate Resolution No. 83 (70th Cong., 1st sess.), directed the Federal Trade Commission to conduct an inquiry into and to report on the growth of capital assets and liabilities of public-utility corporations, both operating and holding companies, doing an interstate or international business; the facts concerning the issuance of securities; the extent to which holding companies owned or controlled engineering, construction, or management companies; and complete details concerning the operation of holding companies, together with a recommendation as to the legislation, if any, which should be enacted by Congress to correct existing abuses. In the second part of the resolution, the Commission was directed to investigate and report concerning the propaganda or publicity activities of public utilities, particularly with regard to efforts to influence public opinion concerning municipal or public ownership, or to influence elections of President, Vice President, and Members of the United States Senate.

A statistical schedule, consisting of 225 printed pages, was prepared and submitted to the companies from which the information was desired. Many of the companies filed reports in accordance with these schedules, but most of them were lost in the fire which destroyed the Commission's Washington office in August 1930. For the most part, then, the data used were obtained through direct examination by the Commission's accountants, auditors, and other representatives, of the corporate records of the utility companies, including contracts, correspondence, corporation minutes, stock-transfer books, accounting records including vouchers, etc. Engineering examinations were also made among the more important groups for the purpose of securing information concerning physical condition and managerial efficiency. Data were also procured from State public service commissions and other State agencies, from Federal income-tax returns, from the Federal Power Commission, and from proceedings before public-service authorities and the courts.

Upon completing the examination of a company's records, the Commission's examiner who conducted the examination prepared a report covering the material procured. Conferences were then held with representatives of the company involved, for the purpose of eliminating any possible fact errors. The report, together with pertinent exhibits was then formally put into the record at a public hearing. The examiner who prepared the report testified in explanation and interpretation of the report, and, on some important financial transactions, company employees conversant with them were also called to testify, and the company involved was permitted to be represented by counsel and had the privilege of cross-examining the Commission's representatives and other witnesses. The opportunity was also given to the companies to introduce any pertinent testimony or evidence which they desired to present. The accuracy of the examiner's reports was seldom challenged, and in only a few instances did the companies offer any evidence controverting the contents of the examiner's report or his conclusions.

In accordance with the terms of the Senate resolution, the Commission filed monthly interim reports except during the summer months. A total of 84 such reports and 7 accompanying volumes of exhibits were filed, together with 11 special reports designated as follows: 69–A, 71–A, 71–B, 72–A, 73–A, 77–A, 81–A, 84–A, 84–C, and 84–D, some of which are hereinafter explained. All were printed as Senate Document No. 92 (70th Cong., 1st sess.), and each was further identified by a part number.

Propaganda.—The material contained in parts 1 to 20 (with the 7 exhibit volumes), which dealt with publicity and propaganda activities and expenditures therefor by the various associations of the electric power and gas industries, was summed up in part 71–A, which was submitted to the Senate on December 12, 1934. A copy of same, consisting of 486 printed pages, is attached hereto as Exhibit F. T. C. 205–A. Material relative to publicity and propaganda activities by utilities groups and companies carried on outside of, and in addition to their participation in and contribution to the activities of the various associations was summed up in part 81–A, together with an index to the record on company publicity and propaganda. This was submitted to the Senate on November 14, 1935. A copy of the report, consisting of 570 printed pages, is attached hereto as Exhibit F. T. C. 205–B.

Volume 71–A consisted of two parts. Part I states the ultimate objective or purpose of these activities, the methods used in obtaining such objective or purpose, the persons or agencies employed, together with a statement as to how they functioned and were financed. Part II is a brief of facts setting forth examples of the activities engaged in. The Commission's representatives examined the files of numerous associations and committees and procured voluminous pertinent data. From this material, representative illustrations were taken, and these were complemented with charts, consolidated tables, and appendixes. All the relevant facts are from testimony and records of the associations, agencies, persons, and concerns of the electric and gas utility industries themselves. The statements and conclusions, therefore, are the declarations and admissions of these associations and the persons connected with them, or are based on such declarations ai missions.

The investigation established that since 1919 the electric and gas utilities were engaged in the greatest peacetime propaganda campaign ever conducted by private interests in this country. In addition to using their own agencies they enlisted outside organizations and personnel in active, and often secret aid in their efforts to disparage all forms of public ownership of utilities. All activities in this regard were carefully considered and planned by responsible heads of the industries and their associations and responsible committees. Such propaganda activities were carried on chiefly through the National Electric Light Association, the national association of the electric-light industry, comprising in membership over 90 percent of the industry, and by the American Gas Association, the national association of the gas industry, which comprised over 90 percent of that industry. State or regional associations were organized to carry out locally the work nationally planned. "State committees" or "bureaus on public-utility information" were also set up, which were devoted solely to propaganda, and at one time there were 28 of these covering 36 of the more populous States. State directors of these committees were selected for their ability to contact press associations and newspapermen and educators, because it was the declared opinion of the utilities that these represented the 2 greatest public opinion forming agencies of the present and future generations.

In the press, the material ran the gamut from harmless and often needless advertising to "canned editorials" furnished to thousands of newspapers throughout the United States, especially the smaller local weeklies. In the schools the material furnished began with a picture book for kindergarten and included insertion of desired material and the elimination of undesired material in books intended as text and research books. Their efforts were thus not confined to affirmative propaganda but included efforts to block full and fair expression of opposition views, especially in books intended for school and research use.

In addition to general press publicity, the utilities carried on propaganda through a number of subsidized publicity agencies and, in some instances, newspapers, or a controlling interest therein, were acquired. The National Electric Light Association formed various committees for contacting and cooperating with other industries and with many associations. In this manner, agencies such as the United States Chamber of Commerce, Kiwanis, Rotary, Lions Club, women's clubs, etc., were utilized to aid the utility program. Repeated attacks were made upon every outstanding public project, whether existing or contemplated, as for example, the Ontario Hydroelectric System, Muscle Shoals, and Boulder Dam.

As indicated by the sales of their security issues, in the period from 1923 to 1929, the utilities, by such propaganda, built up a belief by the general public in the soundness and value of all security issues of privately owned utilities. May we insert the remark that the assertion of soundness, and that one reason for such soundness was alleged complete and sufficient regulation by the States, was made in a printed brief submitted to the Senate Committee on Interstate Commerce when they were considering the resolution for the investigation. This brief of 261 pages was signed by 92 law firms or their representatives from all parts of the United States. It was in support of the contention of the utilities that the proposed investigation was unnecessary (Ex. 924). Billions of dollars of nominal value of securities were issued, often with little or no regard for the underlying soundness of, or necessity for, such issues. The years of propaganda activity undoubtedly proved a powerful aid in having made the general public utility conscious. Boastfully Mr. Aylesworth, then the managing director of N. E. L. A., set forth as a reason why such a Nation-wide and expensive propaganda program should be pushed that the "public pays," that is, that the rate-paying public paid the bill. To measure accurately what the investing public lost in these issues is impossible, due to other factors, including the depression, and to the further fact that no one has ever assembled the varying prices and amounts paid for said security issues, but the amount of loss caused, in whole or in part, by such extensive and reckless issues was very great indeed, certainly running into the hundreds of millions.

Part 81–A dealt with the propaganda and publicity activities of 16 groups and their companies carried on outside of, and in addition to, their participation in and contribution to the activities of the various associations reported on in part 71–A. Part 81–A also contained some association propaganda material uncovered subsequent to the transmission of 71–A.

It was found that most of the propaganda carried on by the holding-company groups or local operating companies was in harmony with and in pursuance of, the plans made and carried on by the various associations and committees of the electric and gas industries. Some groups had quite complete intrasystem propaganda organizations, similar in general character and functioning to the associations of the industries. The associations furnished material either voluntarily or upon solicitation of the companies, and the latter usually distributed same locally. This scheme, whereby the associations produced the propaganda and the groups or individual companies distributed it, was very effective and in general use throughout the United States.

Schedules and exhibits were included in the report which showed the amounts expended by the various companies for advertising; their contributions to other trade associations; fees, retainers and other payments to attorneys, to educational institutions and to professors and teachers, and contributions to the National Committees of the two major parties which were made by persons connected with these companies.

Holding and Operating Companies of Electric and Gas Utilities.—On January 28, 1935, the Commission submitted to the Senate chapters XII and XIII of a summary report with recommendations, on Holding and Operating Companies of Electric and Gas Utilities, consisting of 218 printed pages. This report was published as Senate Document No. 92 (pt. 73–A; 70th Cong., 1st sess.). A copy of same is attached hereto as Exhibit F. T. C. 205–C. This report, together with parts 69–A and 84–B, covered a survey of State laws and regulations, certain pertinent legal studies, the present extent of Federal regulation and the need of Federal legislation, together with conclusions and recommendations.

The exhaustive study made by the Commission established that no substantial progress was being made by the States generally toward effective regulation of holding companies. In a few States efforts were made, but generally the situation remained as it was 25 years earlier. The power of the States in regulating holding companies was handicapped by nonresidence, the interstate character of their business, and other causes. Then, too, certain of the States granted roving charters with practically unlimited power, thereby leaving the States in general quite helpless.

The holding company, as such, performs no producing function. In the utility field it has not, therefore, been subject to regulation as such. Charters were granted to operating utilities to perform general public-utility service, but as a result of holding-company control and management, many operating companies contracted away the real performance of their principal charter functions to the holding company or to other companies designated by it, thus ousting practically all State jurisdiction over business. The opinion was expressed that appropriate Federal legislation would remedy this situation. The Commission further stated that there appeared to be three methods which seemed to commend themselves for the exercise of Federal jurisdiction, namely, (1) the taxation method (2) direct statutory inhibitions, and (3) a compulsory Federal licensing act, coupled with a permissive Federal incorporation act. These methods are explained in detail at pages 67 to 75, inclusive, of part 73–A.

On June 17, 1935, the Commission submitted to the Senate chapters I to XI (preceding 73–A already referred to), and being a review of the record with regard to the economic, financial, and corporate phases of holding and operating companies of electric and gas utilities. This report, which is devoted to the electric utility group and some manufactured gas utility groups, consisted of 882 printed pages and was published as Senate Document No. 92 (pt. 72–A; 70th Cong. 1st sess.). A copy of same is attached hereto as Exhibit F. T. C. 205–D.

During the expansion period of electric-utility service, beginning about 1905–10 and especially in the period after the World War up to 1930, when war-profit money was seeking an outlet, and utilities seemed to offer an especially inviting and lucrative field, with their mere sporadic and ineffective State regulation, the public-utility holding company became an active and dominant influence in utility development, although there continued to be numbers of small independent companies. The functions, variously and in varying degrees, performed or claimed to be performed by many holding companies, which were asserted as advantages for this type of structure were: Obtaining funds from investors which probably could not be obtained by small independent companies; supplying the advantages of large-scale production, skilled management, and expert engineering; extending and improving service with attendant increases in consumption and decreases in production costs, which made lower rates possible, although accompanying unsound financial practices often constituted aids to maintaining rather than reducing rates. Even when some or all the economies claimed were in fact brought about, no substantial rate reductions to the public occurred. The usual result was a siphoning off of the earnings so resulting into the holding-company coffers.

Among the evils of the holding-company management were: Pyramiding, attended with the issuance of highly speculative securities, enabling a few men to gain practical control of vast utility enterprises with a minimum of investment; the exaction of various kinds of excessive fees from controlled operating companies; inflation of capital structures accompanied by pressure to obtain earnings on inflated values at the expense of the rate-paying public; objectionable, misleading and nonrevealing accounting practices; maintaining fictitious prices on their stocks through manipulations of the market; retaining excessive funds collected from operating companies as purportedly required for Federal income taxes; and impressing their activities with an interstate character for the purpose of escaping and avoiding whatever state regulation existed or war attempted (See 69-A, p. 79.)

Financial and Accounting Practices.—The assets of large utility systems which were built up through acquisitions of independent operating companies, and their subsequent unification through consolidation and merger and related construction, reflected large amounts by which they were written up in value in one way or another in the process. Write-ups, improperly capitalized intangibles, and inflation in the fixed assets of all of the holding, subholding, and operating companies examined, were found to aggregate approximately $1,500,000,000 at the final dates of examination.

A large part of the write-ups reflected the capitalization of the additional earning power which was presumed and anticipated through the consolidation and merger of acquired independent operating companies by whatever economies might be effected and to any future economic growth in the community or territory served. Often, this reflected nothing more than the optimistic judgment of the promoters or the result of a so-called "horseback appraisal," i. e., a superficial inspection of the properties by their engineering staffs.

The merged or consolidated company was required to issue, directly or indirectly, its common stock or other securities to the controlling interests in exchange and consideration for the assets of the constituent companies at their increased values. The sale to the public of the nonvoting stocks and long-term debt so issued by the new company permitted those in control to reduce their investment, and in some instances to recover all of it, and in extreme cases more than all of it, and still to exercise the same degree of control over the properties through the retention of the new company's voting common stock which emanated from the write-up, and cost the controlling interests little or nothing.

In some instances utility operating companies employed appraisals and revaluations as a basis of writing up the values of capital assets. As contrasted with the more common forms of write-ups encountered as referred to above, the write-ups based on appraisal, which in many cases resulted from State regulatory commission orders in connection with rates and other matters, were credited, for the most part, to capital surplus or retirement reserve.

Numerous appraisals made of the properties in the Associated Gas & Electric Co. system resulted in appreciation of fixed assets of approximately $83,000,000. Those appraisals were made by E. J. Cheney, who was supposedly an independent appraisal engineer. It was developed that Cheney had been operating in the interest and under the control of H. C. Hopson, vice president of Associated Gas & Electric Company, and could not be considered as having an independent professional status. There were other similar cases.

Other forms of write-ups reflected the capitalization of large profits taken by holding companies in the performance of construction work for their operating subsidiaries, the capitalization of stock and bond discounts incurred in connection with security issues, and the appreciation of capital assets through failure to remove the value of property retired from service.

In a part of the subsidiaries of one large holding-company system which was in receivership, the accountants discovered that over $18,000,000 of worn-out and abandoned property was carried in the property account.

In connection with mergers and consolidations the investigation developed instances of reorganizations, of which it appeared that the principal purpose was to avoid the payment of Federal income taxes. These instances involved

United Gas Improvement Company, Associated Gas & Electric Company, certain Insull companies, Halsey, Stuart & Company, American Superpower Corporation, and the United Corporation. These companies entered into complicated usually intersystem transactions in securities involving large sums in which the payment of taxes on the profits were avoided.

Certain holding-company groups carried on a process of actively buying its own securities on the organized exchanges, while they were being sold to the public through other channels. During the 3 years and 9 months from April 21, 1927, to December 31, 1930, one holding-company group sold 41,388,512 shares of its common no-par stock to the public for $1,146,518,779.19. During the same period its purchasers of this stock on the exchanges amounted to 34,057,929 shares at an expenditure of $965,710,037.65. That is, in order to make a net issue of less than 5,650,000 shares this company effected sales more than 7 times as great and purchased simultaneously a volume nearly 6 times as great. Company purchases constituted a large proportion of the total transactions on the New York Curb Exchange, for example, from April through mid-October 1929 company purchases ranged from 54.6 to 99.6 percent of the total sales on the curb and averaged 72.9 percent for the 6½-month period. This buying demand furnished by the company and the general public, plus the influence of the speculative demand for utility stocks, led to an increase in the closing curb price from $28¾ per share on June 9, 1924, to $46½ July 19, to $52 September 2, and $68 on October 15, 1929. Then followed the crash.

Pyramiding of holding companies, subholding companies, sub-subholding companies upon the operating company was found to be carried to a very attenuated pinnacle. In one holding-company group there were 10 companies in 1 line of control from the top to the bottom of the pyramid. In the Insull system, in which all of the holding and subholding companies became bankrupt or went into receivership, there was a pyramid of 8 companies. Through the device of a pyramid of holding companies the controlling interests were able to control a vast chain of operating companies with a minimum of investment. For example in the Insull 8-tier pyramid $1 of investment by the Insulls controlled $2,000 in the West Florida Power Co. A common capital structure consisted of 50 percent of 5-percent bonds, 25 percent of nonvoting 6-percent preferred stock and 25 percent of common stock for the operating company, and 50 percent of nonvoting preferred stock and 50 percent of common stock for each holding and subholding company in the pyramid. In prosperous times, when the operating company made 8 percent on its total investment in a 6-company pyramid having no write-ups, the earnings available for the first holding company would be 25 percent on the common stock and on the apex company 295 percent, but earnings of 5 percent on the operating company's total investment would leave only 5 percent for its common stock, only 1 percent for the common stock of the first holding company and nothing for the 4 other holding companies in the pyramid.

The earning statements of a number of companies contained many fictitious items of income. For example, preparatory to its refinancing in 1929, Middle West Utilities Co., the principal Insull holding company, began paying dividends on its common stock in 1925. From 1922 to 1928, inclusive, Middle West annual reports showed $16,876,673 of income available for common-stock dividends. During the same period it included in its income $16,781,100 of fictitious income as profit on sales and exchanges of securities among companies in the Middle West system and from revaluations of securities and properties owned. Cash dividends amounting to $8,843,709 were paid from 1925 to 1928. It is evident, therefore, that, if amounts claimed as profit on sales, exchanges, and revaluations of securities and properties were illusory, there was little or no income available for dividends on common stock and such dividends were paid out of capital. Without this dividend record the company could not have sold common stock to the public.

The undistributed earnings of prosperous subsidiaries were often included in the earnings of holding companies, although such subsidiaries had not declared any dividends out of earnings nor set up any obligation on their books to pay anything to the holding company. This practice was wholly indefensible, both legally and as a matter of correct expression of business transactions, and resulted in misleading financial statements for individual companies in the holding-company system in that [illegible] was improperly duplicated in the accounts, being at one and the same time recorded in the books of the subsidiary and the holding company. The earnings so taken up by the hloding company were considered as valid assets but in some cases they were never realized due to receiverships.

The investigation disclosed that a substantial source of net income to many holding companies, either directly or indirectly, was the fees collected from affiliated operating companies for financial, management, and engineering services. In many cases, the actual services rendered under the service contracts were questionable and the fees collected were high and frequently extremely high in relation to cost. For example, the Associated Gas & Electric System, in a little more than 5 years, had a net income of over $6,500,000 for management and construction service alone, or 193 percent net profit on service cost and, in addition, had servicing income on merchandising, purchasing, and other services. Byllesby Engineering & Management Corporation, servicing the Standard Gas & Electric group, had a total net income, for a period of 11 years, of over $17,000,000 derived almost wholly from servicing. Nearly all of this amount was distributed in dividends to its one stockholder, Standard Gas & Electric Company.

In Senate Document 213 (69th Cong., 2d sess.), which is a report by the Federal Trade Commission on Control of Power Companies, the Commission reported on page 75 as follows:

"The Electric Bond & Share Co. states that the general service fee just about covers the cost of the service."

Referring to engineering:

"The fee, the company asserted, consists of the total of the costs thus recorded."

As to construction:

"The company states that the fees just about cover the expense of the construction companies."

It summarized the matter as follows:

"From the foregoing account it will be seen that the Electric Bond and Share Co. regards this service staff as an auxiliary organization that does not directly produce for the company more than a nominal profit."

However, following court action and two decisions to overcome refusal of the company to give access to its records in the utility investigation, the examination disclosed that the profits were far from merely nominal. In most instances they ran over 100 percent—in one instance 269 percent— and they aggregated millions. These profits were after most liberal salaries had been allowed as the major items of expense (Ex. 5602, pt. 62:330–332–34).

During a period of 5 years, Columbia Engineering & Management Corporation collected fees from the affiliated Columbia Gas & Electric group for engineering and management services, amounting to nearly $15,500,000, on which it incurred expenses of slightly over $7,500,000, realizing a net profit on cost of servicing of 106 percent.

W. S. Barstow & Company, Inc., and its subsidiary, W. S. Barstow Management Association, both servicing organizations for affiliated companies, had a combined net income for a period of 3 years and 9 months of $4,400,000, or 321 percent on expenses. Of this total net income, $2,122,000 was distributed to 15 officers and employees as so-called "extra compensation," and in addition, 1 of the 15 received $650,000 under an income-sharing contract, the latter individual receiving almost one-fourth of the total net income under these 2 forms of extra distribution.

Service fees were collected from operating subsidiaries for many services such as accounting, advertising, engineering and construction, legal, merchandising, financing, purchasing, and general management.

It is generally conceded that this inquiry contributed materially to the passage of the Securities Act of 1933, the Securities and Exchange Act of 1934, the Holding Company Act, and the Federal Power Act of 1935, and the Natural Gas Act of 1938; and also that, as a result of the disclosure of exorbitant rate bases and rates, the whole utility rate structure was permanently lowered to the extent of many millions of dollars per annum

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Natural-Gas-Producing, Pipe-Line, and Utility Industries.—On December 31, 1935, the Commission submitted to the Senate its final report covering economic, corporate, operating, and financial phases of the natural-gas-producing, pipe-line, and utility industries, with conclusions and recommendations. It consisted of 617 printed pages and was published as Senate Document No. 92 (pt. 84–A;

70th Cong., 1st sess.). A copy of the report is attached hereto as Exhibit F. T. C. 205-E.

The report dealt with a number of evils that had been found in the natural-gas and natural-gas pipe-line industry, the correction or prevention of which would, in many instances, require extension of regulatory authority over the industry. Among these were:

(1) A great waste of natural gas in production.
(2) Excessive cost of natural-gas production through extravagant competition in drilling wells.
(3) Unregulated monopolistic control of certain natural-gas production areas.
(4) Unregulated control of pipe-line transmission and of wholesale distribution.
(5) Discrimination in some instances in field purchases of natural gas, and refusals to purchase from independent producers.
(6) Unregulated competition in building natural-gas pipe lines to markets.
(7) Costly struggles between rival natural-gas interests to conquer or defend territories of distribution.
(8) Excessive and inequitable variations in city gas rates for natural gas among different localities.
(9) Pyramiding investments in natural-gas enterprises through holding companies, with attendant evils.
(10) Excessive profits in many natural-gas sales between affiliated companies.
(11) Inflation of assets and stock watering of certain natural-gas companies.
(12) Misrepresentation of financial condition, investment, earnings, etc., of some natural-gas operating and holding companies.
(13) Reckless financing and stock manipulation by certain natural-gas holding companies.
(14) Exploiting subsidiary natural-gas companies through fees for construction, management, promotion, etc.
(15) Exaction of excessive bonuses or commissions py investment bankers in connection with financial transactions with natural-gas companies in certain instances.
(16) Exaction of excessive fees and bonuses or commissions by officials of certain companies in connection with sales and construction of properties.

In order to correct these existing evils, the Commission, in 1935, among other recommendations, suggested (1) measures for real conservation and use, including equitable ratable taking, or otherwise protecting all interests in a common reservoir. But such laws must be carefully drafted so as not to result merely in the lengthening and strengthening of the hold of the larger and dominant interests, and the detriment and elimination of the very numerous smaller projects. The Commission specifically warned against the danger that laws enacted in the name of conservation might prove to be the means of lengthening and strengthening the control of the dominant companies and groups, and for that reason divorcement of certain functions within companies and groups in each industry deserves serious consideration as affording a most likely effective remedy; (2) that a Federal regulatory law be enacted applicable to interstate natural gas pipe lines which transport gas for ultimate sale to and use by the public, regulating rates for carriage or city gate rates at the end of such transportation; also regulating security issues, accounts, beginning and abandonment of operations, and intercorporate relations of companies owning or controlling gas pipe lines; retail rates for gas transported and delivered in interstate commerce to be federally regulated only where they are not regulated by the State in which the gas is distributed to the public; (3) that a Federal agency be empowered, insofar as may be lawfully done, to order all reasonable extensions of service to communities desiring natural gas which can be supplied by companies which transport gas for public consumption, without undue disturbance of existing service requirements; (4) that there be a divorcement of gas and electrical utilities because of the fact that they are increasingly competitive, and in many communities are the two chief sources of power and light, and further because three of the four dominant interests in natural gas and gas pipe lines also are in the electrical-utility field; and (5) that Federal and State legislation be adopted which shall restrict banks to investment in, and shall forbid their control and management of, utilities.

In substance, numbers (2) (3) were incorporated in the Natural Gas Act of 1938.

Federal Incorporation or Licensing of Corporations.—In conjunction with its investigation of utility Corporations, the Commission caused a compilation to be made of proposals and views for and against Federal incorporation or licensing of corporations. This report was divided into two major parts, one covering the period prior to the enactment of the Federal Trade Commission Act and the Clayton Act in 1914 and the other including the material subsequent to that date. The topics covered included official and personal expressions and views, proposed legislation, party platforms, viewpoints with regard to constitutional amendments, and the attitude of the press. In this same volume a compilation was also made of State constitutional, statutory, and case law concerning corporations, with particular attention to public-utility holding and operating companies. These several studies were transmitted to the Senate on September 21, 1934, and were printed as Senate Document No. 92 (pt. 69–A). A copy of same, consisting of 618 printed pages, is transmitted herewith as Exhibit F. T. C. 205–F.

Part 84–D is a comprehensive general index of parts 21 to 84–C, inclusive. Parts 71–B and 81–A (pp. 259–570) are indexes to the propaganda.

In closing, it seems proper to remind the Committee that not all of the groups and companies either in the electric or gas and gas-pipe-line industries were examined. The funds, personnel, and time allotted did not permit. Nor is it claimed that all unsound issues were discovered and reported. Therefore, the aggregates are to that extent less than the actual totals for the entire industries. As to some of those that were examined, complete records could not be obtained so that full disclosure has not been made. In at least one instance desired books and records were said to be in Canada.

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PART I

Companies

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PART II–A

For material contained in Part III, see Table of Contents.

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