

ANNUAL REPORT  
OF THE  
FEDERAL  
TRADE COMMISSION  
FOR THE  
FISCAL YEAR ENDED JUNE 30  
1934

UNITED STATES  
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## FEDERAL TRADE COMMISSION

GARLAND S. FERGUSON, Jr., *Chairman* <sup>1</sup>  
 EWIN L. DAVIS, *Vice Chairman*  
 CHARLES H. MARCH  
 WILLIAM A. AYRES  
 OTIS B. JOHNSON, *Secretary*

<sup>1</sup> Chairmanship rotates annually. Commissioner Davis will become chairman in January 1935.

### FEDERAL TRADE COMMISSIONERS--1915-34

Name	State from which appointed	Period of service
Joseph E. Davies	Wisconsin	Mar.16, 1915-Mar. 18, 1918.
William J. Harris	Georgia	Mar.16, 1915-May 31, 1918.
Edward N. Hurley	Illinois	Mar.16, 1915-Jan. 31, 1917.
Will H. Parry	Washington	Mar.16, 1915-A p r. 21, 1917.
George Rublee	New Hampshire	Mar.16, 1915-May 14, 1916.
William B. Colver	Minnesota	Mar.16, 1917-Sept. 25, 1920.
John Franklin Fort	New Jersey	Mar. 16, 1917-Nov. 30,1919.
Victor Murdock	Kansas	Sept. 4, 1917-Jan. 31, 1924.
Huston Thompson	Colorado	Jan. 17, 1919-Sept. 25, 1926.
Nelson B. Gaskill	New Jersey	Feb. 1. 1921-Feb. 24, 1925.
John Garland Pollard	Virginia	Mar. 6, 1920-Sept. 25, 1921.
John F. Nugent	Idaho	Jan.15, 1921-Sept. 25, 1927.
Vernon W. Van Fleet	Indiana	June 26, 1922-July 31, 1926.
Charles W. Hunt	Iowa	June 16, 1924-Sept. 25,1932.
William E. Humphrey	Washington	Feb.25, 1925-Oct. 7, 1933.
Abram F. Myers	Iowa	Aug. 2, 1925-Jan. 15, 1929.
Edgar A. McCulloch	Arkansas	Feb.11, 1927-Jan. 23, 1933.
Garland S. Ferguson, Jr.	North Carolina	Nov.14, 1927,
Charles H. March	Minnesota	Feb. 1, 1929.
Ewin L. Davis	Tennessee	May 26,1933.
Raymond B. Stevens	New Hampshire	June 26, 1933-Sept. 25, 1933.
James M. Landis	Massachusetts	Oct.10, 1933-June 30, 1934.
George C. Mathews	Wisconsin	Oct.27, 1933-June 30,1934.
William A. Ayres	Kansas	Aug. 23,1934.

### EXECUTIVE OFFICES OF THE COMMISSION

2001 Constitution Avenue NW.  
 Washington

### BRANCH OFFICES

45 Broadway New York	544 Market Street San Francisco
608 South Dearborn Street Chicago	801 Federal Building Seattle

### TEMPORARY BRANCH OFFICES

80 Federal Street Boston	5 Post Office Building Memphis
422 Post Office Building Atlanta	208 Federal Building Minneapolis
117 Custom House Building New Orleans	526 Post Office Building Kansas City, Mo.
460 Federal Building Dallas	

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## **INTRODUCTION**

POWERS AND DUTIES OF THE COMMISSION

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**ANNUAL REPORT**  
**OF THE**  
**FEDERAL TRADE COMMISSION**  
**INTRODUCTION**  
**POWERS AND DUTIES OF THE COMMISSION**

The Federal Trade Commission herewith submits its report for the fiscal year 1933-34. Organized March 16, 1915, under its organic act, approved September 26, 1914, the Federal Trade Commission is both a quasi-judicial and administrative body whose chief are (1) to prevent unfair practices in interstate commerce, (2) to make investigations at the request of either branch of Congress, the President, the Attorney General, or upon its own initiative, and (3) to report facts in regard to alleged violations of the antitrust laws.

Under the Federal Trade Commission Act,<sup>1</sup> the duties of the Commission are divided into two broad classes, legal and economic.

Legal activities have largely to do with the prevention and correction of unfair methods of competition in accordance with section 5 of the organic act, in which it is declared that "unfair methods of competition in commerce are hereby declared unlawful."

The economic work of the Commission arises chiefly under section 6 (a) of the organic act giving the Commission power "to gather and compile information concerning, and to investigate, from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers, \* \* \* and its relation to other corporations and to individuals, associations, and partnerships."

Besides its organic act, the Commission enforces sections 2, 3, 7, and 8 of the Clayton Act, dealing, respectively, with unlawful price discriminations, so-called "tying" contracts, stock acquisitions which lessen competition or tend to create a monopoly, and interlocking directorates.

<sup>1</sup> Copies of the Federal Trade Commission Act, National Industrial Recovery Act, Sherman Act, Clayton Act, and Export Trade Act may be obtained on application to the Federal Trade Commission or Government Printing Office, Washington.

The Commission also administers the Webb-Pomerene law, or Export Trade Act. This act is intended to promote export trade and exempts associations of American exporters engaged solely in export trade from the provisions of the antitrust laws. Also under section 6 (h) of the Federal Trade Commission Act, the Commission has power--

to investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

More recently, the Commission has had additional duties arising from the passage of the National Industrial Recovery Act, approved June 16, 1933, and during the fiscal year for which this report is made, the Commission was also charged with the administration of the Securities Act of 1933, approved May 27, 1933. By the provisions of the act known as the Securities Exchange Act of 1934, approved June 6, 1934, administration of the Securities Act of 1933 was transferred to the jurisdiction of the Securities and Exchange Commission, this transfer occurring on September 1, 1934.

The work of the Federal Trade Commission has been substantially increased by reason of the passage of the National Industrial Recovery Act, section 3 (b) of which act provides that violations of codes set up as standards of fair competition by the National Recovery Administration shall be deemed unfair methods of competition within the meaning of the Federal Trade Commission Act.

### **WORK UNDER NATIONAL INDUSTRIAL RECOVERY ACT**

Under section 3 (b) of the National Industrial Recovery Act, the Commission, in the event the provisions of a code are violated, may proceed in the same manner as with regard to violations of section 5 of the Federal Trade Commission Act. In order to avoid duplication of effort and overlapping of work, the Federal Trade Commission and the National Recovery Administration have cooperated in handling complaints of this nature. As a rule, the Commission does not proceed with formal action until it has first consulted with the N.R.A., and an effort made through that organization to obtain compliance.

Section 6 (c) of the National Industrial Recovery Act provides that the Federal Trade Commission, upon request of the President, shall make such investigations as may be necessary to enable the President to enforce the provisions of the act. Pursuant to this section, the National Recovery Administration referred 100 cases to the Federal Trade Commission for investigation during the last fiscal

year. Seventy-six of these cases have been completed and returned to N.R.A. These investigations have ranged from a simple matter of ascertaining the facts relative to an alleged violation of the labor provisions of a code by a single company to a general survey covering several States made for the purpose of ascertaining the effect of the operation of a code on a large group of producers in a given industry.

Results of investigations of this kind are usually reported to the N.R.A. so that it may be fully informed before determining the type of procedure appropriate to each case. In connection with matters requiring immediate action, the Commission cooperates with the local United States district attorneys and assists them in procuring the evidence necessary for the presentation of cases. In some instances the files are returned by the N.R.A. to the Commission for disposition in accordance with its regular procedure, i.e., by complaint and order to cease and desist or by stipulation. Complaints issued by the Commission on relation of the N.R.A. are reported at page 50.

An Executive order of January 20, 1934, provided that when a complaint is filed alleging practices permitting or promoting monopolies or which are discriminatory to small enterprises, and the complainant is dissatisfied with the disposition made of such complaint by the Federal agency involved, excepting the Department of Justice, the complainant may request the transfer of his complaint to the jurisdiction of the Federal Trade Commission. Cases of this nature are handled in the same manner as complaints filed with the Commission under section 5 of the Federal Trade Commission Act.

Full text of the Executive order of January 20, 1934, is as follows:

#### **EXECUTIVE ORDER OF JANUARY 20, 1934**

In order to effectuate the policy of title I of the National Industrial Recovery Act, approved June 16, 1933, I, Franklin D Roosevelt, President of the United States, pursuant to the authority thereby vested in me and in accordance with the provisions of said act and the provisions of an act to create a Federal Trade Commission approved September 26, 1914, do hereby direct that--

"1. Whenever any complainant shall be dissatisfied with the disposition by any Federal agency, except the Department of Justice, of any complaint charging that any person, partnership, corporation, or other association, or form of enterprise, is engaged in any monopolistic practice, or practice permitting or promoting a monopoly, or tending to eliminate, oppress, or discriminate against small enterprises, which is allegedly in violation of the provisions of any code of fair competition approved under the National Industrial Recovery Act, or allegedly sanctioned by the provisions of such code but allegedly in violation of section 3 (a) of said National Industrial Recovery Act, such complaint shall be transferred to the Federal Trade Commission by such agency upon request of the complainant.

"2. The Federal Trade Commission may, in accordance with the provisions of the National Industrial Recovery Act and the provisions of an act to create a Federal Trade Commission, approved September 26, 1914, upon the receipt of any



such complaint transmitted to it, institute a proceeding against such persons, partnerships, corporations, or other associations or form of enterprise as it may have reason to believe are engaged in the practices aforesaid, whenever it shall appear to the Federal Trade Commission that a proceeding by it in respect thereof would be to the Interest of the public: Provided, That if in any case the Federal Trade Commission shall determine that any such practice is not contrary to the provisions of section 5 of the Federal Trade Commission Act or of sections 2, 3, or 7 of the act of October 15, 1914, commonly called the Clayton Act, it shall instead of instituting such proceeding, transfer the complaint, With the evidence and other information pertaining to the matter, to the Department of Justice.

3. The power herein conferred upon the Federal Trade Commission shall not be construed as being in derogation of any of the powers of said Commission under existing law.”

FRANKLIN D ROOSEVELT.

THE WHITE HOUSE,

*January 20, 1934.*

Facilitation of the handling of matters submitted to the Commission by the National Recovery Administration, as well as the Commission 's regular legal investigation of complaints, has been afforded by the establishment of temporary regional offices in Boston, Atlanta, New Orleans, Memphis, Minneapolis, Kansas City, and Dallas. These are in addition to the Commission's permanent branch offices in New York, Chicago, San Francisco, and Seattle. Business men may confer at these offices with representatives of the Commission regarding cases in which they are interested and about rulings made by the Commission.

### GENERAL LEGAL ACTIVITIES

Under authority of the Federal Trade Commission Act and other acts, the Commission, during the fiscal year, continued to direct its efforts toward the correction and elimination of unfair methods of competition and other unlawful practices.<sup>2</sup> It conducted several trade-practice conferences, approving, accepting, and promulgating the trade-practice conference rules adopted by a number of industries, and made preliminary investigations in 1,869 individual cases initiated under the acts which it administers. During the year there was an increase of 558 in the number of complaints of unfair practices received from the public and other sources, as compared with the last preceding year. The Commission disposed of 1,597 cases for the reason that they were found to be private controversies lacking public interest, that the practices complained of had been discontinued, that the firms or persons complained against had gone out of business, or for lack of jurisdiction, etc. The remaining 272 cases were docketed as applications for formal complaints. It settled by stipulation a

<sup>2</sup> Typical methods of competition condemned by the commission as unfair are described on p.69.

total of 272 cases, of which 157 were of a special class in which false and misleading advertising was the principal practice involved.

The stipulation procedure is usually employed in cases where the methods of competition complained of are not so fraudulent or vicious that protection of the public interest demands the procedure of a formal complaint and issuance of a cease and desist order. The stipulation procedure provides an opportunity for the respondent to enter into a stipulation of the facts and voluntarily agree to cease and desist from the alleged unfair methods set forth therein.

During the fiscal year the Commission issued 97 complaints against companies and individuals, charging various forms of unfair competition or other practices alleged to be not in the public interest while in 111 cases it served upon respondents its orders to cease and desist from unfair practices which had been alleged in complaints and found to have been carried on by respondents. Representative cases are described at pages 54 and 64.

In the group of Commission cases taken to the United States Circuit Court of Appeals during the fiscal year, decisions were handed down in three, all of which sustained the Commission in its orders to cease and desist. In the United States Supreme Court the Commission was upheld in two cases, while in a third it was reversed by a majority of the court, four justices dissenting.

Under the Webb-Pomerene law, or Export Trade Act, administered by the Commission to promote export trade, there were exempted from the provisions of the antitrust laws a number of American associations engaged solely in export trade. Besides this act and other acts heretofore mentioned, the Commission also administers sections 2, 3, 7, and 8 of the Clayton Act dealing, respectively, with unlawful price discriminations, so-called "tying" contracts, stock acquisitions which lessen competition or tend to create monopoly, and interlocking directorates.

*Radio advertising practices studied.*--For many years an important part of the Commission's work, under the Federal Trade Commission Act, has been the investigation and correction of the publication in newspapers and periodicals of false and misleading advertising as an unfair method of competition in interstate commerce. Reference to this work during the last year is made in some detail elsewhere in this report. So rapid has been the development of radio advertising that the Commission has taken steps to subject radio advertising to the same close scrutiny that has been given to printed advertising for many years. In May 1934, the Commission announced a plan it had evolved to place radio advertising on a parity with that carried in newspapers and periodicals. The results are already most gratifying, as will be indicated by reading a more de-tailed report on this subject made elsewhere in this volume. It

should be said here, however, that in its effort to bring radio advertising within the bounds of honesty and fairness, the Commission has had the effective cooperation of a great majority of the broadcasting networks, radio stations, and the advertisers and advertising agents as well.

*Report on antidumping legislation here and abroad.*--The Commission, through its export-trade section, prepared and presented to the Senate a report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries, which was printed as Senate Document 112 in January 1934. The report was the result of an inquiry begun in 1933 when certain amendments to the Federal antidumping laws were being considered.

### CHANGES IN POLICY AND RULES

The Commission changed its public-information policy during the year by directing that stipulated cases on its informal docket shall be altogether for the public record, instead of making public only the pertinent facts and withholding the names of the parties to such stipulated agreements.

Recently the Commission amended its rules of practice and procedure to speed the disposition of its cases. The changes include the following:

Hearings on complaints issued by the Commission to be fixed within 30 days instead of 40 days following service of complaint on respondent.

Respondents to make answer to charges set out in complaints within 20 instead of 30 days.

Subsequent to the taking of testimony on a complaint, trial examiners to report to the Commission on the facts in 15 instead of 20 days after they receive the stenographic report of the testimony.

Tentative draft of contentions by either side, when invited or permitted by the trial examiner under the rule, in a case pending before the Commission, to be submitted in 5 instead of 10 days following the closing of the taking of testimony.

Commission counsel to file briefs in a case within 20 instead of 30 days from the day of service on the chief counsel or trial attorney of the trial examiner's report; respondent's counsel to file answering brief within 20 instead of 30 days after the date of service upon a respondent or his attorney of the brief filed by Commission counsel.

Commission's meeting time advanced from 10:30 a.m. to 10 a.m. on business days.

### GENERAL INVESTIGATIONS

The Federal Trade Commission Act, under section 6 (a), gives the Commission power "to gather and compile information con-

cerning, and to investigate from time to time, the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers \* \* \* and its relation to other corporations and to individuals, associations, and partnerships.”

In pursuance of section 6, the Commission conducts general investigations at the request of the President, Congress, the Attorney General, or upon its own initiative, and makes reports in aid of legislation and in regard to alleged violation of the antitrust laws. Approximately 80 such inquiries have been conducted during the Commission's existence.

During the fiscal year 1933-34 the Commission undertook four new general investigations, on corporation salaries, the steel code, prices in the gasoline industry, and the milk industry. Three of these inquiries were completed, namely, salaries, the steel code, and gasoline prices. Work is continuing on the milk investigation and on two other inquiries previously undertaken, namely, power and gas utilities and price bases. The chain-store investigation has been completed, and the report is being written.

These investigations and the status of each are described as follows:

*Power and gas utilities.*--Public hearings were held during the year hearings were held during the following groups: Associated Gas & Electric Co., Central Public Service Corporation, Cities Service Co., Electric Bond & Share Co., Insull group, Natural Gas Pipeline Co. of America, Niagara Hudson Power Corporation, Stone & Webster, the United Corporation, and the United Gas Improvement Co. Field examination of various companies was continued, and a study of important natural-gas pipe-line industries undertaken. It is the purpose to stress this phase of the inquiry during the next year. The inquiry, from its beginning down to June 30, 1934, covers companies having total assets of \$9,930,000,000, according to company books. However, the Commission will submit to the Senate at its session beginning in January 1935 its report on this investigation, to be followed a year later by a supplementary report for the period for which the investigation is to be extended under authority of a resolution passed during the second session of the Seventy-third Congress. By action of the President and Congress it was directed that the investigation be continued and the Commission's final report to Congress be submitted not later than the first Monday in January 1936.

*Salaries inquiry.*--Report on this investigation was transmitted to the Senate February 26, 1934, in 14 volumes, detailing information as to salaries and other compensation received by officials of

corporations having capital and/or assets of more than \$1,000,000 and listed on the New York Stock or Curb Exchanges, for the 5-year period, 1928-32.

*Steel code inquiry.*--The Commission transmitted its report on this investigation to the Senate March 19, 1934, in response to a Senate resolution adopted February 2, 1934, requesting investigation of "the practice of the steel industry under the code with reference to price fixing, the increase of price of steel products, and such other matters as would give a full presentation of facts touching the industry since it went under the N.R.A. code."

*Gasoline prices.*--Report covering this investigation was submitted to the Senate May 9, 1934, showing the trend of prices for regular grade gasoline from July 1, 1933, to January 31, 1934, in 272 cities and towns throughout the United States.

*Chain-store inquiry.*--Factual studies have been completed and published in 33 volumes. The final report is being written.

*Price bases inquiry.*--This investigation is expected to show the various methods of differentiating prices with respect to location, including shipping-point, delivery-point, single and multiple basing-point and zoning methods, and to ascertain their effect, if any, upon prices and competitive conditions.

*Milk investigation.*--This inquiry is to determine what are the conditions with respect to the sale and distribution of milk and other dairy products, and among other things, whether any person, partnership, association, cooperative, or corporation is operating within any milkshed of the United States in such manner as to substantially lessen competition or tend to create a monopoly \* \* \*

## COOPERATION WITH GOVERNMENT DEPARTMENTS

Numerous economic and accounting experts and members of the legal staff of the Federal Trade Commission have been engaged from time to time during the year in serving other departments or governmental bodies, including the National Recovery Administration, the Agricultural Adjustment Administration, the Public Works Administration, the Tennessee Valley Authority, and others.

*National Recovery Administration.*--At the request of the National Recovery Administration, the senior assistant chief economist of the Commission and the chief statistician were assigned to cooperate in the study of various problems, and devoted a considerable part of their time during the year to this work. The assistant chief economist was assigned to the Consumers' Advisory Board and, in addition to other duties, acted as a representative of that board on a committee to advise the deputy assistant administrator in matters of policy. The chief statistician, as an expert in matters of prices and methods of price control, gave practically all of his time for sev-

eral months to this work, particularly the study of proposed codes of conduct for various specific industries. About 90 codes were thus analyzed in preparation for the informal conferences, public hearings, and final reports of the Consumers' Advisory Board to the Administrator of the National Recovery Administration. Among such codes may be mentioned especially: Steel, railway car, wholesale plumbing, cement, aluminum, asphalt the, laundries, agricultural implements, concrete, cordage, anthracite coal, sewer pipe, and boilers.

The Commission's director of trade-practice conferences has submitted comments or suggestions regarding proposed codes, both at the request of the N.R.A. and by direction of the Commission, and has participated in several conferences relating to codes. Commission attorneys familiar with its trade-practice conference work have examined more than 300 codes. Two attorneys from the trade-practice conference division have been assigned to do special work for the Consumers' Advisory Board.

Various other members of the Commission's staff were also detailed to assist the National Recovery Administration from time to time in matters affecting policy or the analysis of special economic or accounting problems.

*Agricultural Adjustment Administration.*--At the request of consumers' counsel of the Agricultural Adjustment Administration, a member of the staff of the economic division was assigned to consumers' counsel to assist in the consideration of certain codes of fair competition and marketing agreements. The work involved analysis of the proposed codes and agreements, and representing consumers' counsel at preliminary conferences and formal hearings. Among the codes thus handled were those for grain exchanges, wheat flour millers, livestock handlers, feed manufacturers, master fisheries, maltsters, and the burley tobacco marketing agreement. At the close of the fiscal year, several other codes were being analyzed in preparation for formal hearings.

*Public Works Administration.*--At the request of the Secretary of the Interior, in his capacity as Public Works Administrator, an engineering expert of the Commission was assigned to assist in a critical study of certain power projects in the Mississippi Valley region.

*Tennessee Valley Authority.*--At the direction of the President, but in behalf of the Tennessee Valley Authority, accountants of the Commission made an examination of the books of the Tennessee Public Service Co., particularly with respect to capital assets and liabilities.

It may be noted here that a special study of the Wilson Dam power plant and its prospective relations with public utility com-

panies in that vicinity was made by an engineering expert of the Commission prior to the organization of the Tennessee Valley Authority, in connection with an inquiry into the situation ordered by the President.

### SECURITIES ACT OF 1933

During the year and few days between the passage of the Securities Act of 1933 and the Securities Exchange Act of 1934, the Federal Trade Commission organized and developed into an efficiently functioning unit a division for the administration of the Securities Act. When the new Securities and Exchange Commission took over from this Commission the duty of enforcing the Securities Act, it acquired the Commission's staff of experts in that division and adopted its procedure and administrative machinery, as well as the rules and precedents developed as a result of more than a year's experience.

Just prior to the beginning of the last fiscal year, the Federal Trade Commission was assigned the task of administering the Securities Act of 1933, approved May 27, 1933. The first registration statements filed under the act were received July 7, 1933, and the first statement became effective on July 27, 1933. From the former date until the transfer of administration of the Securities Act to the new commission, September 1, 1934, the Federal Trade Commission received and examined 1,095 detailed statements filed as information by issuers of proposed securities for registration under the act. Up to September 1, 1934, the Commission had permitted 794 statements, representing a total of \$1,164,135,599.58 in securities of various kinds, to become effective.

Of the 794 registration statements becoming effective, 341 issues, amounting to \$297,928,585.88, were for industrial or commercial purposes; 202 issues valued at \$679,243,526.07 were for financial companies; while 251, amounting to \$186,963,487.63, were reorganization issues. Up to September 1, 1934, the registrants of these issues paid into the treasury \$141,853.21 in registration fees.

Disposition of the work on hand at the time the Commission relinquished its work under the Securities Act is shown as follows:

Statements filed for registration, July 7, 1933, to Sept. 1, 1934	1,095
Statements effective Sept. 1, 1934	794
Statements withdrawn Sept. 1, 1934	154
Statements still under examination Sept. 1, 1934	98
Statements under stop order, refusal order, and consent refusal order	49
	1,095
Cases instituted by the Commission in Federal courts	5

The Securities Exchange Act of 1934 was approved June 6, 1934. Amendments to the Securities Act, which were incorporated as title II of the Securities Exchange Act, provided that "upon the expiration of 60 days after the date upon which a majority of the members of the Securities and Exchange Commission \* \* \* shall have qualified and taken office, all powers, duties, and functions of the Federal Trade Commission under the Securities Act of 1933 shall be transferred to such commission, together with all property, books, records, and unexpended balances of appropriations used by or available to the Federal Trade Commission for carrying out its functions. under the Securities Act of 1933. \* \* \*"

The Federal Trade Commission gave every assistance possible to the new commission in organizing its personnel and getting started with its work. Three of the five members of the new commission were appointed by the President from the membership of the Federal Trade Commission and its staff, while a number of the regular personnel of the Federal Trade Commission were detailed temporarily to the new commission to assist in its formation and operation. As of September 1, 1934, 115 persons engaged on securities work were transferred to the Securities and Exchange Commission.

A detailed statement of the Commission's work under the Securities Act of 1933 may be found beginning at page 37 of this report.

### **HOW THE COMMISSION WORK IS HANDLED**

The work of the Federal Trade Commission may be divided broadly into the following general divisions: Legal, investigational, and administrative.

The legal division has charge of legal investigations and proceedings against respondents charged with unfair methods of competition as forbidden by the Federal Trade Commission Act and with other practices condemned by the Clayton Act, and with the trial of cases before the Commission and in the courts. This division also has certain duties under the National Industrial Recovery Act. The work is carried on under the direction of the chief counsel, chief examiner, and chief trial examiner. The chief counsel is legal adviser to the Commission. There are also the division of trade-practice conferences, the special board of investigation for cases of false and misleading advertising, and the foreign-trade work under the Webb-Pomerene Act. Members of the trial examiners' division. are appointed to preside at the trial of formal complaints and to sit as special masters in the taking of testimony in investigations conducted by Executive direction, pursuant to congressional resolutions,. upon the Commission's own initiative, or at the request of the



Attorney General of the United States. They also arrange settlement by stipulation of applications for complaint, which method is employed particularly in cases where the practice complained of is not so fraudulent or vicious that protection of the public demands the more drastic procedure of complaint.

The economic division, under the chief economist, conducts certain of the general inquiries of the Commission. This division is conducting that part of the power inquiry which deals with the financial structure, organization, and management of the utilities, although the chief counsel's division has charge of the examination in public hearings. The legal division has cooperated with the economic division in studying legal aspects of the chain-store survey.

Investigation of the milk industry and of the activities of the steel industry under the N.R.A. code have been carried on through cooperation of the chief examiner's and the economic divisions. The chief examiner's and the chief counsel's divisions have cooperated in cases involving provisions of the National Industrial Recovery Act which have been referred to the Federal Trade Commission.

Responsible directly to the assistant secretary of the Commission, the administrative division conducts the business affairs of the Commission and is made up of units usually found in Government establishments, the functions of such units being covered largely by general statutes. These units are as follows: Accounts and personnel, disbursing office, docket section, publications, mails and files, supplies, stenographic, hospital, and library.

### **THE COMMISSIONERS AND THEIR DUTIES**

The Federal Trade Commission, one of the Government's independent agencies, is made up of five Commissioners appointed by the President and confirmed by the Senate. Not more than three of the members may belong to the same political party.

The term of office of a Commissioner is 7 years, as provided in the Federal Trade Commission Act. The term of a Commissioner dates from the 26th of September preceding the time of his appointment, September 26 marking the anniversary of the passage of the act in 1914.

At the close of the fiscal year the Commission was composed of the following members: Garland S. Ferguson, Jr., of North Carolina, chairman; Ewin L. Davis, of Tennessee, vice chairman; and Charles H. March, of Minnesota. On that date, June 30, 1934, two members of the Commission, James M. Landis and George C. Mathews, and the Commission's chief counsel, Robert E Healy, were

appointed by President Roosevelt as members of the newly created Securities and Exchange Commission. The President then appointed former Representative W. A. Ayres, of Wichita, Kans., to succeed Mr. Landis as a member of the Federal Trade Commission. The vacancy caused by Mr. Mathews' resignation has not been filled. Mr. Landis, a resident of Cambridge, Mass., had been appointed a Federal Trade Commissioner October 7, 1933, succeeding Commissioner Raymond B. Stevens. On the same day the President declared vacant the position formerly held by the late Commissioner William E. Humphrey, and appointed Mr. Mathews, of Madison, Wis., to his place.

Commissioner Ferguson was chosen by the Commission as its chairman for the calendar year 1934, succeeding Commissioner March. Each January, a member of the Commission is designated to serve as chairman for that calendar year. The position rotates so that each commissioner serves as chairman at least 1 year during his term of office. The chairman presides at meetings of the Commission and signs the more important official papers and reports at the direction of the Commission.

Official activities of the commissioners are generally similar in character, although each assumes supervisory charge of a different division of the Commission's work. One commissioner may be charged with supervision of the economic division, another the legal division and so on, but every case that is to come before the Commission is first examined by a commissioner and then reported on to the Commission. All matters under the jurisdiction of the Commission are acted upon by the Commission as a whole.

The Commission meets regularly for transaction of business on Mondays, Wednesdays, and Fridays at the Commission's offices in Washington and very frequently on adjournment or call of the chairman. The commissioners hear final arguments in cases before the Commission as well as arguments on motions of counsel for the Commission or respondents. Besides these duties and their conferences with persons discussing official business, the commissioners have a large amount of reading and study in connection with the numerous matters before them for decision.

The commissioners preside individually at trade-practice conferences held for industries in various parts of the country, and also have numerous administrative duties incident to their positions.

The secretary of the Commission is its executive officer.

At the close of the fiscal year, the Commission had a total personnel of 584, including commissioners. Of this number, 83 were engaged on securities work.

### **PUBLICATIONS OF THE COMMISSION**

Publications of the Commission, reflecting the character and scope of its work, vary in content and treatment from year to year, especially documents relating to general business and industrial inquiries. Such studies are illustrated by appropriate charts, tables, and statistics. They deal not only with current developments in an industry, but contain scientific and historical background that is usually of value not only to members of the industry concerned, but to students and writers. Many of these reports have been designated for reading in connection with university and college courses in economics and law.

Findings and orders of the Commission, as published, contain interesting material regarding business and industry. They tell, case by case, the story of unfair competition in interstate commerce and of measures taken by the Commission to correct and eliminate such practices.

The Commission's decisions are printed first in the form of advance sheets with permanent volume number and pagination, and later as bound volumes.

Regarding the Commission's publications, the Federal Trade Commission Act, section 6 (f), says the Commission shall have power--

To make public from time to time such portions of the information obtained by it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

## **PART I. GENERAL INVESTIGATIONS**

POWER AND GAS UTILITIES

SALARIES

STEEL CODE

GASOLINE PRICES

CHAIN STORES

PRICE BASES

MILK

## **PART I. GENERAL INVESTIGATIONS**

### **POWER AND GAS UTILITIES**

#### **SCOPE OF INQUIRY AND COMPANIES EXAMINED**

Pursuant to Senate Resolution 83, Seventieth Congress, first session, and section 6 of the Federal Trade Commission Act,<sup>1</sup> the Commission continued its investigation of large utility holding companies, subholding companies, management, construction, and finance companies and typical operating companies. Toward the close of the second session of the Seventy-third Congress, both branches of the Congress passed a joint resolution extending the inquiry to the first Monday in January 1936 which authorized and directed this Commission to proceed with the investigation of additional electric and gas corporations under the terms of Senate Resolution 83, Seventieth Congress, first session.

The investigation is being conducted to ascertain and report the facts with respect to utility holding companies and their controlled electric and gas operating companies, their financial structures, the growth of capital assets and capital liabilities, methods of issuing and of marketing various stocks and securities and the cost thereof, including organization expenses, commissions, discounts, and redemption charges, the capitalization of interests in management and other types of supervisory and controlling contracts, the methods of creation of capital surplus and the payment of dividends therefrom, the treatment of stock dividends as earnings, the taking over by holding companies of undistributed surpluses of subsidiaries as income, and other practices.

The pertinent facts relating to the various service contracts in use from time to time and the fees charged in connection therewith for management, supervision, servicing, engineering, construction, and financing are also being ascertained. Further examinations have

<sup>1</sup> Sec. 6 of the Federal Trade Commission Act provides that--The Commission shall have power--(a) To gather and compile information concerning and to investigate from time to time the organization, business conduct, practices, and management of any corporation engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

\* \* \* \* \*

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.



been made of the physical condition and efficiency of the plants and the equipment of the operating companies as well as of the organization and efficiency of management.

During the fiscal year 1933-34, an examination was made of a few companies owning natural gas producing and pipe-line companies, and an engineering and economic study was begun on some of the important problems of the natural-gas industry. It is planned to stress particularly this phase of the inquiry during the next year. Public hearings were held during the fiscal year 1933-34 on companies and groups on dates as shown below:

Company	Hearings began-
ASSOCIATED GAS & ELECTRIC CO. GROUP	
Associated Gas & Electric Securities Co. Inc	Mar. 20, 1934
Associated Utilities Investing Corporation (Delaware)	Mar. 29, 1934
Broad River Power Co. (engineering)	Apr. 12, 1934
Lexington Water Power Co	Do.
W. S. Barstow & Co. (Delaware)	Sept. 11, 1933
W. S. Barstow & Co. (New York)	Do.
W. S. Barstow Management Association, Inc	Do.
CENTRAL PUBLIC SERVICE CORPORATION GROUP	
Central Gas & Electric Co	Aug. 8, 1933
CITIES SERVICE CO. GROUP	
Arkansas Natural Gas Corporation	June 21, 1933
Arkansas-Louisiana Pipe Line Co	Do.
Little Rock Gas & Fuel Co	Do.
Public Utilities Corporation of Arkansas	Do.
Reserve Natural Gas Co. of Louisiana	Do.
Southern Cities Distributing Co	Do.
Cities Service Co. System (interstate transmission)	Mar. 6, 1934
Cities Service Co. (vol. I)	May 22, 1934
Cities Service Gas Co	Do.
Cities Service Gas Pipeline Co	Do.
Kansas City Gas Co	
The Gas service Co	June 27, 1934
ELECTRIC BOND & SHARE CO. GROUP	
Electric Bond & Share Co. (operating expenses, etc.)	Jan. 18, 1934
Report on sale of Common Stock to officers and other employees of Electric Bond & Share Co. and subsidiaries	June 14, 1934
Supplemental financial statements	Do.
INSULL GROUP	
Central & South West Utilities Co	Feb. 1, 1934
Central & South West Utilities Co. (intercorporate relations)	Do.
Corporation Securities Co. of Chicago	June 28, 1934
Middle West Utilities Co. (supplemental--Sept. 30, 1930, to Apr. 14, 1932)	Oct. 16, 1933
Midland United Co	Nov. 15, 1933
Midland United Group (intercorporate relations)	Nov. 17, 1933
Midland Utilities Co	Nov. 15, 1933
Peabody Coal Co	Oct. 12, 1933
Southwest L. E Myers Co	May 7, 1934
NATURAL GAS PIPELINE CO. OF AMERICA GROUP	
Chicago District Pipeline Co	Jan. 24, 1934
Natural Gas Pipeline Co. of America	Do.
Texoma Natural Gas Co	Do.
NIAGARA HUDSON POWER CORPORATION GROUP	
Adirondack Power & Light Corporation	Aug. 1, 1933
Adirondack Realty Holding Corporation	Mar. 1, 1934
Buffalo General Electric Co	Feb. 14, 1934
Buffalo, Niagara & Eastern Power Corporation	Aug. 1, 1933

Coboes Power & Light Corporation  
Malone Light & Power Co

Nov. 4, 1933  
Feb. 6, 1934



## POWER AND GAS UTILITIES

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Company	Hearings began-
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## NIAGARA HUDSON POWER CORPORATION GROUP--continued

Mohawk Hudson Power Corporation	May 25, 1934
Municipal Gas Co. of the City of Albany	Nov. 3, 1933
New York Power & Light Corporation	Mar. 1, 1934
Niagara Hudson Power Corporation System (interstate transmission)	Feb. 14, 1934
Northeastern Power Corporation	May 3, 1934
Northern New York Utilities, Inc	Nov. 27, 1933
Oswego River Power Corporation	June 15, 1934
Peoples Gas & Electric Co. or Oswego	Nov. 3, 1933
St. Lawrence County Utilities, Inc	June 28, 1934
St. Lawrence Valley Power Corporation	Do.
The Niagara Falls Power Co	Feb. 15, 1934

## NORTH AMERICAN LIGHT &amp; POWER GROUP

North American Light & Power Co. (supplemental)	Jan. 17, 1934
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## STONE &amp; WEBSTER GROUP

Engineers Public Service Co. (Delaware)	May 22, 1934
Hydraulic Engineering Co	June 28, 1934
Stone & Webster Engineering Corporation	May 23, 1934
Stone & Webster, Inc. (Delaware)	May 21, 1934
Stone & Webster, Inc., System (Interstate transmission)	Do.

## THE UNITED CORPORATION GROUP

The United Corporation (engineering)	Aug. 3, 1933
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## THE UNITED GAS IMPROVEMENT CO. GROUP

The Northern Connecticut Power Co	Oct. 10, 1933
The United Gas Improvement Group (intercorporate relations)	June 27, 1933

## UTILITIES POWER &amp; LIGHT CORPORATION GROUP

Utilities Power & Light Corporation (intercorporate relations)	Mar. 0, 1934.
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Testimony and exhibits entered regarding these companies, as well as other companies previously examined, have been or are being printed in volumes as a part of Senate Document No. 92, Seventieth Congress, first session, parts 1 to 67, inclusive. Of these parts, numbers 1 through 53, inclusive, are now available to the public, while parts 54 through 67, inclusive, are in the hands of the printer. Testimony and exhibits introduced as a part of the publicity and propaganda phase of the investigation are printed in parts 1 to 20 which are accompanied by separate volumes of exhibits. Additional material on this phase appears in parts 35, 41, 43, 61, and 64.<sup>2</sup>

<sup>2</sup> Material placed in the record during the publicity or propaganda phase was obtained largely from the utility associations and state committees. Expenditures for publicity work of individual groups or companies are being presented in connection with other testimony and facts touching each such group and

company.

Names of companies concerning which reports have been or are being printed are listed as follows:

Company	Testimony and exhibits-
American Gas & Electric Co. group:	
American Gas & Electric Co	Parts 21 and 22.
Appalachian Electric Power Co	Do.
Indiana & Michigan Electric Co	Do.
Ohio Power Co	Do.
The Scranton Electric Co	Do.
Associated Gas & Electric Co. group:	
Associated Electric Co	Part 46.
Associated Gas & Electric Co	Parts 45 and 46.
Associated Electric Cos	Part 46.
Binghamton Light, Heat & Power Co	Do.
Clarion River Power Co	Do.
Consumers Construction Co	Do.
Eastern New York Electric & Gas Co	
Erie Lighting Co	
Harlem Valley Electric Corporation	
J. G. White Management Corporation	Do.
Johnstown Fuel Supply Co	Do.
Lockport Light, Heat & Power Co	
Management Holding Corporation	Do.
Metropolitan Edison Co	Part 50.
New England Gas & Electric Association	Part 48.
Cambridge Electric Light Co	Do.
Cambridge Gas Light Co	Do.
Cape & Vineyard Electric Co	Do.
Dedham & Hyde Park Gas Electric Co	Do.
Dery Electric Co	Do.
Middlesex County Electric Co	Do.
New England Electric Securities Co	Do.
New Hampshire Gas & Electric Co	Do.
West Boston Gas Co	Do.
Worcester Gas Light Co	Do.
New York Electric Co	Part 46.
New York State Electric & Gas Corporation	Do.
Pennsylvania Electric Co	Part 48.
Citizens Light, Heat & Power Co	Do.
Penn Electric Service Co	Do.
Penn Public Service Co	Do.
Northwestern Electric Service Co. of Pennsylvania	Do.
Venango Public Service Corporation	Do.
Pennsylvania Electric Corporation	Part 46.
Staten Island Edison Corporation	Do.
Utilities Purchasing & Supply Corporation	Do.
Utility Management Corporation (Delaware)	Do.
Western New York Gas & Electric Corporation	Do.
West Virginia Light, Heat & Power Co	Do.
Youghiogheny Hydro-Electric Corporation	Do.
Associated Gas & Electric Securities Co., Inc	Part 64.
Associated Properties, Inc	Part 46.
Associated Utilities Investing Corporation (Delaware)	Part 64.
Associated Utilities Merchandising Co., Inc	Part 46.
Broad River Power Co	Part 64.
Lexington Water Power Co	Do.
The W. S. Barstow Management Association, Inc	Part 57.
W. S. Barstow & Co. (Delaware)	Do.
W. S. Barstow & Co. (New York)	Do.
Central Public Service Co. group:	
Central Public Service Co	Part 52.
Central Gas & Electric Co	Part 56.
Central Public Service Corporation	Part 52.
Southern Cities Public Service Co	Part 53.
Cities Service Co.	
Arkansas Naotuuas Corporation	Part 55.
Arkansas Louisiana Pipe Line Co	Do.
Little Rock Gas & Fuel Co	Do.
Public Utilities Corporation of Arkansas	Do.
Reserve Natural Gas Co. of Louisiana	Do.
Southern Cities Distributing Co	Do.
Cities Service Securities Co	Part 53.
Cities Service Co. System (interstate transmission)	Part 63.
Cities Service Co. (vol.1)	Part 66.
Cities Service Gas Co	Part 67.

Cities Service Gas Pipeline Co  
Kansas City Gas Co  
The Gas Service Co  
Lakeside Construction Co  
Public Service Co. of Colorado

Do.  
Do.  
Do.  
Part 55.  
Do.

Company	Testimony and exhibits-
Columbia Gas & Electric Corporation group:	
Columbia Gas & Electric Corporation	Part 47.
American Fuel & Power Co	Part 52.
Cincinnati Gas Transportation Co	Part 49.
Columbia Corporation	Part 47.
Columbia Engineering & Management Corporation	Do.
Columbia Gas Construction Co	Do.
Columbia Securities Co	Do.
Huntington Gas Co	Part 49.
Manufacturers Light & Heat Co. (The)	Part 47.
Ohio Fuel Corporation	Do.
Union Gas & Electric Co. (The)	Do.
United Fuel Gas Co	Part 49.
Electric Bond & Share Co. group:	
Electric Bond & Share Co	Parts 23 and 24.
American Power & Light Co	Do.
Inland Power & Light Co	Part 35.
Minnesota Power & Light Co	Part 26.
Nebraska Power Co	Part 41.
Northwestern Electric Co	Part 35.
Pacific Power & Light Co	Do.
Washington Water Power Co	Part 29.
Electric Bond & Share Securities Corporation	Parts 23 and 24.
Electric Investors (Inc.)	Do.
Electric Power & Light Corporation	Do.
Arkansas Power & Light Co	Part 42.
Idaho Power Co	Part 35.
Louisiana Power & Light Co	Part 43.
Mississippi Power & Light Co	Part 42.
Utah Power & Light Co	Part 45.
Western Colorado Power Co	Do.
National Power & Light Co	Part 25.
Carolina Power & Light Co	Part 26.
Phoenix Utility Co	Parts 23 and 24.
Phoenix Utility, Co. (Minnesota operations)	Part 35
Two Rector Street Corporation	Parts 23 and 24.
Electric Bond & Share Co. (operating expenses and cost of service)	Part 62.
Report on sale or common stock to officers and other employees of Electric Bond & Share Co. subsidiaries	Part 66.
Supplemental financial statements to report on Electric Bond & Share Co	Do.
Foshay, W. B. Co. group:	
W.B. Foshay Co. (Minnesota)	Part 25.
W. B. Foshay Co. (Delaware)	Do.
Foshay Building Corporation	Do.
Investors National Corporation	Do.
Public Utilities Consolidated Corporation (Arizona)	Do.
Public Utilities Consolidated Corporation (Delaware)	Do.
Insull Group:	
Middle West Utilities Co. (to Sept. 30,1930)	Part 38.
Middle West Utilities Co. (from Sept. 30,1930 to Apr. 14,1932)	Part 59.
Central Illinois Public Service Co	Part 44.
Central & South West Utilities Co	Part 62.
Central & South West Utilities Co. (intercorporate relations)	Do.
Corporation Securities Co. of Chicago	Part 67.
Corporation Securities Co. of Chicago 2	Part 50.
Electric Management and Engineering Corporation	Part 40.
Insull, Son & Co., Inc. 2	Part 50.
Insull Utility Investments, Inc. 2	Do.
L. E. Myers Co	Part 38.
Midland United Co	Part 60.
Midland United Co. System intercorporate relations)	Do.
Midland Utilities Co	Do.
Mississippi Valley Utilities Investment Co. 2	Parts 38 and 50.
National Electric Power Co	Part 40.
National Electric Power Co.2	Part 50.
National Public Service Corporation	Part 40.
National Public Service Corporation 2	Part 50.
Florida Power Corporation	Part 41.
Florida Power Corporation (Engineering)	Part 42.
Georgia Power & Light Co	Do.
Tide Water Power Co	Part 41.
Tide Water Power Co. (properties and operation)	Part 44.
New England Public Service Co	Part 42.
National Light, Heat & Power Co	Part 44.
Twin State Gas & Electric Co	Do.
North West Utilities Co	Part 38.
United Public Service Co	Do.

United Public Utilities Co	Do.
Peabody Coal Co	Part 58.
Preliminary Report Insull Utility Investments, Inc. 2	Part 50.
Public Service Trust 2	Do.
Seaboard Public Service Co. 2	Part 51.
Second Utilities Syndicate, Inc. 2	Do.
South West L. E. Myers Co	Part 65.

2 The material in these reports was taken from reports by auditors to the receivers of the respective companies.

Company	Testimony and exhibits--
Natural Gas Pipeline Co. of America group:	
Chicago District Pipeline Co	Part 62.
Natural Gas Pipeline Co. of America	Do.
Texoma Natural Gas Co	Do.
New England Power Association Group:	
Connecticut Valley Power Exchange	Parts 31 and 32
New England Co	Do.
New England Power Association	Do.
Dearfield Construction Co	Do.
International Paper & Power Co	Do.
New England Power Construction Co	Do.
Power Construction Co	Do.
Sherman Power Construction Co	Do.
Niagara Hudson Power Corporation group:	
Adirondack Power Light Corporation	Part 59.
Adirondack Realty Holding Corporation	Part 63.
Buffalo General Electric Co	Part 62.
Buffalo, Niagara & Eastern Power Corporation	Part 56.
Cohoes Power & Light Corporation	Part 59.
Malone Light & Power Co	Part 62.
Mohawk Hudson Power Co	Part 66.
Municipal Gas Company of the City of Albany	Part 59.
New York Power & Light Corporation	Part 63.
Niagara-Hudson Power Corporation System (Interstate transmission)	Part 62.
Niagara, Lockport & Ontario Power Co	Part 54.
Northeastern Power or oration	Part 65.
Northern New York Utilities, Inc	Part 60.
Oswego River Power Corporation	Part 66.
Peoples Gas & Electric Co. of Oswego	Part 59.
St. Lawrence County Utilities Inc	Part 67.
St. Lawrence Securities Co	Part 53.
St. Lawrence Valley Power Corporation	Part 67.
Syracuse Lighting Co	Part 50.
The Niagara Falls Power Co	Part 63.
Utica Gas & Electric Co	Part 53.
North American Co. (The) group:	
North American Co	Parts 33 and 34.
Central Mississippi Valley Electric Properties	Do.
City Utilities Co	Do.
Cleveland Electric Illuminating Co. (engineering only)	Do.
Edison Securities Corporation	Do.
Great Western Power Co. of California	Part 39.
Midland Counties Public Service Corporation	Do.
Mississippi River Power Co	Parts 33 and 34.
North American Edison Co	Do.
North American Utility Securities Corporation	Do.
Pacific Gas & Electric Co. (engineering only)	Part 39.
Power Operating Co	Parts 33 and 34.
San Joaquin Light & Power Corporation (engineering only)	Part 39.
Union Electric Light & Power Co. (Illinois)	Parts 33 and 34.
Union Electric Light & Power Co. (Missouri)	Do.
Western Kentucky Coal Co	Do.
Western Power Corporation	Do.
Western Power Corporation (engineering)	Part 39.
60 Broadway Building Corporation	Parts 33 and 34.
North American Light & Power Co. group:	
North American Light & Power Co	Part 39.
North American Light & Power Co. (engineering)	Part 50.
North American Light & Power Co. (supplemental engineering)	Part 62.
Southeastern Power Light Co. group:	
Control, Management and Service Relations of Southeastern Power & Light Co	Part 27.
Southeastern Power & Light Co	Do.
Alabama Power Co	Part 30.
Appalachian Development Co	Part 27.
Dixie Construction Co	Do.
Georgia Light, Power & Railways Co	Part 28.
Georgia Power Co	Do.
Southeastern Engineering Co	Part 27.
Southeastern Fuel Co	Do.
Southeastern Realty Co	Do.
Southeastern Securities Co	Do.
Standard Gas & Electric Co. group:	
Standard Gas & Electric Co	Part 36.
Ivyton Oil & Gas Co. (Delaware)	Part 37.
Ivyton Oil & Gas Co. (Kentucky)	Do.
Kentucky Coke Co	Do.
Kentucky Pipe Line Co. (Indiana)	Do.

Kentucky Pipe Line Co. (Kentucky)	Do.
Louisville Gas & Electric Co. (Delaware)	Do.
Louisville Gas & Electric Co. (Delaware) and subsidiaries	Do.
Louisville Gas & Electric Co. (Kentucky)	Do.
Louisville Gas & Electric Securities Co. (Kentucky)	Do.
Louisville Hydro-Electric Co	Do.
Madison Light & Power Co. (Indiana)	Do.
Minneapolis General Electric Co	Part 43.



Company	Testimony and exhibits-
Standard Gas & Electric Co. group--Continued.	
Standard Gas & Electric Co.--Continued.	
Northern States Power Co. (Delaware)	Part 43.
Northern States Power Co. (Minnesota)	Do.
Northern States Securities Corporation	Do.
Oklahoma Gas & Electric Co	Part 36.
Stone & Webster group:	
Engineers Public Service Co. (Delaware)	Part 66.
Engineers Public Service Co., Inc	Part 67.
Hydraulic Engineering Co	Do.
Stone & Webster Engineering Corporation	Part 66.
Stone & Webster, Inc. (Delaware)	Do.
Stone & Webster, Inc. (management and supervision)	Part 67.
Stone & Webster, Inc., System (interstate transmission)	Part 66.
The United Corporation group:	
The United Corporation	Part 52.
The United Corporation (engineering)	Part 56.
The United Corporation (intercorporate relations)	Part 52.
The United Gas Improvement Co. group:	
The Northern Connecticut Power Co	Part 59.
The United Gas Improvement Co	Part 51.
Allentown-Bethlehem Gas Co	Do.
American Gas Co., The	Do.
American Gas Co. of New Jersey, The	Part 54.
Connecticut Electric Service Co., The	Do.
Connecticut Electric Syndicate	Do.
Connecticut Light & Power Co., The	Do.
Connecticut Railway & Lighting Co	Do.
Eastern Connecticut Power Co., The	Do.
Gas Securities Corporation	Part 51.
Philadelphia Gas Works Co., The	Do.
Rockville-Willimantic Lighting Co., The	Part 54.
United Engineers and Constructors, Inc	Do.
Waterbury Gas Light Co., The	Do.
The United Gas Improvement Co. group (Intercorporate relations)	Part 55.
Utilities Power & Light Corporation group:	
Utilities Power & Light Corporation	Part 54.
Utilities Power & Light Corporation (intercorporate relations)	Part 63.

## PROCEDURE AND SCOPE OF INQUIRY

The facts developed in this inquiry are obtained principally from the corporate books and records of the companies examined by the Commission's accountants, engineers, and economists. Prior to public hearings, the reports are carefully checked to correct errors or any misinterpretation of facts.

The testimony presented is chiefly that of the Commission's own examiner experts, who have personally examined the accounting and other records of the various holding company groups and studied such records and the financial and engineering practices, as well as the supervising control by the holding companies over their operating companies under various forms of supervision contracts. On certain occasions, officers of the corporations have also been called to testify on special or specific points. At all hearings, counsel representing the corporations whose records and transactions have

been under discussion, have been present with full privilege to present objections, to cross-examine, and to offer testimony in behalf of such corporations.

Records of the hearings, including transcripts of testimony and reports and charts introduced as exhibits in accordance with Senate

resolution, are transmitted to the Senate on the 15th of each month, and later printed as part of Senate Document No. 92, as mentioned on page 19.

It had been the Commission's purpose to make its final report on the utilities inquiry as of July 1, 1934. It became apparent, however, that if this were done, much information already gathered about other companies would be lost to the record. This situation was laid before the President, who directed that the inquiry be continued until January 1935, by the following letter:

THE WHITE HOUSE,  
*Washington, April 26, 1934.*

GENTLEMEN: I am informed that you have in preparation reports on various electric and gas utilities, operating or holding companies which you have not yet had an opportunity to put into the record in the investigation which you are conducting under Senate Resolution 83, Seventieth Congress, first session, and that you are conducting studies or investigations of still other companies in which reports cannot be written until the completion of such studies. I consider it important that this work which is under way be completed and made a part of the public record in your utilities investigation.

Accordingly, pursuant to the authority vested in me by section 6 (d) of an act approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes" I direct you to complete this work which is under way and to make these reports a part of said public record. I think it is of the greatest importance that your final report to Congress with your recommendations be submitted not later than January 1, 1935.

Very sincerely yours,

(Signed) FRANKLIN D. ROOSEVELT.

FEDERAL TRADE COMMISSION,  
*Washington, D. C.*

Subsequently (June 1, 1934) Congress passed S. J. Res. 115, directing--

That the Federal Trade Commission be, and it is hereby, authorized and directed to proceed under the Senate resolution aforesaid (S. Res. 83, 70th Cong., 1st sess.) until it has investigated such of said corporations as in its judgment should be investigated, but the investigation shall be completed and the Commission's final report, with recommendations, shall be submitted to the Congress not later than the first Monday in January 1936.

#### **GROUPS ON WHICH ACCOUNTING EXAMINATIONS ARE BEING MADE**

The field examination of the business and relations of various electric and gas public utility companies continued throughout the year covered by this report, partly in extending the inquiry into groups which had not then been considered in the hearings, but more especially in broadening the previous inquiry into particular groups on which hearings had already been held and in beginning a study of the important natural gas

and natural gas pipe lines industries.

The public utility groups in which examinations were made during the fiscal year are Associated Gas & Electric Co., Central Public Service Corporation, Cities Service Co., Electric Bond & Share Co., Insull group, Natural Gas Pipeline Co. of America, Niagara Hudson Power Corporation, Stone & Webster, the United Corporation, and the United Gas Improvement Co.

From the beginning of the investigation to the end of the fiscal year of 1933-34, the inquiry covered holding companies having total assets of \$3,972,000,000, subholding companies with total assets of \$2,467,000,000, and operating companies with total assets of \$3,491,000,000, or grand total assets of \$9,930,000,000, according to company records.

## SALARIES INQUIRY

### REPORT CONCERNS CERTAIN COMPANIES LISTED ON NEW YORK STOCK EXCHANGES

This inquiry was initiated by the Commission in response to Senate Resolution 75, Seventy-third Congress, first session. That part of the resolution directed to the Federal Trade Commission reads as follows:

*Resolved*, That the Federal Trade Commission is requested to prepare and transmit to the Senate, as soon as practicable, a report showing the salary schedule of the executive officers and directors of each corporation engaged in interstate commerce (other than public-utility corporations) having capital and/or assets of more than a million dollars in value, whose securities are listed on the New York Stock Exchange or the New York Curb Exchange.

For the purposes of this resolution, the term "salary" includes any compensation, fee, bonus, commission, or other payment, direct or indirect, in money or otherwise, for personal services.

By the terms of the resolution, the Commission's investigation was limited to a comparatively small portion of the corporations within its general jurisdiction. The limitations were (1) that the corporations be engaged in interstate commerce (which is also a general limitation on the powers of the Federal Trade Commission) (2) that they have assets or capital of more than \$1,000,000, (3) that they be listed on the New York Stock Exchange or on the New York Curb Exchange, and (4) that public utilities be excluded.

The Commission's report was transmitted to the Senate February 26, 1934, in 14 volumes. It contained information as to salaries and other compensation for the 5-year period 1928-32, because it was believed to be important as a basis for study in the light of recent changes in economic conditions. As compensation other than regular cash salary is frequently determinable only at the end of the business year, only the cash salary rate as of September 1 was shown for 1933.

The duty of obtaining data from the power utilities engaged in the transportation of electrical energy in interstate commerce, and of other corporations licensed under the Federal Water Power Act, but no other utilities, was assigned to the Federal Power Commission under the resolution, while all public utilities were excluded from the companies to be investigated by the Federal Trade Commission. As a result, other utilities, notably operating gas utilities engaged in interstate commerce, were excluded from the inquiry under the resolution.

The Interstate Commerce Commission furnished to the Senate information relative to compensation paid by railroads and other common carriers which are expressly excluded from the jurisdiction of the Federal Trade Commission by its organic act. The Secretary of Agriculture reported separately to the Senate regarding the compensation paid by packing companies which were transferred to his jurisdiction by the Packers and Stockyards Act of 1921.

The Commission's returns included many companies whose securities were admitted to unlisted trading privileges on the New York Curb Exchange, but the Senate resolution called only for submission of returns of corporations whose securities are listed on the New York Stock Exchange or the New York Curb Exchange; consequently, the Commission did not include in its report to the Senate companies whose securities are traded in on the curb but not fully listed. Where, however, such companies were affiliated with other companies whose securities were listed either on the New York Stock Exchange or the New York Curb Exchange, their reports were used in making consolidations.

A total of 877 schedules, which were pertinent to this inquiry, were returned. Shortly after the returns began to come in, it became obvious that many companies had not included all the indirect compensation referred to in the resolution, chiefly, amounts paid by subsidiary or affiliated companies. In such cases this additional information was obtained from the companies and was consolidated with the original schedule material by the Commission's staff.

Four companies made incomplete returns to the inquiries sent out by the Commission, but these returns have been incorporated with the others. These four companies were the General Electric Co., Burroughs Adding Machine Co., United Drug Co., and Potrero Sugar Co.

Many companies omitted to make any return under the claim that they were not engaged in interstate commerce and therefore were not obliged to report. Where this claim was advanced the Commission attempted to consider the merits of each reply in the light of

whatever information was readily available and to suggest to the company (in a number of instances) specific reasons for a different conclusion regarding its status in this respect. As a reasonably prompt report was imperative, only a limited correspondence was attempted, with results that were sometimes quite inconclusive and at other times definitely unsatisfactory. The main difficulty was with those holding companies which apparently control completely certain companies manufacturing and trading in the general commercial field.

Companies declining to report under the claim that they were not engaged in interstate commerce were as follows: Allied Chemical & Dye Corporation, Koppers Gas & Coke Co., American I. G. Chemical Corporation, the Delaware & Hudson Co., the Hudson Coal Co., the M. A. Hanna Co., Newmont Mining Corporation, Ludwig Baumann & Co., Exchange Buffet Corporation, United Dry Docks, Inc., Pantepec Oil Co. of Venezuela, Venezuelan Petroleum Co., and Penn Mex Fuel Co.

Four companies refusing to make a return replied to the request for information with a general denial of the Commission's powers, namely, General Aviation Corporation, American Can Co., General Motors Corporation, and the Studebaker Corporation.

Companies refusing to make a report or neglecting to comply with the Commission's request, in addition to the foregoing, were as follows: Chrysler Corporation, Bendix Aviation Corporation, Columbian Carbon Co., Congress Cigar Co., Porto Rican American Tobacco Co., Waitt & Bond, Inc., Consolidated Retail Stores, Inc., Dodge Brothers, Inc., General Refractories Co., General Mills, Inc., Howe Sound Co., National Biscuit Co., National Department Stores, Sloss Sheffield Steel & Iron Co., Stein Cosmetics Co., Inc., Timken-Detroit Axle Co., Union Oil Co. of California, Yellow Truck & Coach Manufacturing Co., and Cleveland Tractor Co.

Of the foregoing concerns, General Refractories Co. and the Cleveland Tractor Co. sent in their reports after the Commission reported to the Senate, and they were forwarded to the President of the Senate with an appropriate explanation.

The Commission has not instituted actions to compel any companies to submit reports. It felt that it should report to the Senate at the earliest possible date and that delays which would be inevitable in forcing compliance with the call for information would make it impossible to have a report ready within a reasonable time. A matter for consideration also was the cost which would be involved in taking legal action to compel reports.

## STEEL-CODE INQUIRY

### COMMISSION INVESTIGATES PRACTICES UNDER N.R.A. CODE

Under date of February 2, 1934, the Senate of the United States adopted a resolution directing the Commission to make an investigation and study of the code for the steel industry as approved August 19, 1933. The subjects specifically comprehended by the resolution were "the practice of the steel industry under the code with reference to price fixing, the increase of price of steel products, and such other matters as would give a full presentation of facts touching the industry since it went under the N.R.A. code."

That part of the Senate resolution of February 2, 1934, (S. Res. 166, 73d Cong., 2d sess.) which relates to the steel code, is as follows:

*Resolved*, That the Federal Trade Commission be, and the same is hereby, directed to make an investigation and study of the steel code and report the result thereof to the Senate as soon as practicable, showing-

First. The practice of the steel industry under the code with reference to price fixing, the increase of price of steel products, and such other matters as would give a full presentation of facts touching the industry since it went under the National Recovery Administration code; and

\* \* \* \* \*

The Commission immediately undertook the inquiry and submitted its report to the Senate on March 19. The scope of the report may be judged from the following subject titles under which the material was presented:

- The Practice of the Steel Industry under the Code with Reference to Price Fixing.
- General Survey of Steel Code.
- Composition of the Selling Prices which are Required by the Code.
- Group Limitations on Independent Determination of Mill Base Quotations.
- Limitations Imposed by the Code on Independent Determination of Mill Base Quotations.
- Maximum Deductions from Mill Base Quotations permitted by Code Authority.
- Minimum Additions to Mill Base Quotations Required by Code Authority.
- Group Limitations on Selection and Establishment of Common Basing Points.
- General Limitations Imposed by the Code upon the Calculation of Delivery Charges.
- Specific Limitations Imposed by Code Authority on Calculation of Delivery Charges.
- Imposition of Arbitrary Switching Charges on Sales at Basing Points.
- Code Limitations on Calculation of Delivery Charges on Sales to Structural Steel Fabricators.
- Effect of All-Rail Base Calculations on Steel Purchasers Located on or near Navigable Water, on Water Transportation Industry, and on Federal Waterway Improvements.



Effect of All-Rail Base Calculations on Steel Purchasers Using Truck Transportation, on the Trucking Industry, and on Government Highway Construction.

Code Limitations on Resale Prices.

Code Limitations on Channels of Wholesale Distribution.

Code Limitations on Increase of Producing Capacity.

Scope and Nature of Powers Delegated to Code Authority and Redelegated by It.

General Purpose and Effect of Foregoing System.

The Increase of Price of Steel Products.

General Summary of Price Increases Under the Code.

Comparison of Mill Base Quotations Inadequate and Inconclusive In Determining Price Increases.

Indirect Increases in Price Through Increased "Extras."

Direct Increases in Base Price Quotations.

Direct Increases in Price of Pig Iron Resulting from Putting it on Basing Point System Under the Code.

Historical Background of Present Price System.

Certain modifications in the steel code were approved by the President on May 30. The President directed that a study be made by the Commission and the N.R.A. of the effects of the basing-point system under the amended code and that a report be submitted to him within 6 months.

That part of the Executive order of May 30, 1934, approving the amendment to the steel code, which relates to the investigation by the Commission, is as follows:

In connection with the foregoing approval I desire to make two statements:

1. Conditions of economic emergency make necessary the retention in modified form of the multiple basing-point system adopted in the original code and effective in the industry for many years. But revisions made in this code, increasing substantially the number of basing points, and modifications in practice under the code, while alleviating some of the inequities in the existing system, illustrate the desirability of working toward the end of having prices quoted on the basis of areas of production and the eventual establishment of basing points coincident with all such areas, as well as the elimination of artificial transportation charges in price quotations. Therefore, I have directed the Federal Trade Commission and the National Recovery Administration to study further and jointly the operation of the basing-point system and its effect on prices to consumers, and any effects of the existing system in either permitting or encouraging price fixing, or providing unfair competitive advantages for producers, or disadvantages for consumers not based on natural causes. I have requested that the results of this study be reported to me within 6 months, together with any recommendations for revisions of the code, in accordance with the conclusions reached.

\* \* \* \* \*

## **GASOLINE PRICES**

### **REPORT SHOWS PRICE TRENDS IN 272 CITIES AND TOWNS**

The Commission's investigation of prices of gasoline was made pursuant to a resolution adopted by the Senate February 2, 1934 (S. Res. 166, 73d Cong., 2d sess.). The resolution directed:

That said Federal Trade Commission report to the Senate the increase in the price of gasoline during the last 6 months, and what the increase of price means to the users of gasoline throughout the country in the way of additional cost.

The investigation was completed and a report submitted to the Senate May 9, 1934. It was printed as Senate Document No. 178, Seventy-third Congress, second session.

The report covered the trend of prices for regular grade gasoline from July 1, 1933, to January 31, 1934, in 272 cities and towns throughout the United States, and showed that although gasoline prices were increased by an average of about 2 cents per gallon about the time of the effective date of the Code of Fair Competition for the Petroleum Industry, subsequent declines resulted in an average net increase in prices to the consumer during the 7 months of only 1.04 cents per gallon. Computed on the basis of an estimated consumption of 15,433,871,000 gallons of gasoline during 1933, consumers were paying an annual rate of approximately \$160,550,000 more for gasoline on January 31, 1934, than they were on July 1, 1933. Except for a short period following the date on which the code became effective (September 2, 1933), gasoline prices were comparatively low because of competition accentuated by drastic price wars in a number of the markets covered by the investigation.

Sales taxes are an important factor in the price of gasoline. Combined Federal and State sales taxes range from 3 cents a gallon in some States to 8 cents in others, which amounts to a simple average of 5.14 cents or approximately 27 percent of the simple average price of regular grade gasoline to consumers, who are paying at this rate about \$700,000,000 annually in taxes on gasoline.

## **CHAIN-STORE INQUIRY**

### **FINAL REPORT PRESENTS LEGAL ASPECTS**

All reports on the chain-store inquiry conducted by direction of the Senate (S. Res. 224, 70th Congress, 1st sess.) have been completed, and a final summary is being written which will contain the Commission's general recommendations and conclusions.

The legal aspects relate to that part of the Senate resolution directing the Commission to report on: (1) The extent to which the chain-store movement has tended to create a monopoly or concentration of control in the distribution of any commodity, either locally or nationally; (2) evidence indicating the existence of unfair methods of competition in commerce or of agreements, conspiracies or combinations in restraint of trade involving chain-store distribution; (3) whether or not quantity prices available only to chain-store distributors constitute violations of the Federal Trade Commission Act, the Clayton Act, or any other statute; and (4) what legislation, if any, should be enacted for the purpose of regulating and controlling chain-store distribution.

Factual studies of chain-store systems and their methods of operation have been published by the Commission under the following headings:

#### LIST OF CHAIN-STORE STUDIES

Cooperative Grocery Chains.  
 Wholesale Business of Retail Chains.  
 Sources of Chain-Store Merchandise.  
 Scope of the Chain-Store Inquiry.  
 Chain-Store Leaders and Loss Leaders.  
 Cooperative Drug and Hardware Chains.  
 Growth and Development of Chain Stores.  
 Chain-Store Private Brands.  
 Short Weighing and Over Weighing in Chain and Independent Grocery Stores.  
 Sizes of Stores of Retail Chains.  
 Quality of Canned Vegetables and Fruits (under Brands of Manufacturers, Chains and Other Distributors).  
 Gross Profit and Average Sales per Store of Retail Chains.  
 Chain-Store Manufacturing.  
 Sales Costs, and Profits of Retail Chains.  
 Prices and Margins of Chain and Independent Distributors, Washington, D. C.--Grocery.  
 Prices and Margins of Chain and Independent Distributors, Memphis--Grocery.  
 Prices and Margins of Chain and Independent Distributors, Detroit--Grocery.  
 Chain-Store Wages.  
 Chain-Store Advertising.  
 Chain-Store Policies.  
 Special Discounts and Allowances to Chain and Independent Distributors--Tobacco Trade.  
 Invested Capital and Rates of Return of Retail Chains.  
 Prices and Margins of Chain and Independent Distributors, Cincinnati--Grocery.  
 Special Discounts and Allowances to Chain and Independent Distributors--Grocery Trade.  
 Service Features in Chain Stores.  
 The Chain Store in the Small Town.  
 Special Discounts and Allowances to Chain and Independent Distributors--Drug.

Prices and Margins of Chain and Independent Distributors, Cincinnati--Drug.  
Prices and Margins of Chain and Independent Distributors, Detroit--Drug.  
Prices and Margins of Chain and Independent Distributors, Memphis--Drug.  
Prices and Margins of Chain and Independent Distributors, Washington--Drug.  
Miscellaneous Financial Results of Retail Chains. State Distribution of Chain Stores.

## **PRICE BASES**

### **REPORT ON RANGE-BOILER INDUSTRY IS PREPARED**

This inquiry was begun on the Commission's initiative to develop the various methods of differentiating prices with respect to location, including shipping point, delivery point, single and multiple basing point and zoning methods and to ascertain their effect, if any, upon prices and competitive conditions.

Among the Several industries examined by the Commission in this inquiry is that of range boilers, illustrating the use in a heavy-commodity industry of both a modified zone-price system and a uniform delivered or "postage-stamp" price System. The range-boiler study was largely completed by July 1933, but because of the urgency of other work and the insufficiency of funds both to continue the price-bases inquiry and to carry forward this emergency work, the study was suspended until shortly before the close of the fiscal year, when a draft of a report to be entitled "The Zone-Price Formula in the Range-Boiler Industry" was prepared for later publication.

In March 1932 a report entitled "The Basing-Point Formula and Cement Prices" was submitted to the Congress. In this volume the work of the inquiry as a whole was briefly outlined, while there was presented a description of price-basing methods of industry generally, and a detailed treatment of the multiple basing-point system as employed by the cement industry.

## **MILK INVESTIGATION**

### **INQUIRY BEGUN NEAR CLOSE OF FISCAL YEAR**

Complying with the provisions of House Concurrent Resolution 32, Seventy-third Congress, second session, the Commission, prior to the close of the fiscal year, began the dairy-products inquiry directed by that resolution. The scope of the inquiry was outlined in a resolution adopted by the Commission, as follows:

Whereas the House of Representatives and the Senate of the United States passed a certain concurrent Resolution known as H. Con. Res. 32, 73d Congress, 2d Session, which reads in part as follows:

Resolved by the House of Representatives (the Senate concurring) That the Federal Trade Commission is authorized and directed to investigate conditions

with respect to the sale and distribution of milk and other dairy products within the territorial limits of the United States by any person, partnership, association, cooperative or corporation, with a view to determining particularly whether any such person, partnership, association, cooperative, or corporation is operating within any milkshed of the United States in such a manner as to substantially lessen competition or tend to create a monopoly in the sale or distribution of such dairy products, or is a party to any conspiracy in restraint of trade or commerce in any such dairy products, or is in any way monopolizing or attempting to monopolize such trade or commerce within the United States or any part thereof, or is using any unfair method of competition in connection with the sale or distribution of any such dairy products, or is in any way operating to depress the price of milk sold by producers. The Federal Trade Commission shall report to the House of Representatives as soon as practicable the result of its investigation, together with its recommendations, if any, for necessary remedial legislation.”

*Be it resolved,* That in response to the above concurrent Resolution and upon motion of the Commission in pursuance of authority granted it by law, the Federal Trade Commission conduct an investigation of all the facts relating to conditions with respect to the sale and distribution of milk and other dairy products in accordance with the above concurrent Resolution, including facts relating particularly to (a) supply and demand of milk and milk products; (b) costs of producing, processing, and distributing milk and milk products; (c) prices of milk to the producer and prices of fluid milk and cream to the consumer; (d) the spreads between producer prices and consumer prices; (e) acquisitions, consolidations, and mergers by companies engaged in the milk industry; (f) concentration of control of markets and prices by corporations or by groups of producers or distributors; (g) trade practices which may amount to unfair methods of competition or which may restrain trade or tend to create a monopoly in purchasing, assembling, processing, sale, and distribution of milk and milk products.

Prosecuting this investigation, the Commission sent investigators into certain New England milksheds, where field work was started. The Commission will report to the Congress on the results of this inquiry at its January 1935 session.

**PART II. ADMINISTRATION OF THE SECURITIES  
ACT OF 1933**

PURPOSES OF THE ACT

ACTIVITIES TRANSFERRED TO NEW COMMISSION

EXAMINATION OF REGISTRATION STATEMENTS

DISTRIBUTION OF PROCEEDS

RULES, REGULATIONS AND FORMS FOR REGISTRATION

INVESTIGATION OF ALLEGED VIOLATIONS

## **PART II. ADMINISTRATION OF THE SECURITIES ACT**

### **PURPOSES OF THE SECURITIES ACT OF 1933**

The purposes of the Securities Act of 1933 are to “provide full and fair disclosure of the character of securities sold in interstate and foreign commerce and through the mails, and to prevent frauds in the sale thereof.” The underlying aim of the act is, therefore, to offer protection to the investing public. This protection is sought to be achieved by requiring full disclosure of the facts pertinent to the formation of an intelligent appraisal of the value of a security, and by affording sanctions, civil and criminal, against the parties failing to make such fair disclosure.

The act does not permit judgment by the administrative commission of the value or soundness of a security. That body’s function is to see that full and accurate information is made available to purchasers and the public, and that no fraud is practiced in connection with the sale of securities.

Full information concerning new security issues must be filed with the administrative commission by means of a registration statement. Failure to file such information or the filing of misleading or inadequate information imposes civil and criminal liability.

### **ACTIVITIES TRANSFERRED TO NEW COMMISSION, SEPTEMBER 1, 1934**

Prior to September 1, 1934, when administration of the Securities Act was transferred to the new Securities and Exchange Commission, this work was in charge of the Federal Trade Commission. Fifteen months previous, upon approval of the act by President Roosevelt, on May 27, 1933, the Commission, in order properly to perform its duties, organized a new division with the resulting increase in personnel and purchase of new equipment.

At the beginning of administration of the Securities Act it was necessary to require considerable overtime work on the part of employees assigned to the newly organized unit for these reasons: First, the difficulty in making estimates, prior to actual experience in administering the act; second, the great volume of work entailed; and, third, lack of available funds with which to provide an adequate staff. However, with an increased appropriation made available later, the Commission was able to more efficiently organize its securities division.





The securities work of the Commission may be considered under three general headings: (1) Examination of registration statements filed pursuant to provisions of the act requiring the disclosure of pertinent information concerning new offerings of securities; (2) formulation of rules and regulations for enforcing the provisions of the act, including the adoption of forms for registration of different types of issues, and interpretations of the act in its application to various situations; (3) investigation of alleged violations and, when warranted by the facts disclosed, institution of injunctive proceedings and transmittal of evidence to the Attorney General for consideration with a view to criminal prosecution.

During the 15 months of administration of the Securities Act by the Federal Trade Commission no ruling or finding by the Commission in any securities case was ever appealed to the courts.

### **1. EXAMINATION OF REGISTRATION STATEMENTS**

Since the act provides that a registration statement shall become effective on the twentieth day after it is filed, unless prevented by an order of the Commission, prompt examination is necessary in order that a refusal or stop order may issue (after the required notice and hearing), if it appears that a statement is on its face incomplete or inaccurate or contains an untrue statement of a material fact or a material omission. Such examination must be thorough and, by reason of the amount of information required to be contained in a registration statement and the variety of issues presented for registration, necessarily involves considerable work on the part of experienced analysts, attorneys, and examiners.

From July 7, 1933, the first date on which the filing of registration statements was permitted under the act, to September 1, 1934, inclusive, 1,095 statements, together with prospectuses in the form proposed to be used in the sale of securities covered by them, were filed with the Commission. In addition, it was necessary in many instances to examine one or more amendments changing certain items of information or correcting deficiencies in a statement as originally filed. On September 1, 1934, 794 statements had become effective, 154 had been withdrawn by registrants with the consent of the Commission, and refusal or stop orders preventing or suspending effectiveness had been issued in 49 cases. Ninety-eight statements had not become effective, either being under examination by the division or having been delayed by the registrants. Net filing fees paid by registrants totaled \$141,853.21, covering aggregate proposed security offerings of approximately \$1,347,000,000. The 794 statements which had become effective involved security issues in the amount of \$1,164,135,599.58.

**DISTRIBUTION OF PROCEEDS**

On October 1, 1933, the economic division of the Federal Trade Commission began making a tabular summary, showing by major type of industry the percentage distribution of the gross proceeds of proposed security issues filed with the Commission for which registration statements, excluding reorganization issues, had become effective. This tabulation was continued until administration of the Securities Act of 1933 was transferred to the jurisdiction of the Securities and Exchange Commission.

The following table shows by major type of industry the distribution by percentages of the gross proceeds of 336 security registration statements becoming effective, excluding reorganization issues, for the period of October 1933 to the end of the fiscal year, June 30, 1934:

Agriculture	0.0
Extractive industries	6.7
Manufacturing industries	19.9
Financial and investment companies	62.4
Merchandising	.3
Real estate	1.2
Construction	.1
Transportation and communication	.1
Service	.6
Electric lighting, power, gas, and water companies	8.4
Miscellaneous	.3
Total	100.0

More than 80 percent of the securities registered during the 9 months were by financial and investment companies and manufacturing organizations. Almost two-thirds were accounted for by the former group.

The following summary shows that slightly less than three-fourths of the total registrations were for common stocks and that corporate borrowing represented only 9 percent of the total securities registered by the same 336 companies:

Common stock	73.1
Preferred stock	11.0
Certificates of participation, beneficial interest, and warrants	7.4
Mortgages and mortgage bonds	2.0
Debenture bonds	6.4
Short-term notes	.1
Total	100.0

In excess of 60 percent of the net proceeds of securities under registration statements for 332 of the companies analyzed were proposed to be used for investment purposes. (Two companies registered bonus stock to be distributed with the securities of another

company

and two companies registered securities entirely for the account of others. No net proceeds distribution, therefore, can be given for them.)

Working capital, funding, refunding, and conversion, and reservations for subsequent issue in the order named were the next most important proposed uses of capital. But none of these three purposes accounted for as much as 10 percent of the total net proceeds and no other proposed use for as much as 5 percent.

Organization and development	1.2
New company plant construction, etc	3.6
Acquisition of assets	3.4
Acquisition of capital stock of other companies	.8
Old company plant and equipment additions and betterments	2.5
Working capital	9.7
Funding, refunding, and conversion	8.6
Investment	60.9
Reserved for subsequent issue	7.3
Miscellaneous, unclassified, and unaccounted for	2.0
Total	100.0

Registration statements were available for public inspection at the Commission's offices, and from October 11, 1933, to September 1, 1934, a total of 3,305 personal examinations were made of statements on file with the Commission. In addition, 52,681 photostatic pages of registration statement material were furnished to the public at nominal charges between July 7, 1933, and September 1, 1934. Monthly figures of effective registration statements classified as to type of security, character of issuer, and distribution of net proceeds, together with cumulative figures for the year to date, were issued for publication. Such information was also made available in photostatic form upon payment of the regular charge prescribed by the Commission's regulations.

## 2. RULES, REGULATIONS, AND FORMS FOR REGISTRATION

Pursuant to authority conferred by the act, the Commission adopted forms for registration of various classes of securities and issuers, as well as rules and regulations relating to administration of the act and defining certain accounting, technical, and trade terms used in the act.

A general form (form A-1) was provided for use in registering issues which did not, by reason of their character or that of the issuer, require special treatment. Certain particular types of issues, such as shares in an unincorporated fixed investment trust, certificates of deposit, securities issued in the course of a reorganization or readjustment, voting-trust certificates, and producing and nonproducing

oil and gas royalty interests, were registered on forms applicable to each type. Rules governing the contents of prospectuses to be used in the sale of securities registered on the various forms were also promulgated.

In addition to general regulations relating to administration of the act, the Commission adopted a number of special rules, some of the more important of which were: Rule governing the withdrawal of registration statements and amendments thereto, and requiring that certain powers of amendment, withdrawal, and entry of consent order be conferred upon the person designated as the agent for service of the registrant; rule for newspaper and periodical advertisements of securities registered on form A-1; rule relating to the form of registration statement and prospectus to be used for additional blocks of securities previously registered; regulations for the exemption from registration of offerings of certain classes of securities of not more than \$100,000 in the aggregate.

While the Commission has no power to make a definitive determination as to the application of the act to individual cases, the securities division adopted the policy of expressing an opinion regarding specific questions submitted by registrants and attorneys representing persons engaged in the issuance and distribution of securities. It is estimated that during the 14 months ending September 1, 1934 (the legal staff of the securities division replied to approximately 25,000 oral, written, and telegraphic inquiries, each involving an interpretation of one or more sections of the act. A number of extracts from letters of the division in response to such inquiries were released for publication.

### 3. INVESTIGATION OF ALLEGED VIOLATIONS

Up to September 1, 1934, there had been informally docketed in the securities division of the Commission 382 complaints of violations of the act, which were investigated or were under investigation either by the division staff in Washington or by field agents. Approximately 638 inquiries and complaints were disposed of upon a finding that the Commission had no jurisdiction, mainly because the transactions involved occurred prior to passage of the act. Evidence in seven cases was transmitted to the Attorney General for possible institution of criminal proceedings under the act. Information obtained by the Commission's investigators which appeared to concern possible violations of the postal laws, or which related to pending proceedings under those statutes, was furnished to the Post Office Department in a number of instances.

*First court cases under the act.*--The first court proceeding instituted by the Commission under the authority conferred upon it by

the act was the filing of a bill of complaint in the United States District Court for the Southern District of New York, asking that an injunction be issued to restrain Maison-Pichel, Inc., New York, importer of wines and liquors, from representing that the Commission had passed upon the merits of, or given approval to, an issue of \$100,-000 of preferred and common stock for which a registration statement had been filed. A temporary restraining order issued by the court February 6, 1934, was followed by a hearing of the complaint on February 13, 1934, at which time a permanent injunction was issued.

On June 8, 1934, the Commission obtained a permanent injunction in the United States District Court in New York City against C. Morrison Smith & Co., restraining that company from engaging in certain acts and practices in violation of the provisions of the act. In another case, upon motion of counsel for the Commission, Judge William Clark, of the United States Court for the District of New Jersey, at Newark, on July 2, 1934, granted a temporary order restraining Carleton Saunders & Co., of Newark, from certain practices claimed to have operated as a fraud or deceit upon purchasers of stock of the Inspiration Gold Mining Co. of Montana. Hearing was set for September 10, 1934, at Newark. The latter proceedings were brought by the Commission under section 17A of the Securities Act of 1933.

The Commission also brought actions against Stock Market Finance, Inc., together with various individuals, of New York City, and Popular Finance, Inc., Boston, and Edward Towne, president and editor of the corporation (Aug. 17, 1934, and Aug. 30, 1934, respectively) seeking to enjoin them from engaging in certain transactions which the Commission alleged constituted a violation of the act. In the last named case, a temporary restraining order was granted by Judge Brewster, of the United States District Court in Boston.

### **PART III. GENERAL LEGAL WORK**

DESCRIPTION OF PROCEDURE

LEGAL INVESTIGATION

LEGAL WORK UNDER N.I.R.A.

CONSOLIDATIONS AND MERGERS

STIPULATION PROCEEDINGS

REPRESENTATIVE COMPLAINTS

ORDERS TO CEASE AND DESIST

TYPES OF UNFAIR COMPETITION

CASES IN THE FEDERAL COURTS

## **PART III. GENERAL LEGAL WORK**

### **DESCRIPTION OF PROCEDURE**

A case before the Federal Trade Commission may originate in several ways. The most common origin is through complaint by a competitor or from public sources other than the Commission itself. The Commission may initiate an investigation to determine if the laws administered by it are being violated.

No formality is required for anyone to make application for a complaint. A letter setting forth the facts in detail is sufficient, but it should be accompanied by all evidence in possession of the complaining party in support of the charges made.

### **INFORMAL PROCEDURE**

When an application for complaint is received, the Commission, through its chief examiner, considers the essential jurisdictional elements. It must appear that the practice complained of is one over which the Federal Trade Commission has jurisdiction, that is, it must involve interstate commerce, and the facts must be such that prosecution of a complaint would be in the public interest. Frequently it is necessary to obtain additional data by further correspondence or by a preliminary investigation before deciding whether to docket an application for complaint.

When an application for complaint has been docketed, it is assigned by the chief examiner to an attorney for investigation. The investigation is then made and all of the facts regarding the matter are developed. The attorney to whom the application is assigned inter-views the party complained against, advising of the charges and requesting the submission of such evidence as is desired in defense or in explanation. In making its investigations, it is not the policy of the Commission to disclose the identity of the complainant. If necessary, competitors of the respondent are interviewed to determine the effect of the practice from a competitive viewpoint. It is often desirable to interview consumers for the purpose of developing facts to assist in determining whether the practice alleged constitutes an unfair method of competition and also to establish the requisite public interest.

After developing the facts from all available sources, the examining attorney summarizes the evidence in a final report, reviews the



law applicable thereto, and makes recommendations as to what action the Commission should take thereon.

The entire record is then reviewed by the chief examiner and, if found to be complete, is submitted, with a brief statement of facts and his conclusions and recommendations, to the Commission for its consideration. The chief examiner may recommend: (1) Dismissal of the application and closing of the case for lack of evidence in support of the charge or on the grounds that the practice does not violate any law over which the Commission has jurisdiction, or (2) closing of the application upon the signing by the respondent of a stipulation of the facts and an agreement to cease and desist from the unlawful practice as charged, or (3) issuance of formal complaint.

The submission of the complete record of the investigation of cases direct to the Commission by the chief examiner expedites the handling of these matters. This procedure avoids the delay incident to the former practice of referring the case to a board of review.

If, after consideration of the chief examiner's recommendations, the Commission orders issuance of formal complaint, the case is turned over to the chief counsel for preparation of complaint and trial of the case.

Cases designated for stipulation are referred to the chief trial examiner for negotiation of the agreement. Cases involving unfair methods of competition are, in some instances, referred to the director of trade-practice conferences for report in lieu of formal complaint if they relate to an industry which has had or which contemplates having a trade-practice conference for consideration of the unfair practices in point.

All proceedings prior to issuance of formal complaint or publication of a stipulation are confidential.

#### **FORMAL PROCEDURE**

Only after most careful scrutiny does the Commission issue a complaint. The complaint and the answer of respondent thereto and subsequent proceedings are a public record.

A complaint is issued in the name of the Commission acting in the public interest. It names a respondent and charges a violation of law, with a statement of the charges. The party complaining to the Commission is not a party to the formal complaint issued by the Commission, nor does the complaint seek to adjust matters between parties; rather, the prime purpose of the proceeding is to prevent unfair methods of competition or other unlawful practices, for the protection of the public.

The Commission's rules of practice and procedure provide that in case the respondent desires to contest the proceedings he shall, within

20 days from service of the complaint, file with the Commission an answer to the complaint. The rules of practice also specify a form of answer for use should the respondent decide to waive hearing on the charges and not contest the proceeding.

Failure to appear or to file an answer within the time specified--

shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In a contested case, the matter is set down for taking of testimony before a trial examiner. This may occupy varying lengths of time, according to the nature of the charge or the availability and number of witnesses to be examined. Hearings are held before a Commission trial examiner, who may sit in various parts of the country, the Commission and the respondent each being represented by its own attorneys.

After the taking of testimony and the submission of evidence on behalf of the Commission in support of the complaint, and on behalf of the respondent, the trial examiner prepares a report of the facts for the information of the Commission, counsel for the Commission, and counsel for the respondent. Exceptions to the trial examiner's report may be taken by counsel for either side.

Within a stated time after receipt of the trial examiner's report, briefs are filed, and the case comes on for final argument before the full Commission. Thereafter the Commission reaches a decision either sustaining the charges made in the complaint or dismissing the complaint and closing the case.

If the complaint is sustained, the Commission makes a report in which it states its findings as to the facts and conclusion that the law has been violated, and thereupon an order is issued requiring the respondent to cease and desist from such violation.

If the complaint is dismissed, an order of dismissal is entered and the record in the case is closed.

These orders constitute the final functions of the Commission as far as its own procedure is concerned.

#### **CASES MAY BE TAKEN TO FEDERAL COURTS**

No penalty is attached to an order to cease and desist, but a respondent against whom it is directed is required within a specified time, usually 60 days, to report in writing the manner in which he is complying with the order. If he fails or neglects to obey an order while it is in effect, the Commission may apply to a United States circuit court of appeals for enforcement of its order. Also the respondent may petition for review. The circuit court has power to

affirm, modify, or set aside the order of the Commission, but these proceedings may be carried by either party on certiorari to the Supreme Court of the United States for final determination.

## LEGAL INVESTIGATION

### PRELIMINARY INQUIRIES PRIOR TO FORMAL COMPLAINT

The legal investigation work of the Commission is directed and supervised by the chief examiner, and includes the investigation of applications for complaints preliminary to formal action for the correction of unfair methods of competition under the law administered by the Commission.

At the beginning of the fiscal year, there were pending 478 preliminary or undocketed cases of alleged unfair methods of competition. There were received from the public and other sources 2,151 new applications in which such unfair methods were alleged, which was an increase of 558 such applications over the 1,593 received the preceding year. Preliminary investigations were made by the chief examiner in 1,869 of these cases, leaving 760 undocketed cases on file at the close of the fiscal year.

Of the preliminary investigation cases, 272 were docketed as regular Commission applications for complaint. These, with 125 pending Commission applications (previously docketed at the beginning of the year) totaled 397 docketed applications, of which 241 were disposed of during the year.

A number of the attorneys on the chief examiner's staff usually assigned to the investigation of applications for complaints were engaged on general inquiries being made pursuant to resolutions of the Congress, including the chain store and gasoline investigations. During the last 6 months (January to June 1934) of the fiscal year, at the request of the chief counsel, attorneys on the chief examiner's staff assisted the chief counsel's division to the extent of 4,233 man-hours, or the equivalent of more than 600 working days. Attorneys regularly engaged in legal investigational work of the division were also assigned to investigate matters referred to the Commission by the National Recovery Administrator. However, the regular work has been kept well in hand, as indicated by the fact that the average length of time between the docketing of an application and the disposition by the chief examiner's division, applying to all docketed applications as of June 15 1934, was 6 days less than of the same date last year.

The chief examiner also conducts, by direction of the Commission or on requests, of other units of the Commission, supplemental in-

vestigations (1) in matters originating with the Special Board of Investigation (for false and misleading advertising); (2) where additional evidence is necessary in connection with formal complaints; (3) where it appears or is charged that cease-and-desist orders of the Commission are being violated; and (4) where it appears or is charged that stipulations entered into between the respondent and the Commission wherein the respondent agreed to cease and desist from certain unfair competitive practices, are not being observed in good faith.

The legal-investigation work of the Commission is directed from its central office in Washington and conducted through that office and four branch offices, located at 45 Broadway, New York; 433 West Van Buren Street, Chicago; 544 Market Street, San Francisco; and 801 Federal Building, Seattle. During the year additional regional offices were established to facilitate the handling of matters submitted to the Commission by the National Recovery Administrator as well as the regular legal investigation of complaints in the several localities. These offices, which are of a temporary nature, are located as follows: 80 Federal Street, Boston 422 Post Office Building, Atlanta; 117 Customhouse Building, New Orleans; 5 Post Office Building, Memphis; 208 Federal Building, Minneapolis; 526 Post Office Building, Kansas City, Mo.; and 469 Federal Building, Dallas. Business men may confer at these offices with representatives of the Commission regarding cases in which they are interested and with reference to rulings made by the Commission. All of these branch offices are under the direction and supervision of the chief examiner.

## **LEGAL WORK UNDER THE NATIONAL INDUSTRIAL RECOVERY ACT**

### **N.R.A. REFERS 100 INVESTIGATIONS TO COMMISSION**

Section 6 (c) of the National Industrial Recovery Act provides that the Federal Trade Commission, upon request of the President, shall make such investigations as may be necessary to enable the President to carry out the provisions of the act. Pursuant to this section, the National Recovery Administration, during the last fiscal year, referred 100 cases to the Federal Trade Commission for investigation, of which 76 have been completed and returned to the National Recovery Administration. The investigations have ranged from a simple matter of ascertaining the facts relative to alleged violation of labor provisions in a code by one company to a general survey, covering several States, made to ascertain the effect of the operation of a code on a large group of producers amenable to its provisions.

**COMPLAINTS ISSUED ON RELATION OF NATIONAL RECOVERY  
ADMINISTRATION**

At the request of the National Recovery Administration, the Commission has issued complaints in three cases. In each case, the National Recovery Administration intervened, and its attorney was recognized by the Commission as counsel in charge of the prosecution of the complaint. In each case, the respondent was charged with the use of unfair methods of competition in violation of a code of fair competition for the industry involved, and, therefore, in violation of section 5 of the Federal Trade Commission Act by virtue of the provisions of section 3 (b) of the National Industrial Recovery Act.

Details of the three cases are as follows:

*Phillips-Baker Rubber Co. et al., Docket No. 2201.*--On June 20, 1934, the Commission issued its complaint against Phillips-Baker Rubber Co., a corporation; La Crosse Rubber Mills Co., a corporation; and Goodyear Rubber Co., a corporation.

The code alleged to have been violated by respondents is the Code of Fair Competition for the Rubber Manufacturing Industry as approved on December 15, 1933, by President Roosevelt. Respondents are all members of that industry.

Section 1 of article V of chapter IV of said code requires each member of the industry to file with the Rubber Manufacturers Association a schedule of unit prices, discounts, and terms of sale for their said products or any of them. The respondents are alleged to have failed and refused to file their respective schedules of unit prices, etc., with this association.

Several answers and other pleadings were filed by the intervenor and the several respondents. The answers do not deny the allegation that respondents had failed and refused to file the schedules, but make at length many allegations challenging the validity of the code and of certain of its provisions.

Evidence in the case has been taken with the exception of that portion relating to a single element of the issue, which in turn awaits the termination of certain action now pending in relation to the code by and before the National Recovery Administration.

*Purity Ice Co. et al., Docket No. 2203.*--On June 28, 1934, the Commission issued its complaint against Purity Ice Co., and Felice Ferlise, its president.

The code alleged to have been violated by respondents is the Code of Fair Competition for the Ice Industry as approved October 3, 1933, by the President.

The article of the code alleged to have been violated is article XI, which provides that one desiring to establish additional ice production, storage, or tonnage in any given territory must first show, to the satisfaction of the Administrator appointed by the President to administer the National Industrial Recovery Act, that public necessity and convenience require such additional ice-making capacity, storage, or production. The complaint alleged that respondents, without making such required showing of public necessity and convenience, constructed in Lakeland, Fla., an ice-manufacturing plant, equipped the same for the purpose of making ice therein and thereby, and began and have continued to manufacture ice at the plant and to offer the same for sale, and sell the same, to the public.

Issues were joined on the complaint. Respondents did not deny the allegation above referred to, but at great length alleged facts to challenge the validity of the code as against the respondents.

The case has been tried and will be presented before the Commission on briefs and oral argument.

Edward J Ramsey, et al., Docket No. 2206.--The Commission issued complaint against Edward J Ramsey, Edward P. Ramsey, Louise Ramsey, and three corporations owned and controlled by them.

The code alleged to have been violated by respondents is the Code of Fair Competition for the Boot and Shoe Manufacturing Industry as approved on October 3, 1933, by the President.

The article of said code alleged to have been violated is article VIII, section 3, which provides that in no case shall a member of the industry sell his products to wholesalers, department stores, retailers, and others in the trade at a discount in excess of 5 percent.

It was alleged in the complaint that respondents violated the article of the code in this, to wit, that they made sales at discounts as high as 23 percent.

Issues have been joined by answers filed in which several questions are presented.

Certain respondents deny that they are manufacturers and assert that they are not bound by the provisions of the code, but they do not deny sales at discounts above 5 percent.

Edward J Ramsey denied that he makes sales at a discount of more than 5 percent, claiming that he sells only to his correspondents and in compliance with the code.

The answers also alleged facts which challenge the validity of the provisions of the code. The issues as joined present controverted questions both of fact and of law.

By consent of parties, the case is set for trial on November 20, 1934.

## CONSOLIDATIONS AND MERGERS

### CASES ARISING UNDER SECTION 7 OF THE CLAYTON ACT

Internal reorganization and centralization of subsidiary activities, including recapitalization and some liquidation, continued to prevail in the field of industrial and commercial organizations during the fiscal year ending June 30, 1934. Comparatively few consolidations or mergers of importance were effected during the year. There was, however, considerable movement in the acquisition by established organizations of well-known and favorably located distilling facilities and in the organization of new corporations for the purpose of engaging in the brewing business.

Four preliminary inquiries involving acquisitions, consolidations, and mergers were pending at the beginning of the year; 45 additional inquiries were instituted during the year, and 14 were pending at the close of the year, indicating a disposition of 35 preliminary matters during the year, all of which were filed without docketing.

Three of the 35 matters filed without docketing pertained to proposed acquisitions, consolidations, or mergers which failed of consummation. Twenty of the matters involved acquisition of assets and 12 involved acquisition of capital stocks.

All of the 12 matters involving the acquisition of capital stocks were filed without docketing because the acquisition did not result in a substantial lessening of competition, restraint of trade, or tendency toward monopoly. In 7 of the 12 matters, the products of the organizations were noncompetitive, in 3 the products of the companies were sold in noncompetitive territories, and in 2 there was no competition due to the community of interest developed in the companies involved prior to the acquisition.

Section 7 of the Clayton Act, briefly stated, declares it to be unlawful for a corporation engaged in commerce to acquire the capital stock of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporations involved, restrain commerce in any section or community, or tend to create a monopoly of any line of commerce.

The section does not prohibit corporations from purchasing stock of other corporations for investment where the stock is not used to bring about the substantial lessening of competition; nor does the section prevent the acquisition by a corporation of stock of newly formed subsidiaries to carry on its lawful business where the effect of such formation is not to substantially lessen competition. The section does not prohibit consolidations and mergers of competing companies through the acquisition of assets.

Four docketed applications involving section 7 were pending at the beginning of the year, no new cases were added to the docket, and four were dismissed or disposed of during the year. One previously dismissed docketed application was reinstated and was pending at the close of the year.

Two complaints involving section 7 were pending before the Commission at the beginning of the year; 1 was issued during the year; 1 was dismissed; a cease and desist order was issued in another, and 1 was pending at the close of the year in which Crown-Zellerbach Corporation, of San Francisco, is respondent. The cease and desist order of divestiture was issued against the Vanadium-Alloys Steel Co., of Latrobe, Pa.

The United States Supreme Court, on December 11, 1933, granted Arrow-Hart & Hegeman Electric Co., of Hartford, Conn., a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, which, on May 29, 1933, affirmed the Commission's order of divestiture which was based on section 7 of the Clayton Act. The United States Supreme Court, on March 12, 1934, reversed judgment' of the Court of Appeals for the Second Circuit and thereby set aside the Commission's order of divestiture issued in July 1932.

## **STIPULATIONS TO END UNFAIR TRADE PRACTICES**

### **PROCEDURE PROTECTS THE PUBLIC**

The Commission believes that its stipulation procedure is protecting the American consumer from numerous unfair methods of competition which, in the aggregate, are an important consideration. It is apparent also that large sums of money that otherwise would be spent in litigation are being saved the public.

The stipulation procedure provides an opportunity for the respondent to enter into a stipulation of the facts and voluntarily agree to cease and desist forever from the alleged unfair methods set forth therein. The question of whether a respondent shall be permitted to sign a stipulation is entirely within the discretion of the Commission, as the disposition of a case by stipulation is not a right but a privilege extended by the Commission.

Should a potential respondent decide in the interest of economy and expedition, that he would rather abandon a practice of which complaint has been made than go through with trial and other formal procedure, and the Commission approve such a course, he may sign an agreement to "cease and desist forever" from the alleged unfair practice. This is done with the understanding that should he ever resume such practice, the facts as stipulated may be used in



evidence against him in the trial of a complaint which the Commission may issue.

Commodities mentioned in stipulations are of an infinite variety. Taken at random there would be such a list as follows: Hats, shoes, suit goods, fly-catching devices, tombstones, toy airplanes, perfumes, blankets, electrotherapeutic instruments, synthetic beverages, horse-shoes, radio cabinets, sea food, and tooth paste.

Stipulations in which various individuals and companies agreed to cease and desist from unlawful practices charged were approved and accepted by the Commission during the fiscal year in 115 cases. These cases are in addition to 157 stipulations concerning cases of false and misleading advertising.

During the 81/2 years in which the stipulation system had been in effect, as of June 30, 1934, a total of 1,866 stipulations had been approved and accepted by the Commission, of which 686 were of the special false and misleading advertising class. Fourteen of the total number of cases stipulated have been rescinded.

In February, 1934, the Commission made a change of policy regarding publicity for stipulations, namely that "all such stipulations shall be altogether for the public record of the Commission", where, theretofore, with certain exceptions, only the facts in each case had been made public and the names of the parties omitted.

## **REPRESENTATIVE COMPLAINTS**

### **MAJORITY INVOLVE UNFAIR METHODS OF COMPETITION**

All but 4 of the 97 formal complaints issued during the year charged use of unfair methods of competition, violative of section 5 of the Federal Trade Commission Act. The remaining complaints issued charged violation of sections 7 and 2 of the Clayton Act, the former by the acquisition of the capital stock of competing companies, and the latter by price discrimination tending to create monopoly and substantially lessen competition. No complaints were issued during the year under section 3 (tying contracts) or section 8 (interlocking directorates). No complaint was issued under section 5 of the Federal Trade Commission Act as extended by section 4 of the Export Trade Act.

Herewith are presented brief summaries of the charges contained in a few of the complaints issued by the Commission during the fiscal year. Unless otherwise indicated, the practices charged are violative of the Federal Trade Commission Act. These complaints are fairly representative.<sup>1</sup>

<sup>1</sup> Most of these complaints are pending, consequently, the Commission has reached no determination as to whether the law has been violated therein.

Most of the respondents have filed answers to the Commission's complaints and in most of the cases testimony has been taken. In one case the Commission has taken final action.

#### **RAYON CASES; ALLEGED PRICE FIXING**

In a complaint issued in February 1934 the Commission charged the respondents, a group of rayon manufacturers, individuals controlling such, and a firm of accountants, with conspiracy to fix and maintain prices for rayon yarn and prices for rayon cloth made from such yarn. The conspiracy is alleged to have been entered into in October 1931 and as a means for carrying out such conspiracy, it is charged that respondents curtailed production to keep the price of yarn and cloth in accordance with the agreed price; that the firm of accountants was employed to inspect their books and to find any departure from the agreed prices; that the manufacturers refused to sell to knitters of cloth who did not maintain the prices for cloth set by the yarn manufacturers, and caused some of the respondents to enter into the knitted cloth business for the purpose of policing the rayon cloth field and to keep the cloth knitters in line as to prices for cloth.

Members of the accounting firm were named as co-respondents because it was alleged they assisted the respondent producers in maintaining their price-fixing agreement.

#### **ALLEGED FALSE ADVERTISING IN THE SALE OF ASPIRIN**

A nationally known aspirin manufacturer is charged, in a complaint issued in June 1934, with exaggerating, in newspaper, periodical, and radio advertising, the benefits to be obtained from the use of aspirin. It is further charged that this company's advertisements are in such language as to induce the belief that aspirin sold by other manufacturers is not genuine and that the use of such will not alleviate the suffering or ailment for which aspirin is generally prescribed, but, on the contrary, will be detrimental and injurious. According to the complaint, this manufacturer claimed in fact that its product would quickly relieve various pains, including those from headaches, neuritis, cold, toothache, rheumatism, and other ailments; also that any user may safely take as many of its tablets as necessary to relieve pain or cure diseases or sleeplessness. According to the Commission's complaint, while aspirin will afford a temporary relief of certain pains and aches, it is not a cure or treatment for the pathological condition of which such pains and aches are symptomatic, and may prove harmful to certain people.

### **ALLEGED PRICE DISCRIMINATION BY MANUFACTURERS AND DISTRIBUTORS OF TIRES**

In its complaint issued September 13, 1933, the Commission charges a nationally known tire manufacturer with violating the provisions of section 2 of the Clayton Act in that it was then and for several years had been discriminating in the price of a commodity, namely, tires, between a nationally known mail-order house and its dealers, which discrimination was not "on account of the differences in the grade, quality, or quantity of the commodity sold" and did not "make only due allowances for difference in the cost of selling or transportation", and which was not "made in good faith to meet competition."

The complaint alleges that such discrimination has the effect of substantially lessening competition in the sale of tires between the mail-order house and retail competitors, and that such discrimination tends to create a monopoly of both the mail-order house and the manufacturer.

### **ALLEGED ACQUISITION OF CAPITAL STOCK OF COMPETING CORPORATIONS**

In a complaint issued December 6, 1933, against a certain corporation, the Commission charges that the corporation, originally organized several years before as a holding corporation under a different name, by exchange of its capital stock, acquired all of the common stock of a large corporation engaged in the manufacture of newsprint paper and paper products; that the latter corporation was in competition with the respondent and several other corporations, all of which were subsidiaries of the original holding corporation and that thereby the respondent, through such acquisition, acquired a dominant position in the paper and paper products industry, particularly newsprint paper, controlling the manufacture and sale of 80 percent of the output of newsprint in the Pacific Coast States; that such acquisitions were in violation of section 7 of the Clayton Act because of the lessening of competition between the original holding company and its subsidiaries on the one hand and the paper manufacturing corporation so acquired and its subsidiary corporations on the other, and also because of the tendency to restrain interstate commerce and create a monopoly in the paper industry.

### **ALLEGED COMBINATION TO CONTROL AND DEPRESS COTTONSEED PRICES**

The Commission in June 1934 issued against a cottonseed-products association a formal complaint which was the outgrowth of an extended investigation based on sworn testimony and public hearings directed by Senate resolution. These hearings extended from June

1930 to February 1932. Formal complaint was ordered by the Commission in May 1933 upon submission of its final report to the Senate, but its issuance and service were withheld pending negotiations between the Agricultural Adjustment Administration and the industry for adoption of a marketing agreement under the Agricultural Adjustment Act approved May 12, 1933. No such agreement had been concluded at the time the complaint was issued. The complaint charges respondents with creation and maintenance of combination and conspiracy to control and depress the price of cottonseed and to advance the price of cottonseed meal.

#### **ALLEGED MISREPRESENTATION IN THE SALE OF BUILDING MATERIAL**

On January 23, 1934, the Commission issued complaint against a New York corporation and its officers individually, manufacturers and distributors of a plastic paint or wall-texture material called "Duralith."

The Commission charges that ever since the company's organization, the individual respondents have been sole owners of its stock and also its executive officers. The complaint charges that these individual respondents instituted, maintained, and directed all of the policies, methods, and practices of the corporation and were responsible for all of its activities in interstate commerce.

The complaint charges that respondents devised and practiced a fraudulent scheme in interstate commerce, in course of which, under the pretense of securing distributors for their product, they induced numerous distributors, by false representations, which the complaint specifically sets out, to sign contracts for the purchase of Duralith, and to sign trade acceptances in payment therefor. These contracts and trade acceptances, it is charged, were secured from the distributors largely upon the particular representation, made along with other false representations, that such acceptances would be held by the corporation until maturity and until distributors could pay them out of returns from the sale of Duralith, purchased by them, to dealers and consumers.

The complaint further charges that in violation of such representation, in reliance on which trade acceptances were signed, it has been the practice of respondents to transfer or sell this commercial paper to finance companies which have acted in collusion with respondents. It is alleged that these finance companies, although having full knowledge of the practices of respondents, have purchased such commercial paper and have instituted actions to collect the same, pretending to be innocent purchasers for value and without notice. In other words, it is alleged that respondents have effected the sale

of their product by fraudulent representations and thereafter, by transferring trade acceptances to finance companies with which they have been operating in collusion, have precluded resort by defrauded distributors to the legitimate defense that their signatures to contracts and trade acceptances had been secured by fraudulent pretenses.

#### **ALLEGED CONSPIRACY TO LESSEN OR DESTROY COMPETITION**

In a typical complaint of this character, the Commission charges a New York corporation, two other concerns, and several individuals with the use of unfair methods of competition in the pursuit of a common course of action, and in combining and conspiring together and with others, for the purpose of suppressing, eliminating, or destroying competition and of acquiring and maintaining a monopoly in the distribution of transfers and seals, stamps, or brands used for marking or branding trade marks, designs, patterns, devices, or symbols upon textile fabrics, garments, embroidery, leather, leather goods, and other articles of commerce, including such extensively used commodities as hosiery for men, women, and children.

#### **ALLEGED COMBINATION AND MONOPOLY-BUILDING-MATERIAL DEALERS**

In a complaint issued June 7, 1934, the Commission named as respondents several associations and organizations charged with combining and conspiring together to regulate the flow of building materials in what is known as the "Pittsburgh-Cleveland trade area." It is charged that these groups and associations, being large and influential in the trade, have sought to and have established members and dealers of a class known as "recognized" dealers, that they are confining the sale and distribution of building materials and supplies through the medium of such recognized dealers exclusively. It is further charged that the respondents have induced, required, or compelled manufacturers and producers of such materials and supplies to refrain from selling or distributing such products to nonrecognized competitors or to dealers, contractors, consumers, or other purchasers who are not members of respondent associations or recognized dealers; that respondents have prevented other dealers, contractors, and purchasers from participating with them and their recognized dealers in pool car shipments and have required manufacturers and producers to confine and limit their distribution to carload quantities and to shipments by railroad only, thus compelling such manufacturers and producers to refrain from and to refuse to permit such distribution by motor truck or motor vehicle, thus eliminating the use of such transportation as well as actual or potential competition to themselves and their recognized dealers furnished by others who

may desire to have their requirements delivered by motor transportation.

It is also charged that said respondents have sought to prevent manufacturers of cement blocks and like materials from purchasing supplies direct from manufacturers and have sought to require them to purchase raw materials exclusively from respondent members and recognized dealers; and it is further charged that they have sought to confine the sale and distribution of all cement ordered by municipalities and other political subdivisions to their own members or recognized dealers.

These and other acts of respondents, it is charged, are monopolistic practices and methods of competition which are unfair and violative of section 5 of the Federal Trade Commission Act.

#### **ALLEGED RESALE PRICE MAINTENANCE**

A nationally known manufacturer of fountain pens, desk sets, ink, and automatic pencils was charged, in a complaint issued January 25, 1934, with enforcing a system of resale price maintenance in the sale to the public of its products.

It is alleged that the respondent sells only to retail dealers, and requires those dealers to resell the company's products to the public at prices which are fixed by it. The company has about 20,000 dealers throughout the United States. The complaint alleges that it enlists and secures the support of its officers, agents, and employees and the cooperation of dealers in enforcing and maintaining the system of resale price maintenance.

#### **ALLEGED MISBRANDING AND ADULTERATION OF PAINT**

In September 1933 the Commission issued complaint against a paint manufacturing concern alleging misbranding of various paint products and gross adulteration of the same. An amended and supplemental complaint made additional charges of the same character and the further charge of improper and deceptive use of labels.

It is alleged that in numerous instances, paint, the vehicle of which contained large percentages of water, was manufactured and sold in interstate commerce. In one instance, it is alleged, water comprised 85 percent of the vehicle of the paint, in another 66.1 percent, in another 56.73 percent, while in other instances the percentages alleged were from 49 percent up.

It is further alleged that a product was sold as "white lead" when it contained no white lead; that paint sold as "linseed-oil house paint" contained oil which was not pure linseed oil; that paint

of the cheapest character was sold as high-grade standard paint; that formulas not truly representing ingredients in the paint were printed on trade-name labels; that large quantities of cheap, inadequate substitutes for the requisite elements and proportions of white lead carbonate or sulphate, zinc oxide, or other metallic pigments, and linseed oil were put into the paint to cheapen and adulterate it, such ingredients not being set forth on the labels; that respondents encouraged and aided the opening of "Army", "Factory", and "\$1.00" paint stores in various States for the purpose of selling heavily watered and otherwise adulterated paint, and aided and encouraged such stores in selling at \$1 a gallon paint that was heavily adulterated with cheap substitutes of highly inferior quality, but which was represented as being high-grade, superior quality house paint.

It is further alleged that the respondent paint manufacturing company, in many instances, avoided or refrained from printing its own name on labels for paint manufactured by it, but instead printed on such labels the names of numerous fictitious companies and corporations having no actual existence, certifying on such labels to the quality and quantity of paint in cans to which the labels were affixed, giving directions for the proper use of the paint, guaranteeing its quality, and, in some instances, guaranteeing the number of years the paint would last.

It is also alleged that respondent paint-manufacturing company furnished its trade-name labels to dealers throughout the country who make a practice of buying paint at bankrupt sales and that such dealers affixed these labels to paint picked up by them at various auction sales; further, that respondent paint-manufacturing company cooperated with its various sales agencies throughout the country in advertising its own products as being those of bankrupt and unclaimed freight stock sales, thereby creating the impression upon the purchasing public that such paints, because obtained through bankruptcy and freight stock sales, constituted a high-grade paint product which was being sold at exceptionally low and attractive prices.

It is alleged that the foregoing acts and practices have placed in the hands of various dealers throughout the United States the means of deceiving ultimate purchasers, have diverted trade from and injured competitors of respondent company, are to the prejudice of the public and respondent's competitors, and constitute unfair methods of competition in interstate commerce.

In their answer the respondents admitted some of the allegations of the complaint, denying others.

### **OTHER TYPES OF MISREPRESENTATION**

Other cases in which the Commission has issued complaints during the year, involving misrepresentation, include a wide range of commodities, among which are: Men's shirts, nursery products, men's clothing, so-called health foods, malt sirups, proprietary medicines, handkerchiefs, depilatory products, encyclopedias, hardware products, window glass, cleaning fluids, toiletries, dental preparations, tobacco products, furs, corrugated paper and fabric boxes, furniture, scalp treatments, spark plugs for gasoline engines, pearls, smoke salt, toys, cedarized chests, burial vaults, extracts, Persian coats, can openers, cutlery, bunion removers, military apparel, Angora yarn, burial monuments, seafood, radioactive minerals, and velvet goods.

### **PENDING CASES AT THE CLOSE OF THE YEAR**

At the end of the fiscal year, 115 cases (formal public record) were pending, involving charges of unfair methods of competition in violation of section 5 of the Federal Trade Commission Act, the acquisition of stock in violation of section 7 of the Clayton Act, and price discrimination tending to create monopoly and substantially lessen competition in violation of section 2 of the Clayton Act. Among the practices embraced in such cases under section 5 were combinations and agreements to fix prices, suppress competition, and restrain trade; lottery schemes; commercial bribery; monopoly by international agreement; and various forms of misbranding and deceptive representations.

### **ORDERS TO CEASE AND DESIST**

#### **UNFAIR TRADE PRACTICES PROHIBITED IN 111 CASES**

The Commission issued orders to cease and desist from unfair methods of competition and other practices during the year in 111 cases. Among the respondents were a large manufacturer of gas mantles, a steel company, a distributor of electric light bulbs, a paint and varnish company, a coal-mining company, and others, including 48 candy companies charged with using sales methods held to be in the nature of lotteries or gaming devices. The cases are listed as follows :

#### **ORDERS TO CEASE AND DESIST ISSUED DURING YEAR**

Respondent	Location
Acme Shellac Products Corporation	Astoria, Long Island.
Adams, Charles F. (Inc.)	Lancaster, Pa.
Adams Paint Co. (Inc.)	Cleveland.
Advance Candy Co. (Inc.)	New York City.
Amber-Ita	Kalamazoo, Mich.



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<p>American Candy Co. (Inc.)                      American Caramel Co. (Inc.)                      American College (Inc.) and others                      Arnould Co., D.                      Blackhawk Candy Co. (Inc.)                      Block Candy Co. (Inc.)                      Blue Hill Candy Co. (Inc.)                      Brux Candy Co. and others                      Bunte Bros. (Inc.)                      California Alfalfa Products Co. (Inc.)                      Canton Mills (Inc.)                      Carman-Roberts Co. (Inc.)                      Case, Paul                      Casper Co., A. B. (Inc.)                      Charms Co. (Inc.)                      Cheeseman Medicine Co., Dr                      Chic-American Distributing Co                      Clark Co., D. L. (Inc.)                      Collins Co., J. N. (Inc.)                      Cook Paint &amp; Varnish Co. (Inc.) and others                      Cosmopolitan Candy Co. (Inc.)                      Croxon (Inc.) and others                      Cunrier's Tablets (Inc.)                      Curtiss Candy Co. (Inc.) and others                      Delson Chemical Co. (Inc.)                      Dilling &amp; Co. (Inc.)                      Drew Corporation                      Elbee Chocolate Co. (Inc.)                      Elmer Candy Co. (Inc.)                      English, Worth                      Euclid Candy Co. (Inc.)                      Excelsior Hat Works                      Fishback Candies (Inc.)                      Fler Corporation, Frank H                      Frank Hat Co                      Goldenberg, D. (Inc.)                      Gutman Bros. and others                      Hardie Bros. Co. (Inc.)                      Hanlin Hat Co. (Inc.)                      Heidelberger Confectionery Co. (Inc.)                      Henry Co., DeWitt P. (Inc.)                      Hires Turner Glass Co. (Inc.)                      International Gum Corporation                      International Optical Co., and others                      Ironized Yeast Co. (Inc.)                      Johnson-Fluker Co. (Inc.)                      Karcher Candy Co., A. (Inc.)                      Landis Medicine Co                      Lewis &amp; Sons, Edgar P. (Inc.)                      Lewis Bros. (Inc.)                      Lightning Co. (Inc.)                      Lindsay Light Co. (Inc.)                      Luden's (Inc.)</p>	<p>Milwaukee.                      Lancaster, Pa.                      Chicago.                      New York City.                      Davenport, Iowa.                      Atlanta.                      St. Louis.                      Newark, Ohio.                      Chicago.                      Pasadena, Calif.                      New York City.                      Pittsburgh.                      Brockton, Mass.                      Minneapolis.                      Newark, N.J.                      New York City.                      New Brunswick, N.J.                      Pittsburgh.                      Philadelphia.                      Kansas City, Mo.                      Chicago.                      New York City.                      Hollywood, Calif.                      Chicago.                      Brooklyn.                      Indianapolis.                      New York City.                      Do.                      New Orleans.                      New York City.                      Do.                      Jersey City.                      Indianapolis.                      Philadelphia.                      Brooklyn.                      Philadelphia.                      New York City.                      Pittsburgh.                      New York City.                      Philadelphia.                      Do.                      Do.                      Watertown, Mass.                      Chicago.                      Atlanta.                      Do.                      Little Rock.                      Cincinnati.                      Boston.                      Newark, N.J.                      St. Paul.                      Chicago.                      Reading, Pa.</p>
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Lytle, M. B	Delta, Utah.
Macey Co. (Inc.)	Grand Rapids.
Magnecoil Co. (Inc.)	Salt Lake City.
Maisel Trading Post (Inc.)	Albuquerque.
Margarella, Pasquale	New York City.
McGowan & Hall	Minneapolis.
Mears Radio Hearing Device Corporation	New York City.
Mells Manufacturing Co. (Inc.)	Do.
Metro Chocolate Co. (Inc.)	Do.
Minter Bros	Philadelphia.
Modern Hat Works	Jersey City.
Montecatini Distributing Co	Alliance, Ohio.
Morben Hat Works (Inc.)	New York City.
National Candy Co. (Inc.)	St. Louis.
National Silver Co. (Inc.)	New York City.
Northern Fruit & Produce Co. (Inc.), and others	Chicago.
Nurito Co. (Inc.)	Do.
Nuss Research Laboratory	Elkland, Pa.
Overland Candy Co. (Inc.)	Chicago.
Pecheur Losenge Co. (Inc.)	New York City.
Perlistein H. (Inc.)	Philadelphia.
Philadelphia Leather Goods Co	Do.
Pike, Seedsman, S. W. (Inc.)	St. Charles, Ill.
Pittsburgh The & Mantel Contractors' Association (Inc.) and others	Pittsburgh.
Prosperity Hat Co	New York City.
Quaker City Chocolate & Confectionery Co. (Inc.)	Philadelphia.
Reliable Suit Case Co	New York City.
Rittenhouse Candy Co	Philadelphia.
Rodda Candy Co., R. E (Inc.)	Lancaster, Pa.
Rosemary Candy Co	San Francisco.
Rothman, Max	New York City.
Rubay Candy Co. (Inc.)	Cleveland.
Rudy Chewing Gum Co. (Inc.)	Toledo, Ohio.
Ruth Candy Co., George H. (Inc.)	New York City.
Schutter-Johnson Candy Co. (Inc.)	Chicago.
Schwarz & Son (Inc.)	Newark, N.J.
Shapiro Candy Manufacturing Co. (Inc.)	New York City.
Shotwell Manufacturing Co. (Inc.)	Chicago.
Snyder & Son, E	Hempstead, Md.
Spicer Co., Charles R. (Inc.)	Memphis.
Standard Historical Society (Inc.), and others	Cincinnati.
Thayer Pharmacal Co. (Inc.)	Chicago.
Tuttle's Tite-On Cement Co. (Inc.)	Do.
Vanadium-Alloys Steel Co. (Inc.)	Latrobe, Pa.
Vellguth Co., Walter A	San Francisco.
Voneiff-Drayer Co. (Inc.)	Baltimore.
Walker Medicine Co	Atlanta.
Walkers's New River Mining Co. (Inc.)	Elkins, W.Va.
White-Lite Distributing Corporation, and others	New York City.
White Star Hat Co	Do.
World Woolen Co., and others	Grantwood, N.J.
Youells-Privett Exterminating Corporation	Plainfield, N.J.

A number of representative cases resulting in orders to cease and desist issued during the fiscal year are described below. Unless otherwise indicated, these orders pertain to violations of the Federal Trade Commission Act.

### COMMERCIAL BRIBERY

*Cook Paint & Varnish Co. and others, Kansas City, Mo.*-The Commission, in a complaint issued in June 1931, charged that respondents had offered and given to finishers, foremen, and other employees of manufacturers of furniture to whom the Cook Paint & Varnish Co. sold its products, without the knowledge and consent of their respective employers, substantial sums of money as inducements to influence the employees to purchase Cook products, to recommend such purchases to their employers, or to recommend to employers the use of the respondent company's products. The complaint further charged that the respondent corporation pursued the illegal practices in question through its principal salesman, Mark L. Jones, and that Jones, in order to conceal the transactions and the identity of the donors, had made payments to the donors in cash only.

The respondent, Cook Paint & Varnish Co., made a general denial of the allegations.

Hearings were held and testimony taken in which, among other things, it was shown that the respondent, Jones, had been indicted by the grand jury of Henry County, Va., at the July 1931 term of court, for corruptly influencing agents, servants, and employees, namely, the same persons he had been charged by the Commission with bribing, and that he had thereafter plead guilty to the charges in the indictment and been sentenced to a fine and imprisonment, the jail sentence being suspended during good behavior for 1 year.

The Commission found the respondent company responsible for the aforesaid acts of its salesman, Jones, and issued an order against the Cook Paint & Varnish Co. and against Mark L. Jones, individually, in which the respondents were ordered to cease and desist from directly or indirectly secretly giving or offering to give sums of money to employees of customers or prospective customers of Cook Paint & Varnish Co., or those of its competitors' customers or prospective customers without the knowledge or consent of their employers, as inducements to influence such employees to purchase the Cook products.

Report of compliance with the Commission's order to cease and desist has been filed by the corporate respondent.

**MISREPRESENTATION IN SALE OF OPTICAL GOODS**

*International Optical Co. and Others, Chicago.*-After considering a substantial amount of testimony and evidence, the Commission, on April 6, 1934, found that the respondents in this case, who were engaged in the sale of spectacles by mail, had been enjoined from selling as "Shuron" spectacles and frames, certain frames and spectacles of their own manufacture. The Commission further found that while the respondents advertised to furnish spectacles free, they did not do so. It was the practice of the respondents to require a purchaser to send a deposit whereupon the spectacles would be sent c.o.d. under a guarantee to refund in case the glasses proved unsatisfactory. The Commission found that the respondents made it a practice not to abide by such guarantees and that in a proceeding begun against them by the United States Post Office Department, there were 7,000 cases in which the Department alleged the respondents refused to make good on their guarantees.

The Commission further found that the respondents made false statements and claims in their advertisements regarding a self-eye-tester which the respondents used in their business, basing its conclusion upon the testimony of scientists. The Commission found that the wearing of glasses obtained as a result of tests with respondents' eye tester was injurious and liable to bring about the loss of vision and while the lenses for spectacles and optical instruments ground by reputable manufacturers are ground only from Crown glass, the evidence in the case discloses that a substantial number of lenses and spectacles shown by the respondents were ground from window glass.

The Commission, on April 6, 1934, issued an order against the respondents to cease and desist from (1) directly or indirectly representing to furnish to prospective purchasers free spectacles until and unless the respondents actually do furnish them free of charge; (2) directly or indirectly misrepresenting by advertisement respondents' "marvel eye tester", and (3) from publishing or using fictitious testimonial letters endorsing the "marvel eye tester."

**MISBRANDING PRODUCTS-ELECTRIC LIGHT BULBS**

*White-Lite Distributing Corporation and Others, New York City.*-The Commission, in a proceeding against this corporation, found that it and its manager, another respondent, sold electric light bulbs marked with substantially less than the correct number of watts, indicating that the bulbs or lamps would use less electric current to operate than they actually did use, and representing that the bulbs would, therefore, be less expensive to operate than lamps of standard

makes sold by competitors. For example, salesmen of White Lite Corporation demonstrated its lamp marked "15-watt", which was actually a 27- or 28-watt lamp, against a 25-watt standard lamp of a competitor. The customer was thus led to believe that if he bought respondent's lamp for which he paid twice the purchase price of the standard lamp, he would save in the cost of electric current the difference between the cost of operation of the 15- and 25-watt lamps, respectively. The customers purchasing "Sun-Glo" lamps from respondents thought from the marking on the lamps they were obtaining a 50-watt capacity bulb. Such "Sun-Glo" lamps were found to measure 63.6 and even 69.1 watts.

The Commission further found that Sun-Glo lamps marked 60 watts actually measure 69.8 watts and produced only 569 lumens of light, whereas a standard 50-watt lamp produced 575 lumens of light. In addition, the Commission found that to operate this Sun-Glo lamp at 6 cents a kilowatt-hour would cost \$4.19 for 1,000 hours, whereas the cost, at the same rate, for operating the 50-watt standard lamp would be only \$3 for 1,000 hours, or \$1.19 less.

The Commission ordered the respondent to cease and desist from selling and offering for sale incandescent lamps marked with other than the correct number of watts, and to further cease and desist from representing the lamps as being manufactured to comply with specifications of the United States Bureau of Standards. Respondent was further ordered to cease and desist from representing that any trade mark used in the sale of incandescent lamps was registered in the United States Patent Office, unless such registration had actually been made.

#### MONOPOLY BY INTERNATIONAL AGREEMENT

*Lindsay Light Co., Chicago.*--The Commission on March 5, 1934, entered an order against Lindsay Light Co. prohibiting the enforcement of an agreement entered into by it with four foreign companies or corporations located in Berlin, London, and Paris, by which agreement the foreign companies contracted not to export "thorium" or any derivative thereof into the United States or Canada, and in return the Lindsay Light Co. agreed not to sell "thorium" or products derived therefrom except in the United States or Canada, and then only upon the condition that its purchasers would agree not to export such thorium and its derivatives, which are used in the manufacture of gas mantles.

By the same order, the Commission enjoined the Lindsay Light Co. from enforcing an agreement with Travencor Minerals, Ltd., of London, by which the latter company agreed not to sell "Monazite sand" to anybody in the United States other than the Lindsay Light

Co. and to prevent any of its foreign customers from shipping such into the United States.

#### **ACQUISITION OF CAPITAL STOCK OF COMPETING CORPORATIONS**

*Vanadium-Alloys Steel Co., Latrobe, Pa.*-In an order issued January 12, 1934, the Commission required the Vanadium-Alloys Steel Co., a Pennsylvania corporation engaged in the manufacture and Sale in interstate commerce of tool and other high-grade steels, to divest itself in good faith of all the capital stock of the Colonial Steel Co., a Pennsylvania corporation also engaged in the manufacture and sale in interstate commerce of tool and other high-grade Steels, which, it was charged, had been illegally acquired under section 7 of the Clayton Act, which forbids the acquisition of the capital stock of a corporation engaged in interstate Commerce by a competing corporation where the effect of such acquisition may be to suppress competition between the two Corporations or tend to restrain trade in any community or tend to create a monopoly in any line of commerce.

The Commission found that the effect of the acquisition of the capital stock of the Colonial Steel Co. by the Vanadium-Alloys Steel Co. was a unification of Sales and production policies and a Substantial lessening of the competition between the two corporations. It was further found that while the increases in the production of the two companies, as a result of the acquisition, did not so substantially increase the respondent's production in its relation to the whole as to enable it to restrain commerce in any section or community and did not tend to create a monopoly in the line of commerce in which the two companies were engaged, nevertheless, there having been substantial competition between the two companies, the lessening of this competition was substantial and its elimination a matter of concern to the consuming public.

#### **MISBRANDING SEED POTATOES**

*Northern Fruit & Produce Co., Chicago.*-On March 8, 1934, the Commission entered an order to cease and desist against the Northern Fruit & Produce Co. and Growers' Produce Exchange, both corporations, and five individual respondents, engaged in the business of buying and selling seed potatoes. Four respondents had admitted the allegations of the Commission's complaint of October 5, 1933, waived hearing on the charges, and consented to the order. The other three failed to answer.

The order was to cease and desist from representing by means of tags attached to the seed potatoes, or in any other manner, that such

potatoes had been inspected or certified with reference to size, quality, or grade when such was not the fact; that they had been inspected for conditions known as "dwarfing", "running out", "Mosaic", or any other potato disease determinable only by inspection of the seed potato plant while growing, when such seed potatoes did not come from plants so inspected; that the seed potatoes had been inspected or reported upon by any department or bureau of the United States Government with reference to size, quality, or grade, when such inspection had consisted of an inspection "for condition only"; or that the seed potatoes were of a grade known and designated as "U. S. No. 1" or "True to Variety", when such was not the fact.

A subsequent investigation by the chief examiner's division disclosed that respondents were complying with this order.

#### **MISBRANDING AND MISLABELING OF COAL**

*Walker's New River Mining Co., Elkins, W. Va.*--The Commission found that the respondent mined its coal in a region some 75 miles from the "New River" district of West Virginia., but that nevertheless it advertised and sold its coal as "New River" coal. The Commission further found that efforts of the operators in the "New River" field to distinguish "New River" coal from other types or grades and to give it a recognized reputation of quality had been quite successful. While the Commission did not find that the respondent's coal was of inferior quality, nevertheless it ordered respondent to cease and desist from designating or labeling its product "New River Coal." The respondent contended that "New River Coal" is not in fact a trade name signifying coal from the "New River" field, but could be appropriately applied to coal mined from any of the seams known geologically as the "New River Group of the Pottsville Series." The Commission, however, found that the practice of the respondent in using the words "New River" in its corporate and trade name and its practice of offering for sale and selling its coal described, designated, or invoiced as "New River Coal", had the capacity and tendency to mislead and deceive the public into the belief that the coal so offered by respondent was mined in the district generally known as the "New River District" or "New River Coal Field", a name which to the public was an assurance of uniform character and value, irrespective of geological origin or fluctuation in quality encountered in mining from various Seams of coal, and to induce the purchase of such coal in reliance on such erroneous belief.

**MISREPRESENTATION OF LEATHER GOODS**

*Jacob Antinoph and Harry Medoff, copartners, doing business as Philadelphia Leather Goods Co., Philadelphia.*--The Commission, on February 2, 1934, issued against the respondents above named its order to cease and desist from designating and describing their handbags, suitcases, and other luggage made from "split seal" as "Seal" or "genuine seal" unless the word "seal" is modified by the word "split" or other expression designating that the material is an under layer of sealskin.

Another order of the same general nature was that against Benjamin Hallman, doing business as Reliable Suit-Case Co., in which respondent was ordered to cease and desist from designating luggage made from split leather as being made from genuine leather.

**SALE OF CANDY BY LOTTERY OR CHANCE**

In September 1931 the Commission issued an order requiring R. F. Keppel & Bro., Inc., of Lancaster, Pa., to cease and desist from employing certain methods of sale in the nature of a lottery or gaming device. The respondents were found to have distributed to wholesale and retail dealers packages or assortments of candy so packed and assembled as to involve the use of a lottery scheme when distributed to the consumer. One of the plans consisted of an assortment of candies composed of a number of pieces of uniform size, shape, and quality, selling at retail for 1 cent each and in a small number of which had been concealed pieces of money. Another plan was the indication of the price of the individual pieces of candy on slips of paper concealed within the wrappers, some being given away free of charge. A third plan consisted of arranging an assortment of candy in which the purchaser of a piece of candy having a center of a particular color was given a larger piece of candy or a prize.

The Commission's order was reversed by the Circuit Court of Appeals but upon certiorari to the Supreme Court was affirmed February 5, 1934, and as a result the Commission has issued similar cease and desist orders against 48 candy manufacturers with headquarters in 14 Eastern and Middle Western States, and has formally docketed approximately 60 complaints.

**TYPES OF UNFAIR COMPETITION****PRACTICES CONDEMNED IN ORDERS TO CEASE AND DESIST**

The following partial list shows unfair methods of competition condemned by the Commission from time to time in its orders to



cease and desist issued under section 5 of the Federal Trade Commission Act.

These do not include Clayton Act violations, which, under the jurisdiction of the Commission, embrace, subject to the various provisions of the statute, price discrimination (sec. 2, Clayton Act), tying and exclusive contracts or dealings, corporate stock acquisitions (sec. 7, Clayton Act), and interlocking directorates (sec. 8, Clayton Act).

The list is as follows :

The use of false or misleading advertising, calculated to mislead and deceive the purchasing public to their damage and to the injury of competitors.

Misbranding of fabrics and other commodities respecting the materials or ingredients of which they are composed, their quality, purity, origin, or source, and selling them under such names and circumstances that the purchaser would be misled in these respects.

Bribing buyers or other employees of customers and prospective customers, without the latter's knowledge or consent, to secure or hold patronage.

Procuring the business or trade secrets of competitors by espionage, or bribing the employees, or by similar means.

Inducing employees or competitors to violate their contracts and enticing away employees of competitors in such numbers or under such circumstances as to hamper or embarrass the competitors in the conduct of their business.

Making false and disparaging statements respecting competitors' products, their business, financial credit, etc.

Wide-spread threats to the trade of suits for patent infringement arising from the sale of alleged infringing products of competitors, such threats not being made in good faith but for the purpose of intimidating the trade and hindering or stifling competition.

Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods at the same terms accorded to the boycotters or conspirators, or to coerce the trade policy of their competitors or of manufacturers from whom they buy.

Passing off goods or articles for well and favorably known products of competitors through appropriation or simulation of such competitors' trade names, labels, dress of goods, etc., with the capacity and tendency unfairly to divert trade from the competitors, and/or with the effect of so doing to their prejudice and injury and that of the public.

Selling rebuilt, second-hand, renovated, or old products or articles made from used or second-hand materials as and for new.

Paying excessive prices for supplies for the purpose of buying up same and hampering or eliminating competition.

Using concealed subsidiaries, ostensibly independent, to secure competitive business otherwise unavailable.

Using merchandising schemes based on a lot or chance.

Cooperative schemes and prices for compelling wholesalers and retailers to maintain resale prices fixed by the manufacturer for resale of his product.

Combinations or agreements of competitors to enhance prices, maintain prices, bring about substantial uniformity in prices or to divide territory or business, to cut off competitors' sources of supply, or to close markets to competitors, or otherwise restrain or hinder free and fair competition.

Various schemes to create the impression in the mind of the prospective customer that he or she is being offered an opportunity to make a purchase under unusually favorable conditions when such is not the case, with capacity and tendency to mislead and deceive many of the purchasing public into buying products involved in such erroneous belief, and/or with the effect so to do, to the injury and prejudice of the public and of competitors, such schemes including--

(1) Sales plans in which the seller's usual price is falsely represented as a special reduced price made available on some pretext for a limited time or to a limited class only.

(2) The use of the "free goods" or service device to create the false impression that something is actually being thrown in without charge, when, as a matter of fact, it is fully covered by the amount exacted in the transaction taken as a whole.

(3) Use of misleading trade names calculated to create the impression that a dealer is a manufacturer selling directly to the consumer with resultant savings.

(4) Use of pretended exaggerated retail prices in connection with or upon the containers of commodities intended to be sold as bargains at lower figures.

Subsidizing public officials or employees through employing them or their relatives under such circumstances as to enlist their interest in situations in which they will be called upon by virtue of their official position to act officially, making unauthorized changes in proposed municipal bond issues, corrupting public officials or employees and forging their signatures, and using numerous other grossly fraudulent, coercive and oppressive practices in dealing with small municipalities.

Imitating or using standard containers customarily associated in the mind of the general purchasing public with standard weights or quantities of the product therein contained to sell to the public such

commodity in weights or quantities less than the aforementioned standards, with capacity and tendency to deceive the purchasing public into believing that they are purchasing the quantities generally associated with the standard containers involved, and/or with the effect of so doing, and with tendency to divert trade from and otherwise injure the business of competitors who do not indulge in such practices and/or with the effect of so doing, to the injury of such competitors and to the prejudice of the public.

Concealing business identity in connection with the marketing of one's product, or misrepresenting the seller's relation to others, e.g., claiming falsely to be the agent or employee of some other concern or failing to disclose the termination of such a relationship in soliciting customers of such concerns, etc.

Misrepresenting in various ways the advantages to the prospective customer of dealing with the seller, with the capacity and tendency to mislead and deceive many among the consuming public into dealing with the person or concern so misrepresenting, in reliance upon such supposed advantages, and to induce their purchases thereby, and/or with the effect of so doing, to the injury and prejudice of the public and of competitors, such as--

- (1) Seller's alleged advantages of location or size.
- (2) False claims of being the authorized distributor of some concern.
- (3) Alleged endorsement of the concern or product by the Government or by nationally known businesses.
- (4) False claim by a dealer in domestic products of being an importer, or by a dealer of being a manufacturer, or by a manufacturer of some product of being also the manufacturer of the raw material entering into the product.
- (5) Being manufacturer's representative and outlet for surplus stock sold at a sacrifice, etc.
- (6) Representing that the seller is a wholesale dealer, grower, producer, or manufacturer, when in fact such representation is false.

Use by business concerns associated as trade organizations or otherwise of methods which result, or are calculated to result, in the observance of uniform prices or practices for the products dealt in by them, with consequent restraint or elimination of competition, such as use of various kinds of so-called standard cost systems, price lists or guides, exchange of trade information, etc.

Obtaining business through undertakings not carried out and through dishonest and oppressive devices calculated to entrap and coerce the customer or prospective customer, with the result of deceiving the purchasing public and inducing purchases by many thereof, and of diverting and tending to divert trade from competi-

tors who do not engage in such false, misleading, and fraudulent representations, all to the prejudice and injury of the public and competitors, such practices including--

(1) Securing by deceit prospective customer's signature to a contract and promissory note represented as simply an order on approval; obtaining agents to distribute the seller's products through promising to refund the money paid by them should the product prove unsatisfactory, and through other undertakings not carried out.

(2) Obtaining business by advertising a "free trial" offer proposition, when, as a matter of fact, only a "money-back" opportunity is offered the prospective customer.

Giving products misleading names so as to give them a value to the purchasing public or to a part thereof which they would not otherwise possess, with the capacity and tendency to mislead the public into purchasing the products concerned in the erroneous beliefs thereby induced, and with the tendency to divert and/or with the effect of diverting business from and otherwise injuring and prejudicing competitors who do not engage in such practices, all to the prejudice of the public and of competitors, such as-

(1) Names implying falsely that the particular products so named were made for the Government or in accordance with its specifications and of corresponding quality, or are connected with it in some way, or in some way have been passed upon, inspected, underwritten, or endorsed by it; or

(2) That they are composed in whole or in part of ingredients or materials, respectively, contained only to a limited extent or not at all; or

(3) That they were made in or came from some locality famous for the quality of such products; or

(4) That they were made by some well and favorably known process, when, as a matter of fact, they were only made in imitation of and by a substitute for such process; or

(5) That they have been inspected, passed, or approved after meeting the tests of some official organization charged with the duty of making such tests expertly, disinterestedly, or giving such approval; or

(6) That they were made under conditions or circumstances considered of importance by a substantial part of the general purchasing public, etc.

Selling below cost, with the intent and effect of hindering, stifling, and suppressing competition.

Dealing unfairly and dishonestly with foreign purchasers and thereby discrediting American exporters generally, with the effect of bringing discredit and loss of business to all manufacturers and

business concerns engaged in and/or seeking to engage in export trade, and with the capacity and tendency to so do, to the injury and prejudice of the public and of the offending concerns' export-trade competitors.

Coercing and enforcing uneconomic and monopolistic reciprocal dealing.

Falsely representing that a moving picture is a pictorial record of an expedition in a foreign country and a depiction of travel therein showing true happenings, peoples, customs, and animal life.

Entering into contracts in restraint of trade whereby foreign corporations agree not to export certain products into the United States in Consideration of a domestic company's refusal to export the same commodity or sell to anyone other than those who agree not to so export the same.

## **CASES IN THE FEDERAL COURTS**

### **COMMISSION ACTIONS IN THE UNITED STATES COURTS**

Federal Trade Commission cases pending in the United States courts for final determination during or at the close of the fiscal year are reviewed in alphabetical order in the pages immediately following.<sup>1</sup>

During the fiscal year, the Commission was sustained in three cases before the United States Circuit Courts of Appeals and reversed in none. The three cases were as follows: Artloom Rug Mills, of Philadelphia, James B. Hall, Jr., Inc., and Edwin Cigar Co., Inc., both of New York City. Decisions in the Hall and Edwin cases, both involving companies engaged in the cigar business, were announced from the bench without opinion.

In the United States Supreme Court, the Commission was sustained in two cases, while by a five-to-four decision it was reversed in one, that of the Arrow-Hart & Hegeman Electric Co., of Hartford, Conn., a proceeding under the Clayton Act.

One of the Supreme Court decisions favorable to the Commission was in the White Pine group of cases which concerned several western lumber companies, although the issue was tried as one case. Following the decision, the Commission took steps to obtain the compliance of Middle West and Pacific slope pine lumber producers with cease-and-desist orders issued by the Commission in 1931 directing a large number of companies to cease advertising and selling Ponderosa pine lumber as "California White Pine" or "White Pine."

<sup>1</sup> United States Circuit courts of Appeals are designated first circuit, second circuit, etc.

Another Supreme Court decision favorable to the Commission was in the case of R. F. Keppel & Bro., Inc., of Lancaster, Pa., involving lottery practices in the candy business. Following this decision, the Commission issued 48 orders requiring candy companies to cease and desist from practices which promoted the use of lotteries in making sales through retail channels.

Cases pending during the fiscal year are described as follows :

*The Arrow-Hart & Hegeman Electric Co., Hartford, Conn.*--This corporation, on September 29, 1932, filed with the second circuit (New York City) its petition to review and set aside the Commission's cease and desist order, based on findings to the effect that by acquisition of the stock of two competing concerns, this company's predecessor, Arrow-Hart & Hegeman, Inc., had lessened competition between them, and had created a situation whereby there was a tendency to restrain commerce and create a monopoly in the sale of electrical wiring devices, in violation of section 7 of the Clayton Act. The second circuit, May 29, 1933, affirmed the Commission's order (65 F. (2d) 336), saying:

Congress intended to prevent, by section 7, a corporate control which could be concentrated by prohibited acquisition of stock. Wrongful acquisition of the stock facilitates a merger or consolidation of assets. When ordered to divest itself of stock, the utmost good faith should be used by a corporation in order to remove as far as possible the corporate concentration of ownership caused by the wrongful acquisition of stock.

\* \* \* \* \*

As has been often announced, the purpose of the provisions of the Clayton Act is to reach unlawful agreements in their incipency. *Standard Fashion Co. v. Magrane Houston Co.*, 258 U.S. 346 \* \* \* In *International Shoe Co. V. Federal Trade Comm.*, 280 U.S. 291 \* \* \* the Supreme Court required evidence of substantial competition in fact, in order that there may be established an effect upon the public interest, and said:

"Obviously such acquisition will not produce the forbidden result if there be 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."

The converse is true, and, if there is real substance in the competition, the public interest is affected. In that case, only 5 percent of the commodities produced by each company were competitive, while in the instant case 59 percent by volume of sales of Hart & Hegeman Manufacturing Co.'s products competed with Arrow Electric Co. products.

The company's petition for writ of certiorari was granted December 11, 1933 (290 U.S. 622), and, after argument, February 8, 1934, the Supreme Court of the United States, on March 12, 1934, by a 54 decision, reversed the judgment of the Second Circuit (*supra*) affirming the Commission's order.

The majority opinion was delivered by Mr. Justice Roberts. The Supreme Court disposed of the case on the ground that the Commis-

sion "lacked authority to issue any order against the petitioner." In this connection, it said (291 U.S. 587):

Section 7 of the Clayton Act forbids any corporation to acquire the whole or any part of the share capital of two or more corporations, where the effect of the acquisition or the use of the stock by voting or otherwise may be to substantially lessen competition between such corporations, restrain competition in interstate commerce or create a monopoly in any line of commerce. Section 11 specifies the remedy which the Commission may apply, namely, that it may, after hearing, order the violator to divest itself of the stock held contrary to the terms of the act. 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. \* \* \*

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In the present case the stock which had been acquired contrary to the act was no longer owned by the holding company when the Commission made its order. Not only so, but the holding company itself had been dissolved. The petitioner, which came into being as a result of merger, was not in existence when the proceeding against the holding company was initiated by the Commission, and never held any stock contrary to the terms of the statute. If the merger of the two manufacturing corporations and the combination of their assets was in any respect a violation of any antitrust law, as to which we express no opinion, it was necessarily a violation of statutory prohibitions other than those found in the Clayton Act. And if any remedy for such violation is afforded, a court and not the Federal Trade Commission is the appropriate forum.

Mr. Justice Stone delivered a dissenting Opinion, concurred in by Mr. Chief Justice Hughes, Mr. Justice Brandeis, and Mr. Justice Cardozo. Mr. Justice Stone said :

While this proceeding was pending before the Federal Trade Commission to compel a holding company to divest itself of the controlling common stock of two competing corporations which it had acquired in violation of section 7 of

the Clayton Act, that stock was used to effectuate a merger of the competing corporations. It is now declared that, however gross the violation of the Clayton Act, however flagrant the flouting of the Commission's authority, the celerity of the offender, in ridding itself of the stock before the Commission could complete its hearings and make an order restoring the independence of the competitors, leaves the Commission powerless to act against the merged corporation.

\* \* \* \* \*

I am unable to construe so narrowly a statute designed, as I think, to prevent just such suppression of competition as this case exemplifies.

\* \* \* \* \*

Unless we are to close our eyes to this open chapter in the record of corporate concentration, an examination of the legislative history of the Clayton Act, and that of the earlier Sherman Act, can leave no doubt that the former was aimed at the acquisition of stock by holding companies not only as itself a means of suppressing competition but as the first and usual step in the process of merging competing corporations by which a suppression of competition might be unlawfully perpetuated. Thus one of the evils aimed at, the merger of competing corporations through stock control, was reached in its most usual form by forbidding the first step, the acquisition of the stock of a competing corporation, and by conferring on the Trade Commission authority to deal with the violation.

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These considerations demand our rejection of the contention that an offender against the Clayton Act, properly brought before the Commission and subject to its order, can evade its authority and defeat the statute by taking refuge behind a cleverly erected screen of corporate dummies.

*Artloom Rug Mills, Philadelphia.*--The Commission, on December 23, 1932, filed with the Third Circuit (Philadelphia), an application for enforcement of its cease and desist order issued in this case.

The respondent, a Pennsylvania corporation, was charged with misbranding certain of its floor coverings as "Wilton" rugs. The Commission's order, based on findings supported by testimony, required the respondent, among other things, to cease and desist from, directly or indirectly:

Using the word "Wilton" in describing, designating, or labeling any rug fabric on the surface of which is displayed a design or pattern in two or more colors, which is of the same weave construction as the "Bagdad Seamless Jacquard Wilton" rug fabric now manufactured by respondent, or which is of a weave construction in which the warp pile yarns, when not required at the surface for the said design or pattern, are not continued in the subsurface structure of the fabric.

The case was argued May 4, 1933, and decided in favor of the Commission January 30, 1934. Pertinent excerpts from the court's decision (69 F. (2d) 36) follow :

As the statute directly provides that the fact findings of the Commission, if supported by testimony, shall be conclusive, this court is limited to the determination of two questions: First, whether such findings are supported by any evidence; and, second, if they are so supported, whether these facts, as found, justify the conclusion that the sale of the respondent's Bagdad rugs as Wilton rugs constituted unfair competition in commerce.



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Under the ruling of the Supreme Court in *Federal Trade Commission v. Algoma Lumber Co.*, 54 S. Ct. 315, 318, 78 L.Ed. \_\_\_\_\_, opinion filed January 8, 1934, the fact findings of the Commission are not to be regarded as merely persuasive.

\* \* \* \* \*

Since the statute and decisions expressly confer upon the Commission and not upon the court the duty of determining the facts, it is of no consequence that, if the Congress had conferred fact finding power upon the court, it might have reached a conclusion other than that of the Commission.

The premise of misbranding being supported by the Commission's findings, the conclusion follows that, when the respondent sold its misbranded rugs in commerce, it thereby harmed its competitors and deluded the ultimate consumers.

A petition for rehearing, filed by the company, was denied March 5, 1934.

*Cigar Cases, New York City.*--On July 20, 1933, the Commission filed with the second circuit (New York City), applications for enforcement of its orders to cease and desist issued against James B. Hall, Jr., Inc., and the Edwin Cigar Co., Inc., both New York corporations. With the applications, there were filed transcripts of the records and briefs for the Commission.

The Commission's findings were to the effect that these two concerns falsely advertised cigars as made from tobacco grown on the Island of Cuba on plantations owned by them, when, as a matter of fact, the cigars were manufactured in New York City, largely of domestic tobacco.

Respondent's briefs were filed November 20, 1933, and the Commission's reply briefs on December 4. Argument was heard on December 5, 1933. Immediately thereafter, the court affirmed, from the bench, without opinion, the Commission's orders which directed the respective corporations, their officers, agents, and employees, to cease and desist from:

(1) Using the word "Havana" as descriptive of cigars unless such cigars be made entirely from tobacco grown in the Island of Cuba.

(2) Representing in any manner that cigars other than those manufactured entirely from tobacco grown in the Island of Cuba, are Havana cigars.

(3) Advertising or representing in any manner whatsoever that any of the tobacco going into the manufacture of cigars manufactured by it was grown upon a plantation or plantations in the Island of Cuba owned by it, when such is not the fact.

*Garment Manufacturers' Association, Inc., and others, New York City.*--This association and several concerns engaged in the manufacture, jobbing, and distribution of ladies' coats and suits within the city and State of New York, filed on January 17, 1934, in the Su-

preme Court of the District of Columbia, its bill of complaint against Gen. Hugh S. Johnson, Administrator of the National Recovery Administration, and others (including the Federal Trade Commission), praying "that the said defendants and all persons acting under their direction, authority, and control and each and every one of them and all persons to whom notice thereof shall come, be enjoined and restrained by temporary writ of injunction pending the trial and determination of this cause, \* \* \* and by final decree and by permanent writ of injunction, upon the determination of this cause, from enforcing as against the complainants' herein the provisions of the Code of Fair Competition for the Coat and Suit Industry as approved on August 4, 1933, by the President of the United States by Executive order, in any manner whatsoever" (specifying, among other things, the "cease and desist" orders of the Commission) "for the reason that said statute is null and void by reason of it being an unconstitutional exercise of the powers of the Congress of the United States, \* \* \*"

The Commission was joined as a party because it is "empowered under and by virtue of section 3-b of the National Industrial Recovery Act to issue 'cease and desist' orders against violators of the provisions of said statute and the codes of fair competition submitted and approved thereunder."

The gravamen of the complaint was that wage scales and classifications imposed by the code place the complainants (in the Eastern area-New York City) at a serious disadvantage in competing with other manufacturers (in the Western area-Baltimore) resulting, among other things, in diversion of business and confiscation of property without due process of law.

The suit was dismissed without prejudice, February 8, 1934.

*Hoboken White Lead & Color Works, Hoboken., N.J.*--The Commission, on October 19, 1932, filed with the second circuit (New York City) a petition for a rule to show cause why this concern should not be adjudged in contempt and punished accordingly for violation of the court's decree of January 19, 1931, which in connection with the sale of paint products in interstate commerce prohibited the respondent:

(1) From using the words "White Lead", or word or words of like import, upon the containers of, or with which to brand, label, represent, advertise, or describe any such paint material or paint pigment which contains less than 50 percent white lead, lead carbonate, or lead sulphate; and, if and when said paint material or paint pigment is not composed wholly of white lead or of lead carbonate or lead sulphate or of the two in combination, but contains white lead, lead carbonate, or lead sulphate as its principal and predominant in-

redient to the extent of not less than 50 percent by weight of the product, from similarly using said words "White Lead", or word or words of like import, unless immediately preceded in equally conspicuous form and color by a word or words clearly indicating that said paint material or paint pigment is not composed wholly of white lead.

(2) From using the words "Zinc Lead", or word or words of like import, upon the containers of, or with which to advertise, brand, label, represent, or describe any such paint material or paint pigment when said product is not in fact zinc lead or is not in fact wholly composed of zinc in combination with lead carbonate or lead sulphate

An order to show cause was signed by the court, and the case set for hearing November 7, 1932. On the latter date, at the instance of counsel for the respondent, the matter was postponed to afford an opportunity for settlement without argument. Efforts to dispose of the case without litigation proving unsuccessful, briefs were filed and the matter formally presented November 6, 1933. The court, on November 20, 1933, in an opinion by Judge Manton, found the corporation guilty of contempt and imposed a fine of \$500 (67 F. (2d) 551). The court was of opinion that respondent had violated both paragraphs of the decree supra insofar as ingredients were concerned.

*E. Griffiths Hughes, Inc., Rochester, N.Y.* --This corporation, on September 15, 1933, filed with the Second Circuit (New York City) its petition asking that the Commission's order to cease and desist be annulled and set aside.

The order in question was based on findings to the effect that this concern, engaged in the sale in interstate commerce of proprietary preparations known as "Kruschen Salts" and "Radox Bath Salts", falsely represented its Kruschen Salts as a cure or remedy for obesity, and that its Radox Bath Salts, when used in the bath and as otherwise directed, radiated oxygen in great quantities and sufficiently to produce an invigorating and energizing effect.

The corporation made unsuccessful attempts in the District of Columbia courts to restrain the Commission from holding public hearings, or making public the contents of its complaint (63 F. (2d) 362).

Developments subsequent to the filing of the petition in the Second Circuit were: (a) Granting of petitioner's motion to dispense with printing of the exhibits, and denial of its motion for correction of certain errata in transcript of testimony-the court taking the position that the latter was a matter to be taken care of before the Commission; (b) filing of the corrected transcript on April 25, 1934; (c) negotiation of stipulations between the parties, due to the illness

of counsel for the petitioner, extending the time for printing the transcript.

Inecto, Inc., New York City.--On June 15, 1933, the Commission filed with the Second Circuit (New York City) an application for the enforcement of its order to cease and desist issued in this case.

The Commission's complaint alleged that respondent, in the manufacture, sale, and distribution in interstate commerce of its hair dye under the name of "Inecto Rapid Notox", made certain false and misleading statements and misrepresentations concerning its nature, properties, and characteristics, including, among others, numerous false and misleading statements to the effect that the product was safe and harmless, and, when applied, produced no harmful or deleterious effects. After respondent had filed answer, testimony was taken before a trial examiner, and the Commission, having made its findings as to the facts, issued the order which is the basis of the present proceeding, and which, among other things, directed the corporation to cease and desist, in connection with the sale or distribution of its said hair dye- (a) from directly or indirectly causing to be used or made any representations, statements, or assertions in advertisements, trade-promotional literature, or in any other manner, to the effect that the hair dye or other hair-coloring product of substantially the same composition is safe or harmless to use, or is nontoxic or nonpoisonous, or does not contain any toxic, poisonous, or deleterious ingredients or properties: (b) from directly or indirectly using, or causing to be used, the word "Notox" as, or in, the designation of the hair dye or other hair-coloring product upon the commercial containers thereof; and from designating, describing, or representing any of the products with such word "Notox" in advertising matter or trade-promotion literature used in promoting the sale or use thereof.

Respondent filed a report, as called for by the order to cease and desist, showing compliance in part with its terms, and leaving in issue, chiefly, its right to use the word "Notox."

At the instance of the Commission, the court signed an order providing for the elimination of nonessential portions of the record before printing. The respondent questioned the power of the court to enter such an order and moved to vacate it. The court, July 11, 1933, denied the motion and afterward signed an order extending for 30 days the time within which the Commission should prepare and serve upon the respondent a memorandum presenting its views as to what revision and condensation of the record should be made. The Commission served its memorandum on August 11.

The respondent filed with the Supreme Court of the United States, on September 12, its petition for writ of certiorari to review the

action of Judge Manton in entering the order (*supra*) providing for the condensation of the record, asserting that Judge Manton had acted in excess of his powers, in that the rules of the second circuit provided that the Commission, in applications to the court for the enforcement of its orders, should print the entire record. Brief on behalf of the Commission, in opposition to the petition, was filed October 5. The petition was denied November 6, 1933 (290 U.S. 682).

Subsequent negotiations, looking toward reduction of the record before printing, having proved unsuccessful, the Commission moved the court, March 12, 1934, for leave to present the case without printing the entire record. The motion was denied April 2, in a *per curiam* decision (70 F. (2d) 370), the court saying:

The court will have no occasion to resort to the record on which the findings were based, unless it be asserted by the respondent that the order is not supported by the evidence. \* \* \* Upon our review, it will be our duty to ascertain whether such finding is supported by any evidence, if it be challenged. Petitioner asserts that part of the issues of fact tried in this case were determined in favor of the respondent and are no longer in issue; that there will be no occasion to consider any portion of that evidence concerning these issues. The petitioner asks to print only so much of the evidence as it relies upon to support any finding or findings which bear upon the issues to be presented to this court.

Rule 21, subdivision 2 of this court, on application for the enforcement of an order, requires that the transcript of the entire record shall be printed, and unless the parties agree upon printing less we cannot do otherwise than require all the testimony to be printed as constituting the record for our review. Contentions are made by respondent that it would be necessary to examine it all to ascertain if there is a violation of the order to cease and desist. The one way that we can answer that inquiry is by reading the entire record and this we can only do if it is before us in the form required by our rule.

Settlement of the record for printing is being negotiated between counsel, following the completion of which the case will be briefed and argued.

*R. F. Keppel & Bro., Inc., Lancaster, Pa.*--This concern, a candy manufacturer, filed with the third circuit (Philadelphia) January 25, 1932, its petition to review and set aside the Commission's order to cease and desist.

The Commission's findings were to the effect that this corporation, in connection with the sale and distribution of its products (penny candies), employed certain methods in the nature of lotteries or gaming devices. For instance, one assortment was composed of a number of pieces of uniform size, shape, and quality, retailing for 1 cent each, a small number of which had concealed within them pieces of money. The prices of individual pieces in another assortment were indicated by printed slips concealed within their wrap-

pers, and a third assortment provided for certain prizes, dependent upon the colors of the centers of the pieces of candy in the box.

A decision, adverse to the Commission, was handed down January 25, 1933 (63 F. (2d) 81), one member of the court dissenting.

The Commission, June 21, 1933, petitioned the Supreme Court for writ of certiorari. This was granted October 9, 1933 (290 U.S. 613), and after briefing, the case was argued January 11, 1934. On February 5, by unanimous decision delivered by Mr. Justice Stone, the Supreme Court reversed the judgment of the third circuit. Pertinent excerpts from the decision follow (291 U.S. 304):

Upon the record it is not open to question that the practice complained of is a method of competition in interstate commerce and that it is successful in diverting trade from competitors who do not employ it. If the practice is unfair within the meaning of the act, it is equally clear that the present proceeding, aimed at suppressing it, is brought, as section 5 of the act requires, "to the interest of the public." The practice is carried on by 40 or more manufacturers. The disposition of a large number of complaints pending before the Commission, similar to that in the present case, awaits the outcome of this suit. Sales of the break-and-take package by respondent aggregate about \$234,000 per year. The proceeding involves more than a mere private controversy. A practice so generally adopted by manufacturers necessarily affects not only competing manufacturers but the far greater number of retailers to whom they sell, and the consumers to whom the retailers sell. Thus, the effects of the device are felt throughout the penny candy industry. A practice so wide-spread and so far-reaching in its consequences is of public concern if in other respects within the purview of the statute.

\* \* \* \* \*

Respondent argues that the practice is beyond the reach of the Commission because it does not fall within any of the classes which this court has held subject to the Commission's prohibition.

\* \* \* \* \*

But we cannot say that the Commission's jurisdiction extends only to those types of practices which happen to have been litigated before this court. Neither the language nor the history of the act suggests that Congress intended to confine the forbidden methods to fixed and unyielding categories.

\* \* \* \* \*

The act undoubtedly was aimed at all the familiar methods of law violation which prosecutions under the Sherman Act had disclosed. See *Federal Trade Comm. v. Raladam Co.*, supra, 649, 050. But as this court has pointed out it also had a broader purpose, *Federal Trade Comm'n. v. Winsted Hosiery Co.*, 258 U.S. 483, 493; *Federal Trade Comm'n. v. Raladam Co.*, supra, 648. As proposed by the Senate Committee on Interstate Commerce and as introduced in the Senate, the bill which ultimately became the Federal Trade Commission Act declared "unfair competition" to be unlawful. But it was because the meaning which the common law had given to those words was deemed too narrow that the broader and more flexible phrase "unfair methods of competition" was substituted. Congress, in defining the powers of the Commission, thus advisedly adopted a phrase which, as this court has said, does not "admit of precise definition but the meaning and application of which must be arrived at by what this court elsewhere has called 'the gradual process of judicial inclusion and

exclusion.”” *Federal Trade Comm’n. v. Raladam Co.*, supra, 648; compare *Davidson v. New Orleans*, 96 U.S. 97, 104.

The argument that a method used by one competitor is not unfair if others may adopt it without any restriction of competition between them was rejected by this court in *Federal Trade Comm’n. v. Winsted Hosiery Co.*, supra; compare *Federal Trade Comm’n v. Algona Lumber Co.*, ante, page 67. There it was specifically held that a trader may not, by pursuing a dishonest practice, force his competitors to choose between its adoption or the loss of their trade. A method of competition which casts upon one’s competitors the burden of the loss of business unless they will descend to a practice which they are under a powerful moral compulsion not to adopt, even though it is not criminal, was thought to involve the kind of unfairness at which the statute was aimed.

The practice in this case presents the same dilemma to competitors, and we can perceive no reason for distinguishing between the element of chance as employed here and the element of deception involved in labeling cotton goods “Natural Wool”, as in the Winsted case. It is true that the statute does not authorize regulation which has no purpose other than that of relieving merchants from troublesome competition or of censoring the morals of business men. But here the competitive method is shown to exploit consumers, children, who are unable to protect themselves. It employs a device whereby the amount of the return they receive from the expenditure of money is made to depend upon chance. Such devices have met with condemnation throughout the community. Without inquiring whether, as respondent contends, the criminal statutes imposing penalties on gambling, lotteries, and the like, fail to reach this particular practice in most or any of the States, it is clear that the practice is of the sort which the common-law and criminal statutes have long deemed contrary to public policy. For these reasons a large share of the industry holds out against the device, despite ensuing loss in trade, or bows reluctantly to what it brands unscrupulous. It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statutory construction, to hold that the method is not “unfair.”

\* \* \* \* \*

While this court has declared that it is for the courts to determine what practices or methods of competition are to be deemed unfair, *Federal Trade Comm’n v. Gratz*, supra, in passing on that question the determination of the Commission is of weight. It was created with the avowed purpose of lodging the administrative functions committed to it in “a body specially competent to deal with them by reason of information, experience, and careful study of the business and economic conditions of the industry affected”, and it was organized in such a manner, with respect to the length and expiration of the terms of office of its members, as would “give to them an opportunity to acquire the expertness in dealing with these special questions concerning industry that comes from experience.”

*Maison Pichel, New York City.*--See page 41 of this report for an account of this action under the Securities Act of 1933.

*Popular Finance, Inc., Boston.*--See page 42 of this report for reference to this action under the Securities Act of 1933.

*C. Morrison Smith & Co., New York City.*--See page 42 of this report for an account of this action under the Securities Act of 1933.



*Stock Market Finance, Inc., New York City.*--See page 42 of this report for reference to this action under the Securities Act of 1933.

*U. S. A. ex rel. Warner I. Cubberly v. F. T. C. (Lease-agency Contracts).*--On August 4, 1933, at the instance of the petitioner, the Supreme Court of the District of Columbia issued a rule requiring the Commission to show cause why a writ of mandamus should not issue, compelling it to issue formal complaints in proceedings pending before it based on lease-agency and lease-license contracts entered into by the large oil companies with retail gasoline dealers, or to immediately rule upon and make public its opinion concerning the legality of such agreements.

The Commission, in its answer and return to the rule, denied it had previously gone on record to the effect that the agreements referred to were in violation of law, as contended by the petitioner; alleged that it had not yet had occasion to decide whether or not formal complaints should issue, and stated that investigation in the premises had not been completed by its examining division. It pointed out that the petition did not allege facts from which the court could decide the question of the violation of section 5 of the Federal Trade Commission Act by the companies concerned, but on its face showed the relator's efforts to have the court compel the Commission to decide that it had reasonable cause to believe that certain corporations were violating section 5 of the Federal Trade Commission Act, a matter, like that of the public interest involved, within the statutory discretion of the Commission and therefore not one upon which mandamus could lawfully operate.

The motion was argued August 11, before Mr. Justice Cox, who sustained the Commission's position, granting its motion to dismiss and discharge the rule to show cause. The decision was not appealed.

*E. J. Wallace, St. Louis.*--The Commission on March 28, 1934, filed with the Eighth Circuit (St. Louis) an application for enforcement of its order to cease and desist issued in this case, together with typewritten transcript of the record.

The order, based on findings supported by evidence, required this respondent, among others, to cease and desist from undertaking and cooperating together and acting in concert in hindering and preventing, or attempting to hinder and to prevent, directly or indirectly, the purchase and sale of coal in interstate commerce by and between producers, jobbers, and wholesale dealers therein, and individuals, firms, corporations, farm clubs, cooperative societies, church organizations, or others, consumers of coal or dealers therein, by the following methods:

1. Arbitrarily classifying sellers and purchasers of coal and shipments thereof as "Snowbird" shippers. "Snowbirds" and "Snow-

bird” shipments, respectively, or by any similar or other terms because of or according to the extent or degree of equipment owned by the said purchasers or employed by them in the sale, movement, or distribution of coal, or causing any such classification to be published in any trade paper, or other publication, or to be communicated to others or among themselves, in that or any other manner.

2. Designating or causing to be designated, in articles or editorials in any trade paper or other publication, or in any other manner or by any other means, any individual, firm, corporation or association, or groups thereof, as the vendor or purchaser of coal, or their shipments of coal by using or causing to be used denunciatory, scurrilous, abusive, or derogatory language of and concerning them or either of them.

3. Soliciting or receiving between or among themselves or with others and/or circulating between and among themselves or with others communications or reports, either printed, written, or verbal, having the purpose, tendency, or the effect of inducing, coercing or compelling producers, jobbers, or wholesale dealers in coal, their agents or their brokers, directly or indirectly, to refuse to deal with or to sell coal to any person, firm, corporation, or association.

4. Threatening with loss of patronage or custom, any producer, jobber, or wholesale dealer in coal, or his agent or broker, for selling or agreeing to sell to any person, firm, corporation, or association, or from persuading any such producer, jobber, or wholesale dealer in coal not to sell coal to any person, firm, corporation, or association..

The court, April 10, on motion of the Commission, entered an order making it unnecessary to print or otherwise reproduce the exhibits in this case “for use upon the hearing before this court of the application for enforcement of the order of said Federal Trade Commission.” The result of this order was to effect a saving of some \$10,000 to the Commission.

On April 25, again on motion of the Commission, the court entered an order granting leave to the Commission to have the transcript printed at the Government Printing Office, Washington, instead of at St. Louis, as provided for in a previous order. Following printing of the record, the case was to be briefed and argued.

*White Pine cases--California, Oregon, Nevada, Arizona, and New Mexico.*--Petitions for review of the Commission’s orders in several of these cases were filed with the ninth circuit (San Francisco) in January 1932. They were part of a group of 50 cases in which the Commission issued complaints charging unfair methods of competition by using the phrase “white pine” as part of such trade designations as “California White Pine”, “Arizona White Pine”, “New Mexico White Pine”, and “Western White Pine” for a species of

yellow pine known as *Pinus ponderosa*. Of the 50 complaints, 11 were dismissed before trial or subsequently, while against the remaining 39, orders to cease and desist were entered. Twenty-five companies elected to abide by the orders.

The Commission's orders were based on findings to the effect that the lumber to which respondents applied the phrase "white pine" was not, as above stated, white pine, but a species of yellow pine; that the latter was inferior for certain important uses; had a higher degree of variableness in such qualities as hardness, weight, density, and color; had a large proportion of sapwood; was less durable when exposed to the weather, and had a greater tendency toward shrinking, warping, and twisting.

The Commission further found that respondents' use of the phrase "white pine" was misleading and confusing to the general public, architects and builders, many retail dealers, and to certain millwork manufacturers; and was to the detriment of the public and of competitors selling genuine white pine or selling *Pinus ponderosa* lumber but not designating it as "white pine." Many of these findings were attacked in the petitions filed in court.

The order made by the court in this case, permitting the filing of petitions for review, required the inclusion, in the record to be certified by the Commission, of a copy of the trial examiner's report upon the facts. The Commission moved to amend the order by striking out this requirement, and the court, on March 7, 1932, granted this motion (56 F. (2d) 774).

The case was argued on the merits, June 24, 1932, and decided against the Commission, April 4, 1933 (64 F. (2d) 618).

The ninth circuit, after rather extensive references to the record, said:

It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name "California White Pine" is an unfair method of competition or that its prevention would be in the interest of the public.

A petition for writ of certiorari was docketed with the Supreme Court of the United States on July 3, and granted October 9, 1933 (290 U.S. 607). After briefing, the case was argued December 14-15, 1933.

On January 8, 1934, in a unanimous opinion, delivered by Mr. Justice Cardozo, the Supreme Court of the United States reversed the judgment of the Ninth Circuit. The following language is taken from the opinion (291 U.S. 67):

The respondents are engaged in the manufacture and sale of lumber and timber products which they ship from California and Oregon to customers in other States and foreign lands. Much of what they sell comes from the species of tree that is known among botanists as *Pinus ponderosa*. The respondents

sell it under the name of "California white pine", and under that name, or at times "white pine" simply, it goes to the consumer. In truth it is not a white pine, whether the tests to be applied are those of botanical science or of commercial practice and understanding.

\* \* \* \* \*

The confusion and abuses growing out of these interlocking names have been developed in the findings. Many retail dealers receiving orders for white pine deliver California white pine, not knowing that it differs from the lumber ordered. Many knowing the difference deliver the inferior product because they can buy it cheaper. Still others, well informed and honest, deliver the genuine article, thus placing themselves at a disadvantage in the race of competition with the unscrupulous and the ignorant. Trade has thus been diverted from dealers in white pine to dealers in *Pinus ponderosa* masquerading as white pine. Trade has also been diverted from dealers in *Pinus ponderosa* under the name "Pinus ponderosa" to dealers in *Pinus ponderosa* under the more attractive label. The diversion of trade from dealers of one class to dealers of another is not the only mischief. Consumers, architects, and retailers have also been misled. They have given orders for the respondents' product, supposing it to be white pine and to have the qualities associated with lumber of that species. They have accepted deliveries under the empire of that belief. True indeed it is that the woods sold by the respondents, though not a genuine white pine, are nearer to that species in mechanical properties than they are to the kinds of yellow pine indigenous to the South. The fact that for many purposes they are half-way between the white species and the yellow makes the practice of substitution easier than it would be if the difference were plain. Misrepresentation and con-fusion flourish in such a soil.

\* \* \* \* \*

"The findings of the Commission as to facts, if supported by testimony, shall be conclusive." 15 U.S.C., sec. 45. The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Comm v. Pacific States Paper Trade Assn.*, 273 U.S. 52, 61, 63) forbid that exercise of power.

The argument is made that unfair competition is disproved by the "simplified-practice recommendations" of the Bureau of Standards when read in conjunction with the testimony as to the comparative utility of the genuine white pine and *Pinus ponderosa*.

\* \* \* \* \*

Such a holding misconceives the significance of the Government's endeavor to simplify commercial practice.

\* \* \* \* \*

The recommendations of the Bureau of Standards for the simplification of commercial practice are wholly advisory. Dealers may conform or diverge as they prefer.

\* \* \* \* \*

The action of the Bureau was at most a bit of evidence to be weighed by the Commission along with much besides. It had no such significance as to dis credit in any appreciable degree a conclusion founded upon evidence otherwise sufficient.

\* \* \* \* \*

But saving to the consumer, though it be made out, does not obliterate the prejudice. Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. *Federal Trade Comm v. Royal Milling Co.*, 288 U.S. 212, 216; *Carlsbad v. W. T. Thackeray & Co.*, 57 Fed. 18. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance. Nor is the prejudice only to the consumer. Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightly named, are diverted to others whose methods are less scrupulous. "A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice." *Federal Trade Comm v. Winsted Hosiery Co.*, 258 U.S. 483, 493. The careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down.

\* \* \* \* \*

Competition may be unfair within the meaning of this statute and within the scope of the discretionary powers conferred on the Commission, though the practice condemned does not amount to fraud as understood in courts of law. Indeed there is a kind of fraud, as courts of equity have long perceived, in clinging to a benefit which is the product of misrepresentation, however innocently made.

\* \* \* \* \*

That is the respondents' plight today, no matter what their motives may have been when they began. They must extricate themselves from it by purging their business methods of a capacity to deceive.

Fourth. Finally, the argument is made that the restraining orders are not necessary to protect the public interest, \* \* \* but to the contrary that the public interest will be promoted by increasing the demand for *Pinus ponderosa*, though it be sold with a misleading label, and thus abating the destruction of the pine forests of the East.

The conservation of our forests is a good of large importance, but the end will have to be attained by methods other than a license to do business unfairly.

The respondents filed a petition for rehearing on January 31. It was denied February 5, 1934.

## **PART IV. TRADE-PRACTICE CONFERENCES**

RULES ACCEPTED BY INDUSTRIES

RULES FOR INDUSTRIES PUBLISHED

COOPERATION WITH THE N.R.A.

HISTORY AND PURPOSE OF PROCEDURE

RESULTS ATTAINED FROM CONFERENCES

TRADE PRACTICE CONFERENCE PROCEDURE

## **PART IV. TRADE-PRACTICE CONFERENCES**

### **RULES ACCEPTED BY 2,400 MEMBERS OF INDUSTRIES**

Trade-practice rules adopted by various industries at conferences held under auspices of the Federal Trade Commission were accepted during the fiscal year by approximately 2,400 individuals, firms, and corporations. This is tantamount to saying that these persons and organizations signed "acceptances" to observe rules of fair competition because the rules they agreed to observe were designed to do away with many unfair trade practices complained of in the industries concerned. A large percentage of these persons and firms had been either present at the trade-practice conferences held for their industries or were represented through their trade associations or otherwise.

During the fiscal year the following trade-practice conferences were held under the Commission's auspices:<sup>1</sup>

*Barre granite industry.*--The conference for quarries and manufacturers of Barre granite was held at Barre, Vt., July 8, 1933. Almost 100 percent of the industry was present or represented. The rules approved by the Commission as a result of this conference were published November 30, 1933. It is reported that the total value of the finished product of this industry in a recent year was more than \$11,000,000.

*Baby-chick industry.*--The producers of baby chicks throughout the United States held a conference; at Grand Rapids, Mich., August 10, 1933. The rules approved by the Commission as a result thereof were published November 25, 1933. This was one of the largest conferences, from point of attendance, held by the Commission in recent years. It is estimated that approximately 75 percent of the total capacity of the industry was represented through various State associations. Approximately \$30,000,000 is said to be involved in the capitalization, equipment, buildings, and operating capital of firms engaged in the production and sale of baby chicks.

<sup>1</sup> Responsive to many requests received from business men and trade organizations, the Commission authorized the publication of a trade-practice conference booklet containing the rules for nearly 100 industries. A copy of this pamphlet may be obtained by addressing the superintendent of Documents, Government Printing Office, Washington, D. C., and enclosing 15 cents.





*Rabbit and cavy breeders.*--A conference for rabbit and cavy breeders was held in Chicago, October 13, 1933. Rules approved by the Commission as a result of this conference were published April 30, 1934. Approximately 150,000 firms and individuals are engaged in this industry, many of them being members of national, State, or local associations.

*Uniform manufacturers.*--Members of the uniform-manufacturing industry met under Commission auspices in New York City, December 13, 1933. The rules were promulgated by the Commission March 15, 1934. Almost 80 percent of the industry was represented at the conference. Three hundred and sixty firms in this industry, with a capital investment of approximately \$25,000,000, do an annual business of about that amount.

#### **TRADE-PRACTICE RULES FOR INDUSTRIES PUBLISHED**

During the year the Commission promulgated rules for the following industries for which trade-practice conferences had been held prior to the fiscal period:

Manufacturers and wholesalers of musical merchandise; rules published April 4, 1934.

Cleaning and dyeing industry in Pennsylvania and adjoining States; rules published January 11, 1934.

Manufacturers of stamping and marking devices; rules published September 1, 1933.

Among trade practices which have been discontinued as a result of trade-practice conferences are the following: False and misleading advertising, commercial bribery, use of marked-up or fictitious prices, imitation of trade-marks or other identifying marks of competitors, deviation from established standards of an industry by deceptive means or devices, selling of goods below cost with the intent and effect of injuring a competitor, price discrimination where the effect may be to substantially lessen competition or tend to create a monopoly, false marking or branding of products, secret payment or allowance of rebates, defamation of competitors, and shipping or delivering products which do not conform to samples submitted.

During the fiscal year 31 cases, involving alleged violations of trade-practice conference rules, were adjusted through correspondence. Seven complaints were referred to the Commission with recommendation for investigation.

#### **COOPERATION WITH NATIONAL RECOVERY ADMINISTRATION**

The Director of Trade Practice Conferences has on several occasions submitted comments or suggestions relating to certain proposed codes of fair competition before the National Recovery Administration, at its request and by direction of the Commission,

and has participated in a number of conferences concerning other codes under consideration. As requested by the National Recovery Administration, the Commission assigned two attorneys from the division to special work with the Consumers' Advisory Board.

#### **HISTORY AND PURPOSE OF TRADE-PRACTICE CONFERENCE PROCEDURE**

Trade-practice conferences are the logical development of the efforts of the Commission, cooperating with industry, to protect the public against unfair methods of competition and to raise the standards of business practices. As early as 1919 the Commission established the procedure of holding conferences for the purpose of eliminating unfair methods of competition or any trade abuses.

These conferences afford representatives of an industry the opportunity to assemble voluntarily and, under the auspices of the Federal Trade Commission, consider methods for the correction or abandonment of unfair and unethical practices and trade abuses. It is a procedure whereby an industry takes the initiative in establishing self-government of business, making its own rules of business conduct, subject to approval by the Commission.

The procedure is to deal with an industry as a unit. Concern is solely with practices and methods. Agreements reached terminate on a given date unfair methods of competition, unethical conduct, or any trade abuses condemned at the conference, and thus place all competitors on a fair competitive basis. The same result is achieved as by issuance of a formal complaint, but without bringing charges, prosecuting trials, or employing any compulsory process. At the same time an agreement multiplies results by as many times as there are members of an industry.

Procedure is predicated on the theory that the primary concern of the Federal Trade Commission is the interest of the public. Recognition is given of the principle that the public is entitled to the benefits which flow from competition, and that each competitor is entitled to a fair competitive opportunity. The legitimate conduct of business is in perfect harmony with the best interest of the public. That which injures one undoubtedly harms the other, and the Commission, in the trade-practice conference, provides a procedure which protects the interests of all. In these conferences is found a common ground upon which competitors can meet, lay aside personal charges, jealousies, and misunderstandings, freely discuss practices of an unfair or harmful nature, reach a basis of mutual understanding and confidence, and agree to such practices as are to the advantage of industry as well as the public.

### RESULTS ATTAINED FROM THE TRADE-PRACTICE CONFERENCE

Trade-practice conferences sponsored by the Federal Trade Commission have proven of incalculable benefit to the public by the voluntary elimination of unfair methods of competition, and have resulted in a great saving of time and expense by obviating the necessity of investigation and trial by complaint.

Trade-practice conferences result in a generally recognized and clearly marked trend toward the use of higher standards of business conduct. Many persons engaged in a given business and industry may not be aware, until a trade-practice conference is held, that some competitive methods often used by them are actual violations of law. Neither do they realize that the unnecessary cost of unfair competition and wasteful practices, if abandoned at one and the same time by voluntary agreement of all in the industry, may be converted from an item of expense to a substantial profit without adding to the price paid by the consumer.

The value of the trade practice conference plan is recognized in legislation enacted by the State of California, providing for the enforcement of certain conference rules pertaining to an industry in that State. This is the general dairy law of California, approved June 15, 1923, and amended May 31, 1927.

### TRADE-PRACTICE CONFERENCE PROCEDURE

The first requisite of a trade-practice conference is an expression of desire on the part of a sufficiently large number in an industry to eliminate unfair methods of competition and trade abuses and to improve competitive conditions. The procedure is as follows:

*1. Method of Applying for a Trade-practice Conference.*--In authorizing a trade-practice conference, the Commission must first be assured that the holding of such conference would be desirable and to the best interest of the industry and the public. An application, in the form of a petition or informal communication, should contain the following information:

1. A brief description of the business for which the conference is intended, the products manufactured, or the commodities distributed. The annual volume of production, value of production, capitalization of the industry, and like items should be approximated in order to furnish an idea of the size and importance of the industry.

2. The authority of the person making the application must also be shown. If made by an association executive, a resolution showing the action of the association should be submitted, together with a statement of the percentage of the entire industry represented by the association membership.

3. The application should state whether the conference is intended for all branches of the industry or whether it should be limited to a particular branch or branches thereof: If the resolutions adopted by manufacturers, for example, are confined to practices which do not materially affect distributors, there would be no particular reason for including distributors. On the contrary, if the proposed action involves distribution, the distributors should be included.

4. The application should also set out and describe the various unfair methods of competition, trade abuses, and uneconomic and unethical practices which exist in the industry at the time the application is filed and which the industry desires to eliminate through the medium of a trade-practice conference. This does not limit the discussion at the conference, however, to the particular subjects thus named, as the conference itself constitutes an open forum wherein any practice existing in the industry may be brought forward as a proper subject for discussion. Any resolutions submitted by any committee or member of the industry prior to the holding of a trade-practice conference are tentative, and their introduction does not prohibit other members of the industry from offering new or different resolutions.

5. The application should be accompanied by a complete and accurate list of the names and addresses of all firms in the industry, or such list may be furnished shortly thereafter. It should be divided or symbolized to indicate association or nonassociation members, and as to types of concerns, such as manufacturers, distributors, etc.

*II. Procedure following authorization by Commission.*--After the conference has been authorized by the Commission and a commissioner designated to preside, a time and place are arranged for the meeting and invitations are sent to all members of the industry affected. At these conferences, anyone in the industry may participate. In order to give the widest possible range to the discussion of practices which may be proposed and to preserve the voluntary character of the conference, the attendants are requested to complete the organization of the conference by electing a secretary.

Resolutions are then introduced, discussed, and finally acted on by members of the conference.

Following the conference, the proceedings are reported to the Federal Trade Commission by the director of trade practice conferences with his recommendation.

If, after consideration by the Commission, the rules are approved, they are sent to a committee of the industry appointed by the conference, with the request that the committee report to the Commission whether it is willing to accept on behalf of the industry the rules as approved by the Commission. Thereafter, if and when these rules

have been so accepted, every member of the industry is furnished with a record of the Commission's action, accompanied by a form providing for individual acceptance. A copy of this form is as follows:

FEDERAL TRADE COMMISSION,  
*Washington, D.C.*

GENTLEMEN: A copy of the rules of practice for the \_\_\_\_\_ industry, as approved or received by the Federal Trade Commission, has been received and read, and said rules will be observed and followed in the business conduct and practice of this concern.

\_\_\_\_\_  
(Name of concern)

\_\_\_\_\_  
(Name and title of person signing)

\_\_\_\_\_  
(Address of concern)

Date \_\_\_\_\_

Such acceptance, properly signed and dated, is then returned to the Federal Trade Commission, where, after recording, it is filed with the records of the industry concerned.

The Commission has intrusted its division of trade-practice conferences with the duty of coordinating and facilitating the work incident to the holding of trade-practice conferences, of properly extending the scope of such work, and of encouraging closer cooperation. between business as a whole and the Commission in serving the public.

After a trade-practice conference is held, the Commission retains its interest in the observance of those rules adopted by the industry and approved by the Commission.<sup>2</sup>

<sup>2</sup> Rules approved by the Commission relate to practices violative of the law and are designated group I. Other rules, received by the Commission as expressions of the trade, are classed as group II.

**PART V. SPECIAL PROCEDURE IN CERTAIN TYPES OF  
ADVERTISING CASES**

NEWSPAPER, PERIODICAL, AND RADIO ADVERTISING

PUBLISHERS AND ADVERTISING AGENCIES COOPERATE

## **PART V. SPECIAL PROCEDURE IN CERTAIN TYPES OF ADVERTISING CASES**

### **NEWSPAPER, PERIODICAL, AND RADIO ADVERTISING**

False and misleading advertising matter as published in newspapers and periodicals and as broadcast over the radio, is surveyed and studied by a special board set up by the Federal Trade Commission in 1929. This board, known as the Special Board of Investigation, consists of three Commission attorneys designated to represent the Commission at preliminary hearings and specialize in this type of cases.

Misrepresentation of commodities and services sold in interstate commerce is a type of unfair competition with which the Commission has dealt under authority of the Federal Trade Commission Act ever since its organization in 1915. Such cases form a large part of the Commission's legal work. By 1929 it had become evident that misrepresentation as embodied in false and misleading advertising in the newspaper and periodical field was of such large volume that it should receive specialized attention from the Commission.

Since that time the Commission, through its special board, has examined the advertising columns of newspapers and periodicals, noting a large amount of unfair representations, and has received numerous complaints of false and misleading advertising from consumers. Each instance has been carefully investigated, and where the facts have warranted, formal procedure has been resorted to and the cases tried. While a number of orders have been issued requiring the respondents to cease and desist from advertising practices complained of, in a majority of cases the matters have been adjusted by means of the respondent signing a stipulation agreeing to abandon unfair practices.

The Commission believes its work in this field has contributed toward the general improvement noticeable in the last few years in the character of newspaper and periodical advertising. Advertisements are more likely to be true and accurate than they were a few years ago, and the maliciously fraudulent type of advertisement, particularly that relating to fake medicines and other purported cures for human ailments, has practically disappeared from the better class of publications.

However, this advance has not come about solely through reform or a desire to maintain high ethical standards. In fact, it is apparent that a number of the authors of questionable advertising matter, having been dissuaded from continuing their appeals to the reading public, have gone to the radio and it is in that field that the Commission began a careful survey preliminary to working out a comprehensive plan for checking and ultimately preventing fraudulent and unfair advertising practices.

The Commission, on May 16, 1934, requested all networks, transcription companies, and individual broadcasting stations to file with it duplicate copies of their advertising continuities. To this request all of the 10 networks, all of the 596 broadcasting stations, and practically all of the transcription companies which make commercial continuities have responded. This cooperation has been most gratifying. The Commission has already received approximately 180,000 continuities, of which it has made preliminary detailed examination of almost 150,000. Of the latter number, more than 125,000 were found unobjectionable and filed without further action, while about 21,000 were distributed among members of the special board of investigation for further checking. There remained approximately 33,000 continuities to be examined. In all cases where false and misleading advertising is found, the Commission is applying substantially the same procedure as is followed in cases of false and misleading advertising in newspapers and periodicals.

This scrutiny of radio advertising is being conducted with a minimum of expense to the Government as well as to the industry because of the cooperation of members of the industry and the system of procedure developed.

In its examination of the radio continuities, as well as of newspaper and periodical advertising, the Commission's sole purpose is to curb unlawful abuses of the freedom of expression guaranteed by the Constitution. It does not undertake to dictate what an advertiser shall say, but rather indicates what he may not say. Jurisdiction is limited to cases which have a public interest as distinguished from a mere private controversy, and which involve practices held to be unfair to competitors in interstate commerce.

Some idea of the potentialities for false and misleading advertising may be gained from the fact that more than 600 radio broadcasting stations have been established during recent years, while more than 20,000 periodicals, printing and circulating every year more than 16 billion copies, are published in the United States.



**PUBLISHERS AND ADVERTISING AGENCIES COOPERATE**

In the proper prosecution of its complaints against advertisers in newspapers or periodicals, the Commission has found it advisable to join the advertising agencies and the publishers involved as Co. respondents with the advertiser. Usually, the publishers and advertising agencies elect to abide by the Commission's action without becoming or being made parties respondent.

When the Commission receives information of unfair advertising practices, it initiates an investigation. A questionnaire may be sent to the advertiser and request made for the advertising copy and for the quantitative formula, if the product is a preparation or corn. pound. The advertiser is also asked to forward copies of all recent advertisements, with copies of booklets, circulars, and other advertising literature.

Upon receipt of the material, the Commission, through its special board, examines it carefully, and if it finds representations that appear to be false or misleading, may order the docketing of an application for complaint against the offending advertiser. The entire matter is then referred back to the special board for further procedure. The board notifies the advertiser, to whom is extended the privilege of a preliminary hearing to enable the advertiser to submit evidence justifying, verifying, or explaining the representations he is making to the public, or otherwise show cause why complaint should not issue.

In a large majority of cases, advertisers admit failure to justify representations complained of and enter into a stipulation with the Commission to cease and desist from publishing the misleading statements. In only a relatively few cases do advertisers refuse to stipulate, making it necessary for complaints to be issued. when advertisers are able to establish the truth of representations that have appeared to be misleading, no complaints are issued, and no stipulation is necessary, the matter being closed without further action.

During the fiscal year ended June 30, 1934, the Commission, through its special board of investigation, investigated several hundred cases. Questionnaires were sent to more than 200 advertisers applications for complaint were docketed by the Commission and referred to the special board in 99 cases. Stipulations were negotiated in 174 cases, of which 102 were with advertisers, 68 with publishers, and 4 with advertising agents. A large number of cases were closed without action, and the papers and other information gathered by the board filed for possible future reference. In only

seven cases was the Commission, through its special board, unable to negotiate satisfactory stipulations. In these it ordered complaints to be issued.

Effective cooperation has obtained throughout the year, as for many years, with other departments of the Government. Cases involving what appear to be fraudulent schemes in violation of the postal laws are referred to the Post Office Department. Action by the Commission in such cases as are found to be under investigation by that Department is suspended pending the outcome of such proceedings. Valuable scientific opinions have been rendered by the Food and Drug Administration, Bureau of the Public Health Service, and the Bureau of Standards. Also analyses and comments regarding the therapeutic properties of various preparations have been furnished by the Food and Drug Administration. In a number of cases Commission action against advertisers of medical preparations has been undertaken at the request of the Department of Agriculture.

## **PART VI. FOREIGN-TRADE WORK**

THE WEBB-POMERENE LAW, OR EXPORT TRADE ACT

WEBB LAW EXPORTS IN 1933

FORTY-FIVE ASSOCIATIONS

ANTIDUMPING LEGISLATION

TRUST LAWS AND UNFAIR COMPETITION ABROAD

## **PART VI. FOREIGN-TRADE WORK**

### **THE WEBB-POMERENE LAW, OR EXPORT TRADE ACT**

Foreign-trade work of the Commission includes administration of the Export Trade Act, commonly known as the “Webb-Pomerene law”, and inquiries made under section 6 (h) of the Federal Trade Commission Act. This work is handled by the export-trade section of the legal division.

The Webb law, an “act to promote export trade”, passed by Congress in 1918, grants exemption from the antitrust laws to export combines or associations which are required to file with the Commission copies of their organization papers, annual reports, and such other information as the Commission may require as to their organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. In case of violation of the law, the Commission may conduct inquiries and make recommendations for readjustment of the business. Should an association fail to comply with the recommendations, the matter may be referred to the Attorney General for further action.

Reports received from Webb law associations show a decided improvement in their export business during the last half of 1933 and the first half of 1934, although the figures still do not compare favorably with the more prosperous years, 1929 and 1930, due to depressed business conditions abroad and trade barriers, and also to the fact that some of the associations have suspended price agreements, permitting members to sell at independent prices. These independent sales are not reported and included in the Web- law totals.

Webb law exports in 1933 are shown in the following table:

#### **WEBB LAW EXPORTS IN 1933**

Metal and metal products, including copper, iron and steel, metal lath, zinc, machinery, railway equipment, pipes and valves, screws, electrical apparatus, and signal apparatus	\$29,000,000
Products of mines and wells, crude sulphur, phosphate rock, petroleum products, and carbon black	44,000,000
Lumber and wood products, pine, fir, redwood, walnut, hardwood, plywood, tool handles, barrel shooks	8,000,000



Foodstuffs such as milk, meat, sugar, flour, fresh fruit, dried fruit, and canned fruit	\$28,000,000
Other manufactured goods, rubber, paper, abrasives, cotton goods, buttons, and chemicals	34,000,000
Total	143,000,000

From the group of associations exporting metals and metal products, reports show better prices and a much larger volume of business in 1933 than in 1932. One association reports that--

We are now on the upward trend \* \* \* there is no doubt in the minds of the member companies that with a general improvement in world conditions, this association will be able to obtain a fair share of the export business in the future \* \* \* the operation of the association has resulted in economies and should continue to be just as advantageous in the future as in the past.

Another states that--

Our sales were materially higher in 1933. This was due in part to improved conditions in many of the countries of the world and in a large part to the fact that dealers' stocks had become depleted to the vanishing point.

In the second group noted above, including mines and wells, one association reports "perceptible improvement toward the end of the year 1933, in new business, and advanced prices for shipment during 1934, this situation due largely to depreciation of the dollar exchange, enabling us to meet competition of foreign products."

Another association reports an increase of 43 percent in volume in 1933, but states that unless American producers are permitted to operate as an association under the Webb law they cannot hope to successfully meet the competition of foreign combines and cartels.

Lumber exporters report increased prices and in most cases an increase in shipments in 1933 due to general improvement in foreign markets. In some countries import duties were increased, and in others quota requirements were hard to meet; in South America there was great difficulty in handling terms of payment. Group support afforded by the associations in poor markets was of particular advantage during the year, and the cost of delivery to Europe was materially reduced by cooperative action in negotiating freight rates.

Exporters of foodstuffs were handicapped by increases in import duties abroad, preferential tariffs and quota plans; but prices beginning to improve during the closing months of 1932, continued to increase in 1933.

In the last group noted above, exporters of manufactured goods, some associations report improvement and others loss of trade. One states that--

During the last 6 months of 1933, we lost heavily in our most important markets. This was due to advanced prices, particularly through higher labor costs which were not reflected in costs of

exporters in competitive markets.

An association reporting an increase in both volume and value of business attributes this "to the fact that the low point of the depression period has been passed." Improved business seems to have been the rule in all major countries abroad, and buying increased. This association says:

The general pick-up beginning in the fall of 1933 seemed to be due to (1) real increase in business, (2) fear of price rises, and (3) anxiety to obtain stock before further barriers, tariffs, quotas, etc., could be applied. There was increased difficulty in obtaining dollar exchange, and it was necessary to make price concessions in order to meet depreciated foreign currency. \* \*  
\* As last year, the advantage of centralized control over credits, the ability to maintain a basic price structure, and economies obtainable by group shipments can be attributed to the association.

#### FORTY-FIVE WEBB LAW ASSOCIATIONS NOW IN OPERATION

Forty-five Webb law associations were registered with the Commission on June 30, 1934:

- |  |   |
|--|---|
| American Hardwood Exporters, Inc.,<br>Marine Building, New Orleans.                        | Douglas Fir Exploitation & Export<br>Co., Henry Building, Seattle.                                  |
| American Locomotive Sales Corpora-<br>tion, 30 Church Street, New York<br>City.            | Durex Abrasives Corporation, 82<br>Beaver Street, New York City.                                    |
| American Paper Exports, Inc., 75 West<br>Street, New York City.                            | Electrical Apparatus Export Associa-<br>tion, 541 Lexington Avenue, New<br>York City.               |
| American Pitch Pine Export Co., Pere<br>Marquette Building, New Orleans.                   | Export Petroleum Association, Inc., 67<br>Wall Street, New York City.                               |
| American Provisions Export Co., 80<br>East Jackson Boulevard, Chicago.                     | Export Screw Association of the<br>United States, Box 1242, Providence,<br>R. I.                    |
| American Soda Pulp Export Associa-<br>tion, 230 Park Avenue, New York<br>City.             | Florida Hard Rock Phosphate Export<br>Association, Savannah Bank &<br>Trust Building, Savannah, Ga. |
| American Soft Wheat Millers Export<br>Corporation, 3261 K Street, Wash-<br>ington, D.C.    | General Milk Co., Inc., 19 Rector<br>Street, New York City.   |
| American Spring Manufacturers Ex-<br>port Association, 30 Church Street,<br>New York City. | Goodyear Tire & Rubber Export Co.,<br>The, 1144 East Market Street, Ak-<br>ron, Ohio.               |
| American Textile Trading Co., 1410<br>G Street, Washington, D.C.                           | Grapefruit Distributors, Inc., Daven-<br>port, Fla.   |
| American Tire Manufacturers Export<br>Association, 30 Church Street, New<br>York City.     | Gulf Pitch Pine Export Association,<br>Whitney Bank Building, New Or-<br>leans.                     |
| California Dried Fruit Export Asso-<br>ciation, 1 Drumm Street, San Fran-<br>cisco.        | Hawkeye Pearl Button Export Co., 601<br>East Second Street, Muscatine,<br>Iowa.                     |
| Carbon Black Export Association, Inc.,<br>60 East Forty-second Street, New<br>York City.   | Metal Lath Export Association, The,<br>60 East Forty-second Street, New<br>York City.               |
| Cement Export Co., The Pennsylvania<br>Building, Philadelphia.                             | Northwest Dried Fruit Export Asso-<br>ciation, Title & Trust Building,<br>Portland, Oreg.           |
| Copper Exporters, Inc., 33 Rector<br>Street, New York City.                                |   |



Pacific Flour Export Co., care of  
Fisher Flouring Mills Co., Seattle.  
Phosphate Export Association, 393  
Seventh Avenue, New York City.  
Pipe-Fittings & Valve Export Associa-  
tion, Branford, Conn.  
Redwood Export Co., 405 Montgomery  
Street, San Francisco.  
Rubber Export Association, The, 19  
Goodyear Avenue, Akron, Ohio.  
Shook Exporters Association, Stahl-  
man Building, Nashville, Tenn.  
Signal Export Association, 74 Trinity  
Place, New York City.  
Standard Oil Export Corporation, 30  
Rockefeller Plaza, New York City.  
Steel Export Association of America,  
The, 75 West Street, New York City.  
Sugar Export Corporation, 120 Wall  
Street, New York City.

Sulphur Export Corporation, 420 Lex-  
ington Avenue, New York City.  
Textile Export Association of the  
United States, 40 Worth Street,  
New York City.  
United States Alkali Export Associa-  
tion, Inc., 11 Broadway, New York  
City.  
United States Handle Export Co., The,  
Piqua, Ohio.  
Walnut Export Sales Co., Inc., Twelfth  
Street and Kaw River, Kansas City,  
Kans.  
Walworth International Co., 60 East  
Forty-second Street, New York City.  
Western Phywood Export Co., Tacoma  
Building, Tacoma, Wash.  
Zinc Export Association, 500 Fifth  
Avenue, New York City.

#### **REPORT ON ANTIDUMPING LEGISLATION AND OTHER IMPORT REGULATIONS IN THE UNITED STATES AND FOREIGN COUNTRIES**

A report on Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries prepared by the export trade section, under Commission direction, was presented to the United States Senate by Senator Clarence C. Dill, of Washington, and was printed as Senate Document No.112 in January 1934.

This inquiry was began in the spring of 1933, when amendments to the antidumping laws were under consideration by Congress and Congressional committees were conducting hearings on the question of equalizing tariff duties by compensating for depreciation of foreign currencies. The subject falls within the jurisdiction of the Commission under section 6 (h) of the Federal Trade Commission act and also under section 5 of the act, since dumping may be found an unfair method of competition in international trade.

#### **TRUST LAWS AND UNFAIR COMPETITION IN FOREIGN COUNTRIES**

Recovery measures abroad have included a number of laws and plans for the promotion and regulation of industry and trade. Some of these are briefly noted, as follows:

*Africa.*--Southern Rhodesian Maize Control Amendment Act, 1933, and Custom and Excise Management Amendment Act, 1933, provide for restriction of importation of maize and wheat.

*Argentina.*--National Meat Board, under law of October 7, 1933, to control the industry and provide national packing and refrigeration plants.

Grain Regulating Board under decree of November 28, 1933, has authority to purchase grain at increased prices and sell for export at international market prices.

Decree of February 23, 1934, simplifies exchange control and diminishes restrictions.

*Australia.*--Amendment to Customs Tariff Act, December 4, 1933, provides new exchange dumping regulations.

Trade Coupons Act, Queensland, operative January 1, 1934, prohibits use or advertising of trade coupons.

Butter and Cheese Stabilization Act, effective in 1934, prohibits interstate trade except under license issued when export-quota regulations have been complied with. New South Wales, Victoria, and Queensland have laws to regulate intrastate marketing and control production. Queensland has 17 pools or boards to control marketing of agricultural products.

Iron and Steel Products Bounty Act, 1933, regulates rates of bounty on these products.

*Belgium.*--Wheat Valorization Scheme, 1933, includes tax on imports for valorization and payment of bounties to domestic growers.

*Brazil.*--Federal Coffee Control Department reports in January 1934 that statistical equilibrium has been restored by withdrawal of all nonexportable surplus (during 3 years about 26,000,000 sacks of coffee were burned or dumped into the sea).

*Canada.*--The Natural Products Marketing Act, 1934, authorizes the establishment and enforcement of codes or marketing agreements to control the sale and distribution of "any product of agriculture or the forest, sea, lake, or river" and articles manufactured therefrom. The law will be administered by a Marketing Board, and codes for interprovincial and foreign trade will be approved by the Governor in Council. Codes for intraprovincial trade will be approved by the provincial Lieutenant Governor in Council. Provincial boards will be created to cooperate with the federal board, and marketing acts have been passed in Saskatchewan, Manitoba, British Columbia, and Alberta for this purpose. The Alberta act covers not only agricultural production but also any trade or industry in which agreements or codes may be entered into, with provisions for registration and licensing; part III applies specifically to the coal-mining industry.

Emergency Wheat Control Acts passed in Manitoba, Saskatchewan, and Alberta in April 1934 provide control of 95 percent of the Canadian wheat production through emergency boards in the Provinces and a joint board to be established by the Dominion.

A Parliamentary Committee on Agriculture and Colonization made an inquiry and presented a report on the Milk Industry in 1933. Milk-control laws are operative in Manitoba, Alberta, and Ontario.

Under the Combines Investigation Act and the Criminal Code, a group of importers of British anthracite coal in Quebec were convicted and fined in December 1933.

A new Federal Companies Bill, designed to check fraudulent stock promotion, is under consideration, and steps have been taken toward agreement among the provincial administrations for uniformity in company regulation.

*Chile.*--Agricultural Export Board authorized by law of February 1, 1934, to control exports and imports of wheat and wheat products and fix prices of bread; export bounty to be paid on oats.

Decree of July 21, 1933, created a Government monopoly of the guano industry; and a decree of January 24, 1934, grants monopoly of trade and exportation of nitrates and iodine for 35 years to the Nitrate and Iodine Sales Corporation of Chile, 25 percent of the profits to go to the Government.

*China.*--Law for the Encouragement of Industry, April 20, 1934, under which certain industries will be granted tax exemption, reduction in shipping charges, awards of cash, and certain groups may be granted exclusive privilege of manufacture.

*Czechoslovakia.*--Cartel Act, July 12 and 29, 1933, provides for registration and control of cartel agreements that regulate prices, credit, terms, production quotas, and allocation of foreign markets.

Decree of August 14, 1933, authorizes agrarian syndicates under Government control to insure appropriate utilization of agricultural products, imports to be subject to special permit. A plan presented by the Ministries of Commerce and Finance in 1934 proposes legislation whereby all important industries shall be syndicated, and production, marketing, credit terms, prices, and rates shall be under Government control.

*Ecuador.*--State monopoly for sale and distribution, storing, importing, and exporting petrol, created by law effective January 1, 1934. New exchange-control laws operative in Quito, December 22, 1933, and in Guayaquil, January 15, 1934.

*France.*--Law effective July 15, 1933, fixed a minimum price for wheat during the 1933-1934 crop and provided for an export bounty. Under a law of February 28, 1934, effective until November 15, 1934, the Government was authorized to modify the customs tariff by decrees issued in ministerial council.

*Germany.*--Compulsory Cartel Law, July 15, 1933, amends decrees of November 2, 1923, and June 14, 1932, in re misuse of economic monopolies; transfers from the Cartel Court to the Minister of Economics, power to decide whether a cartel agreement should be nullified; and gives to the Minister power to compel formation or extension of cartels or to restrict business expansion. During the first

year of operation the Minister intervened in over 30 cases, either to form compulsory cartels or to decree a prohibition against the erection of new or the extension of existing enterprises.

Law of Business Advertising and Publicity, September 12, 1933, established an Advertising Council to supervise commercial and business advertising of all types, with authority to issue and revoke permits under direction of the Minister of Propaganda and Public Enlightenment.

Law of November 14, 1933 limits the rebates or discounts that may be granted to purchasers by retail tradesmen, its purpose said to be to prevent indirect price cutting.

Law of February 27, 1934, for reorganization of German industry, provides that the Minister of Economics may recognize trade associations as sole representatives of their individual industries or commercial activities, and that he may dissolve or join together present associations. All industry and commerce will be divided into thirteen groups, under the direction of leaders appointed by and responsible to the Minister. A law of March 22, 1934 further empowers the Minister to control and regulate trade in industrial raw materials and semi-manufactures. Under an order issued by the Minister on May 16, 1934, boards of price control which were established under legislation in 1931 are now revived, with power to control price of "every-day necessities", minimum working margins, minimum trade margins, maximum rebates, or minimum extra charges.

Legislation in 1933 and 1934 extended Government control of agriculture to production, marketing, processing, price fixing, and the abolition of futures trading. Sales agencies will be established for each group. A law of September 15, 1933 authorized the Minister of Agriculture to issue regulations for establishment of a National Estate of Food Producers, including not only general agriculture, horticulture, fishing and hunting, but also the wholesale and retail trade in such products and the firms engaged in working up the agricultural products.

*Great Britain.*--The Agricultural Marketing Act, 1933, amending the act of 1931, provides for supervision of agricultural imports on a quota basis, as well as regulation of production and distribution of home grown supplies. Proposed legislation would provide a Cotton Control Board to amalgamate businesses, take charge of marketing of cotton goods, and issue licenses in order to restrict the entry of new firms in the industry. A sugar marketing board is proposed in a sugar bill, to take the place of the Sugar Subsidy Act of 1925 which expires in 1934.

The Gift Coupons Bill met with an adverse report by the Board of Trade committee which reported that gift coupons and trading

stamps are not detrimental to the public interest and do not call for legislative intervention.

An antidumping bill under consideration would exclude foreign goods from a country in which currency inflation manipulation is employed for the purpose of exporting at a price below the cost of production.

*International.*--The International Convention for the Protection of Industrial Property and the Madrid Agreement for the Repression of False Indications of Origin, were amended at the London Conference in May 1934.

Japan and the Netherlands, the only countries still bound by the International Convention for the Abolition of Import and Export Prohibitions and Restrictions, of 1927, gave notice of their withdrawal effective on June 30, 1934.

An international agreement for stabilization of wheat production was signed in August 1933 by 21 countries, including the four largest producers, United States, Canada, Australia, and Argentina.

An international agreement for the restriction of the production of tea was executed in 1933 by producers in India, Ceylon, and the Dutch East Indies.

The international tin restriction scheme involving production in Malaya, Nigeria, Dutch East Indies, Bolivia, and Siam was renewed for 3 years from January 1, 1934.

An international agreement for control of production and prices of rubber entered into by producers in Malaya, Netherlands Indies, Ceylon, British India, Burma, North Borneo, Sarawak, and Siam came into operation June 1, 1934, effective until the end of 1938. An agreement signed at London, May 7, 1934, by the governments of the United Kingdom, France, Netherlands, India, and Siam gave government approval to the plan.

*Ireland.*--Agricultural Produce (Cereals) Act of May 4, 1933, provides for control of production, manufacture, importation, and sale of wheat, flour, and other cereals.

The Control of Imports Act effective March 24, 1934, grants authority to the Executive Council to limit imports by means of quotas.

*Italy.*--Decree law on September 28, 1933, provides for exchange dumping duties on goods imported from countries with depreciated currencies.

The Corporations Act, January 18, 1934, provides for a council of corporations to exercise regulatory functions over industrial associations or groups, to fix prices of commodities, and rates for public utility supplies and services.

Royal Decree law of May 15, 1933, establishes regulations for the issuance of permits under which the Government will control the

erection of new plants or the enlargement of existing plants in certain industries.

*Jamaica.*--The Sugar Industry Control Law, December 14, 1933, provides for regulation by the Sugar Control Board.

*Japan.*--Law for the Prevention of Unfair Competition published May 27, 1934, provides action in a court of justice, to obtain redress in case of injury by unfair competitive methods.

The Japanese Protective Trade Act effective May 1, 1934, provides for control of the foreign trade of the country by a trade investigation commission, decisions to become effective by imperial ordinances. Export guilds will be formed, one for each line of goods, to exercise control over prices and volume of exports.

*Mexico.*--The Monopolies Law of 1931 supplemented by a decree of February 9, 1934, naming certain articles as "necessities" and granting to the Secretariat of National Economy, in case of "notable scarcity", authority to force those who may have stocks to place them for sale at fixed prices.

The Six Year Plan includes an extension of foreign trade through operation of a commission to control imports and exports, a board of standards, a semi-official exporters' association, and officials appointed sales agents for foreign service.

*Latvia.*--A goods import control commission established by a law effective June 1, 1934, will determine the quantity and quality of imports and fix quotas.

*Netherlands.*--The Agricultural Crisis Law of May 1933, as amended, gives to the government extensive powers of control over the output and marketing of agricultural products. Further decrees have created monopolies for importation and exportation of cereals, fruits, and vegetables, and provided "equalization fees" on exported goods, intended to refund the monopoly fees paid on imports or to compensate exporters for higher prices and costs of production in the Netherlands.

*Poland.*--Decree of October 27, 1933, contains new provisions for regulation of the capital issues of corporations, and publication of information concerning their activities.

*Spain.*--All importers into Spain must be registered with the Director-General of Commerce and Customs Policy, under a decree dated March 16, 1934.

A decree issued in December 1933 provides for a wide extension of the import quota system under direction of the Minister of Trade and Commerce. Decrees dated March 10, 1934, and May 23, 1934, provide for prevention of dumping into Spain.

*Switzerland.*--Export credit insurance under government control is provided in a decree of March 28, 1934.

## **FISCAL AFFAIRS**

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## FISCAL AFFAIRS

### APPROPRIATIONS, ALLOTMENTS, AND EXPENDITURES

Appropriations available to the Commission for the fiscal year ended June 30, 1934, under the Independent Offices Act approved June 16, 1933, were \$920,000; under the Fourth Deficiency Act approved June 16, 1933, \$265,000; under the Independent Offices Act approved March 28, 1934, \$22,027.80; under the Independent Offices Act 1935, immediately available clause, \$70,566.76; in all, \$1,277,594.56. This sum was made up of two separate items: (1) \$1,237,344.56 for salaries of the Commissioners and general work of the Commission, and (2) \$40,250 for printing and binding.

In addition, there were allotted funds from the National Recovery Administration the sum of \$35,671.82; from the Agricultural Adjustment Administration the sum of \$747.11; a total of \$36,418.93 in allotted funds.

#### *Appropriations, allotments, expenditures, liabilities, and balances*

	Amount available	Amount expended	Liabilities	Expendi- tures and liabilities	Balances
Federal Trade Commission, 1934:					
Salaries, Commissioners and all other authorized expenses	\$1,237,344.56	\$1,218,762.85	\$18,424.60	\$1,237,187.45	\$157.11
Printing and binding	40,256.00	35,243.45	5,006.55	40,250.00	
Allotments from National Recovery Administration	35,871.82	28,983.59	6,688.23	35,671.82	
Allotments from Agricultural Adjustment Administration	747.11	616.95	130.16	747.11	
Total, fiscal year 1934	1,314,013.49	1,283,606.84	30,249.54	1,313,856.38	157.11
Unexpended balances:					
1933	29,870.46	24,795.75		24,795.75	5,074.71
1932-33	671.36	23.80		23.80	647.56
1932	24,406.23	14.47		14.47	24,391.70
Total	1,368,961.54	1,308,440.86	30,249.54	1,338,090.40	30,271.14

#### *Detailed statement of costs for the fiscal year ending June 30, 1934*

	Salary	Travel expense	Other	Total
Commissioners	\$42,456.28	\$62.58		\$42,512.86
Clerks to Commissioners	10,048.76			10,648.76
Messengers to Commissioners	4,545.75			4,545.75
Total	57,044.79	62.58		57,707.37



	Salary	Travel expense	Other	Total
<b>Administration:</b>				
Office of secretary	\$23,466.73		\$23,466.73	
Accounts and personnel section	19,981.51		19,981.51	
Disbursement section	3,008.89		3,008.89	
Docket section	28,213.32		28,213.32	
Hospital	1,472.85		1,472.65	
Labor	2,896.46		2,896.46	
Library section	6,977.17		6,977.17	
Mail and files section	10,967.30		10,967.30	
Messenger service	8,921.92		8,921.92	
Public relations	4,764.25		4,764.25	
Publications section	21,351.95		21,351.95	
Purchases and supplies section	7,083.70		7,083.70	
Stenographic section	39,569.38		39,569.38	
Communications			\$5,894.25	5,894.25
Equipment			28,593.98	28,593.98
Heat and light			50.34	50.34
Miscellaneous			204.62	264.62
Rents			6,306.86	6,306.86
Repairs			1,009.06	1,009.06
Reporting service			11,514.72	11,514.72
Supplies			12,067.38	12,067.38
Transportation of things			429.21	429.21
Witness fees			1,223.70	1,223.70
Total	178,675.23		67,354.12	246,029.35
<b>Legal:</b>				
Applications for complaints	114,323.87	\$9,254.74	288.41	123,867.02
Complaints	121,109.75	16,076.40	254.40	138,664.25
Export trade	6,516.11			6,516.11
National Recovery Administration	52,549.80	5,071.78	57.93	57,679.51
Preliminary inquiries	77,936.60	9,366.08	105.68	87,408.36
Trade-practice conferences	19,274.25	570.51		19,844.76
Total	391,710.38	40,339.51	706.42	433,980.01
<b>General investigations:</b>				
Agricultural Adjustment Administration	1,610.20			1,610.20
Building materials	349.73	1.50		351.23
Cement	41.73			41.73
Chain stores	26,941.85	63.99		27,005.84
Cottonseed	683.13			683.13
Gasoline prices	2,102.08			2,102.08
Power and gas	236,011.11	41,122.95	982.56	278,116.62
Price bases	13,538.39			13,538.39
Price wars, milk	948.66	88.55		1,037.21
Public works	221.32			221.32
Salaries of executives	10,603.34	1.73		10,605.07
Securities	182,881.33	3,823.46	46.50	186,751.29
Senate bread inquiry	542.81			542.81
Senate ocean and air-mail contracts	814.52			814.52
Steel industry codes	7,333.35	805.96		8,139.31
Tennessee Valley Authority	712.64	107.29		819.93
Total	485,336.19	46,015.43	1,029.06	532,380.68
Printing and binding	35,243.45			35,243.45
Transferred to chief disbursing officer, Treasury Department	3,100.00			3,100.00
<b>Summary:</b>				
Commissioners	57,644.79	62.58		57,707.37
Administration	178,675.23		67,354.12	246,029.35
Legal	391,710.38	41,503.21	706.42	433,980.01
General investigations	485,336.19	46,015.43	1,029.06	532,380.68
Printing and binding	35,243.45			35,243.45
Transferred to chief disbursing officer, Treasury Department	3,100.00			3,100.00
Total	1,113,366.59	87,641.22	1,074,330.55	1,308,440.86

*Recapitulation of costs by divisions*

	Salary	Travel expense	Other	Total
Administrative	\$229,818.44	\$62.58	\$65,845.15	\$295,726.17
Economic	261,628.59	38,764.53	2,824.52	303,217.64
Chief counsel	137,226.25	12,081.04	24,002.61	173,309.90
Chief examiner	219,220.26	27,323.97	487.86	247,032.09
Board of review	4,612.62			4,612.62
Special board of investigation	17,359.10		16.50	17,375.60
Trial examiner	56,916.36	4,833.76	20.00	55,770.12
Trade practice conferences	23,113.69	570.51	177.31	23,861.51
Securities	169,471.28	4,004.83	10,959.10	184,435.21
Transferred to chief disbursing officer	3,100.00			3,100.00
Total	1,113,366.59	87,641.22	107,433.05	1,308,440.86

Appropriations available to the Commission, Since its organization and expenditures for the same period, together with the unexpended balances, are shown by the following table:

Year	Appropriations	Expenditures	Balance	Year	Appropriations	Expenditures	Balance
1915	\$184,016.23	\$90,442.05	\$93,574.18	1925	1,010,000.00	1,008,998.80	1,001.20
1916	430,964.08	379,927.41	51,036.67	1926	1,008,000.00	996,745.58	11,254.42
1917	567,025.92	472,501.20	94,524.72	1927	\$997,000.00	\$960,654.71	\$36,345.29
1918	1,608,865.92	1,462,187.32	156,678.60	1928	984,350.00	972,966.64	11,383.96
1919	1,753,530.75	1,522,331.95	231,198.50	1929	1,163,192.62	1,169,459.76	3,732.77
1920	1,305,708.82	1,120,301.32	186,407.80	1930	1,495,821.69	1,494,619.69	1,202.00
1921	1,032,005.67	938,659.69	93,345.98	1931	1,863,348.42	1,861,971.72	1,376.70
1922	1,026,150.54	956,116.50	70,034.04	1932	1,817,382.49	1,778,427.88	38,954.61
1923	974,480.32	970,119.66	4,360.66	1933	1,426,714.70	1,393,427.90	33,286.80
1924	1,010,000.00	977,018.28	32,981.72	1934	1,314,013.49	1,313,614.33	399.16

## **EXHIBITS**

FEDERAL TRADE COMMISSION ACT

SHERMAN ANTITRUST ACT

CLAYTON ACT

EXPORT TRADE ACT

NATIONAL INDUSTRIAL RECOVERY ACT

RULES OF PRACTICE

## FEDERAL TRADE COMMISSION ACT

AN ACT To create a Federal Trade Commission, to define its powers and duties, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the Commission) , which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed : *Provided, however,* That upon the expiration of his term of office a commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. The Commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the Commission shall not impair the right of the remaining commissioners to exercise all the powers of the Commission.

The Commission shall have an official seal, which shall be judicially noticed.

SEC. 2. That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint secretary who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the Commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the Commission and by the Civil Service Commission.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making *any* investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the Commission. 2

SEC. 3. That upon the organization of the Commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the Commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the Commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the Commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nine-

teen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the Commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. That the words defined in this section shall have the following meaning when found in this Act, to wit :

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” means any company, or association incorporated or unincorporated, which is organized to carry on business for its own profit and has shares of capital or capital stock, and any company, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” means all documents, papers, and correspondence, in existence at and after the passage of this act.

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February fourteenth, eighteen hundred and eighty-seven, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

“Antitrust Acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety; also sections 73 to 77, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August twenty-seven, eighteen hundred and ninety-four; also the Act entitled “An Act to amend sections 73 and 76 of the Act of August twenty-seven, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February twelfth, nineteen hundred and thirteen; and also the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October fifteenth, nineteen hundred and fourteen.

Sec. 5. That unfair methods of competition in commerce are hereby declared unlawful.

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

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply

to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forth-with served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or judgment of the court to enforce the same shall in any wise relieve or absolve any person, partnership, or corporation from any liability under the antitrust acts.

Complaints, orders, and other processes of the commission under this section may be served by anyone duly authorized by the commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (c) by registering and mailing a copy thereof addressed to such person, partnership, or corporation at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 6. That the commission shall also have power--

(a) To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce, excepting banks, and common carriers subject to the act to regulate commerce, and its relation to other corporations and to individuals, associations, and partnerships.

(b) To require, by general or special orders, corporations engaged in commerce, excepting banks and common carriers subject to the act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or

both annual and special, reports or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General, it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust acts by any corporation.

(e) Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) To make public from time to time such portions of the information obtained publicly it hereunder, except trade secrets and names of customers, as it shall deem expedient in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use.

(g) From time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of this act.

(h) To investigate, from time to time, trade conditions in and with foreign countries, where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

SEC. 7. That in any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a matter in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

SEC. 8. That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. That for the purposes of this act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the at-

tendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such deposition may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No person shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: *Provided*, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

SEC. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence, of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be



payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punishable by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. Nothing contained in this act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust act or the acts to regulate commerce, nor shall anything contained in the act be construed to alter, modify, or repeal the said antitrust acts or the acts to regulate commerce or any part or parts thereof.

Approved, September 26, 1914.

## SHERMAN ACT

SECTION 1. Every contract, combination the form of trust or otherwise, conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States; in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court; the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7 Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person", or "persons", wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Approved, July 2, 1890.

## SECTIONS OF THE CLAYTON ACT ADMINISTERED BY THE FEDERAL TRADE COMMISSION

AN ACT To supplement existing laws against unlawful restraints and monopolies, and  
for other purposes

*Be it enacted by the Senate and House of Representatives of the United States Of America in Congress assembled,* That "antitrust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety: sections seventy-three to seventy-seven, inclusive, of an Act entitled, "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the Jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the Jurisdiction of the United States: *Provided*, That nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States the laws of any of the Territories, the laws of any State; or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate 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, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers, of commodities, on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of Selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, 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, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or under-

standing may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

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SEC. 7. 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 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.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, 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 such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*. That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. \* \* \* That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000 engaged in whole or in part in commerce other than banks, banking associations, trust companies, and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of

the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

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SEC. 11. That authority to enforce compliance with sections two, three, seven, and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers subject to the Interstate Commerce Act, as amended; in the Federal Communications Commission where applicable to common carriers engaged in wire or radio communication or radio transmission of energy; 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, to be exercised as follows:

Whenever the commission, authority, or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven, and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission, authority, or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown, may be allowed by the commission, authority, or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission, authority, or board. If upon such bearing the commission, authority, or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission, authority, or board may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside in whole or in part, any report, or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission, authority, or board while the same is in effect, the commission, authority, or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission, authority, or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person, and thereupon shall have Jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission, authority, or board. The findings of the commission, authority, or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, authority, or board, the court may order such additional evidence to be taken before the commission, authority, or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission, authority, or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The Judgment and decree of the court

shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission, authority, or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission, authority, or board be set aside. A copy of such petition shall be forthwith served upon the commission, authority, or board, and thereupon the commission, authority, or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission, authority, or board as in the case of an application by the commission, authority, or board for the enforcement of its order, and the findings of the commission, authority, or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The Jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission, authority, or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission, authority, or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the antitrust Acts.

Complaints, orders, and other processes of the commission, authority, or board under this section may be served by anyone duly authorized by the commission, authority, or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

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Original act approved October 15, 1941.

## EXPORT TRADE ACT

An Act to promote export trade, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the words “export trade” where-ever used in this Act mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words “export trade” shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

That the words “trade within the United States” wherever used in this Act mean trade or commerce among the several States or in any Territory of the United States, or in the District of Columbia, or between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

That the word “Association” wherever used in this Act means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

SEC. 2. That nothing contained in the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July second, eighteen hundred and ninety, shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *And provided further,* That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

SEC. 3. That nothing contained in section seven of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October fifteenth, nineteen hundred and fourteen, shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

SEC. 4. That the prohibition against “unfair methods of competition” and the remedies provided for enforcing said prohibition contained in the Act entitled “An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes”, approved September twenty-sixth, nineteen hundred and fourteen, shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

SEC. 5. That every association now engaged solely” in export trade, within sixty days after the passage of this Act, and every association entered into hereafter which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or

members, and if a corporation, a copy of its certificate or articles of incorporation and by-laws, and if unincorporated, a copy of its articles or contract of association, and on the first day of January of each year thereafter it shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the commission such information as the commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of section two and section three of this Act, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

Approved, April 10, 1918.



# SECTIONS OF THE NATIONAL INDUSTRIAL RECOVERY ACT IN WHICH THE FEDERAL TRADE COMMISSION HAS JURISDICTION

## TITLE I--INDUSTRIAL RECOVERY

### DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

\* \* \* \* \*

### CODES OF FAIR COMPETITION

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that Such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

\* \* \* \* \*

SEC. 6 (c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect to investigations under the Federal Trade Commission Act, as amended.

## **RULES OF PRACTICE**

### **I. SESSIONS.**

(a) The principal office of the commission at Washington, D. C., is open each business day, excepting Saturdays, from 9 a.m. to 4:30 p.m. The commission may meet and exercise all its powers at any other place, and may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States. Branch offices are maintained at New York, Chicago, San Francisco, and Seattle.

(b) Sessions of the commission for hearing contested proceedings will be held as ordered by the commission.

(c) Sessions of the commission for the purpose of making orders and for the transaction of other business, unless otherwise ordered, will be held at the office of the commission at Washington, D. C., on each business day at 10:00 a. in. A majority of the membership of the Commission shall constitute a quorum for the transaction of business.

(d) All orders of the commission shall be signed by the Secretary.

### **RULE II. APPEARANCE**

(a) Any individual or member of a partnership which is a party to any proceeding before the Commission may appear for himself, or such partnership upon adequate identification, and a corporation or association may be represented by a bona fide officer of such corporation or association.

(b) A party may also appear by an attorney at law possessing the requisite qualifications, as hereinafter set forth, to practice before the Commission. Upon application and for good cause shown, the commission, in its discretion, may permit a party to be represented by any person having requisite qualification to represent others.

### **RULE III. PRACTICE BEFORE THE COMMISSION**

(a) Attorneys at law who are admitted to practice before the Supreme Court of the United States, or the highest court of any State or Territory of the United States, or the Court of Appeals of the Supreme Court of the District of Columbia, may be admitted to practice before the Commission. No register of admitted attorneys is maintained.

(b) The Commission may, in its discretion, deny admission, suspend, or disbar from practice before it, any person, who, it finds, does not possess the requisite qualifications to represent others, or is lacking in character, integrity, or is guilty of unprofessional conduct. Any person who has been admitted to practice before the Commission may be disbarred or suspended from practice for good cause shown, but only after he has been afforded an opportunity to be heard.

### **RULE IV. COMPLAINTS**

(a) Any person, partnership, corporation or association may apply to the Commission to institute a proceeding in respect to any violation of law over which the Commission has jurisdiction.

(b) Such application for complaint shall be in writing, signed by or in behalf of the applicant and shall contain a short and simple statement of the facts constituting the alleged violation of law and the name and address of the applicant and of the party complained of.

(c) The Commission shall investigate the matters complained of in such application, and if upon investigation made either on its own motion or upon application, the Commission shall have reason to believe that there is a violation of law over which the Commission has jurisdiction, and if it shall appear to the Commission that a proceeding by it in

respect thereof would be to the interest of the public, the Commission shall issue, and serve upon the party complained of, a complaint stating its charges and containing a notice of a hearing upon a day and at a place therein fixed, at least 30 days after the service of said complaint.

#### RULE V. ANSWERS

(a) In case of desire to contest the proceeding the respondent shall, within 20 days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall be deemed to be admitted to be true and may be found by the Commission.

(b) In case the respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that the Commission may make, enter, and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint, or that respondent admits all the allegations of the complaint, to waive a hearing thereon, and to authorize the Commission, without trial and without further evidence, or other intervening procedure, to make, enter, issue, and serve up on respondent:

(c) In cases arising under section 5 of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes" (the Federal Trade Commission Act), or under sections 2 and 3 of the act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purpose" (the Clayton Act,) an order to cease and desist from the violations of law charged in the complaint;

(d) In cases arising under section 7 of the said act of Congress approved October 15, 1914 (the Clayton Act), findings of fact and an order to cease and desist from the violations of law charged in the complaint and to divest itself of the stock found to be held contrary to the provisions of said section 7 of said Clayton Act;

(e) In cases arising under section 8 of the said act of Congress approved October 15, 1914 (the Clayton Act), findings of fact and an order to cease and desist from the violation of law charged in the complaint and to rid itself of the directors found to have been chosen contrary to the provisions of said section 8 of said Clayton Act.

(f) Failure of the respondent to file answer within the time above provided for shall be deemed to admission of all allegations of the complaints and to authorize the Commission to find them to be true and to waive hearing on the charges set fourth in the complaint.

(g) Three copies of answers shall be furnished. All answers shall be signed in ink, by the respondent or by his attorney at law, or by a duly authorized agent with appropriate power of attorney affixed, and are required to show the office and post-office address of the signer. All answers are required to be type-written or printed. If type-written, they are required to be on paper not more than 8 ½ inches wide and not more than 11 inches long. If printed, they are required to be on paper 8 inches wide and 10 ½ inches long.

#### RULE VI. SERVICE

Complaints, orders, and other processes of the Commission, may be served by the Commissions secretary by registered mail, (except whenever otherwise method specifically ordered by the Commission), and in those instances where service cannot be made by such method, service may be made by anyone duly authorized by the Commission, or by any examiner of the Commission, either (a) by delivering a copy of the thereof to the person served, or to a member of the partnership to be served, or to the president, secretary, or other executive

officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person, partnership, corporation, or association; or (c) by registering and mailing a copy thereof addressed to such person, partnership, corporation, or association at his or its principal office or place of business. The verified return by the person so serving said complaint, order, or other process, setting forth the manner of said service, shall be proof of the same, and the return post-office receipt for said complaint, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

#### VII. INTERVENTION.

(a) Any person, partnership, corporation, or association desiring to intervene in a contested proceeding shall make application in writing, setting out the grounds on which he or it claims to be interested. The commission may, by order, permit intervention by counsel or in person to such extent and upon such terms as it shall deem just.

(b) Applications to intervene must be on one side of the paper only, on paper not more than 8 ½ inches wide and not more than 11 inches long, and weighing not less than 16 pounds to the ream, folio base, 17 by 22 inches, with left-hand margin not less than 1 ½ inches wide, or they may be printed in 10 or 12 point type on good unglazed paper 8 inches wide by 10 ½ inches long, with inside margins not less than 1 inch wide.

#### VIII. WITNESSES AND SUBPOENAS.

(a) Witnesses shall be examined orally, except that for good and exceptional cause for departing from the general rule the commission may permit their testimony to be taken by deposition.

(b) Subpoenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing may be issued by any member of the commission.

(c) Subpoenas for the production of documentary evidence (unless directed to issue by a commissioner upon his own motion) will issue only upon application in writing, which must be verified and must specify, as near as may be, the documents desired and the facts to be proved by them.

(d) Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appear.

#### IX. TIME FOR TAKING TESTIMONY.

Upon the joining of issue in a proceeding by the Commission the examination of witnesses therein shall proceed with all reasonable diligence and with the least practicable delay. Not less than 5 nor more than 10 days' notice shall be given by the Commission to counsel or parties of the time and place of examination of witnesses before the Commission, a commissioner, or an examiner.

#### X. OBJECTIONS TO EVIDENCE.

Objections to the evidence before the Commission, a commissioner, or an examiner shall, in any proceeding, be in short form. stating the grounds of objections relied upon, and no transcript filed shall include argument or debate.

#### XI. MOTIONS.

A motion in a proceeding by the Commission shall briefly state the nature of the order applied for, and all affidavits, records, and other helpers upon which the same is founded, except such as have been previously filed or served in the same proceeding, shall be filed with such motion and plainly referred to therein.



## XII. HEARINGS ON INVESTIGATIONS.

(a) When a matter for investigation is referred to a single commissioner for examination or report, such commissioner may conduct or hold conferences or hearings thereon, either alone or with other commissioners who may sit with him, and reasonable notice of the time and place of such hearings shall be given to parties in interest and posted.

(b) The chief counsel or one of his assistants, or such other attorney as shall be designated by the commission, shall attend and conduct such hearings, and such hearings may, in the discretion of the commissioner holding same, be public, unless otherwise ordered by the Commission.

## RULE XIII. HEARINGS BEFORE TRIAL EXAMINERS

(a) Where evidence is to be taken in a proceeding upon complaint issued by the Commission, a trial examiner shall be designated by the Commission for that purpose. It shall be the duty of the trial examiner to complete the taking of evidence with all due dispatch and he shall state the place, day, and hour to which the taking of evidence may from time to time be adjourned.

(b) All hearings before the Commission or trial examiners on complaints issued by the Commission shall be public, unless otherwise ordered by the Commission.

(c) The trial examiner shall, within 15 days after the receipt of the steno-graphic report of the testimony, make his report on the facts, and shall forthwith serve copy of the same on the parties or their attorneys, who, within 10 days after the receipt of same, shall file in writing their exceptions, if any, and said exceptions shall specify the particular part or parts of the report to which exception is made, and said exceptions shall include any additional facts which either party may think proper. Seven copies of exceptions shall be filed for the use of the Commission. Citations to the record shall be made in support of such exceptions. Where briefs are filed, the same shall contain a copy of such exceptions. If exceptions are to be argued, they shall be argued at the final argument on the merits.

(d) The report of the trial examiner is not a decision, finding, or ruling of the Commission, and is not a part of the record in the proceeding. The Commission's findings as to the facts are based upon the record.

(e) When, in the opinion of the trial examiner engaged in taking evidence in any formal proceeding, the size of the transcript or complication or importance of the issues involved warrants it, he may of his own motion or at the request of counsel, at the close of the taking of evidence, announce to the attorney for the respondent and for the Commission that the examiner will receive, at any time before he has completed the drawing of the trial examiner's report upon the facts, a statement in writing (one for either side) in terse outline setting forth the contentions of each as to the facts proved in the proceeding.

(f) These statements are not to be exchanged between counsel and are not to be argued before the trial examiner.

(g) Any such statement submitted by either side shall be submitted within 5 days after the closing of the taking of evidence and not later, which time shall not be extended.

## RULE XIV. DEPOSITIONS

(a) The Commission may order evidence to be taken by deposition in any proceeding or investigation pending at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the Commission and having power to administer oaths.

(a) Any party desiring to take the deposition of a witness shall make application in writing, setting out the reasons why such deposition should be taken, and stating the time when, the place where, and the name and post office address of the person before whom it is desired the deposition be taken, the name and postoffice address of the witness, and the subject matter or matters concerning which the witness is expected to testify. If good cause be shown, the Commission will make and serve upon the parties, or their attorneys, an order wherein the Commission shall name the witness whose deposition is to be taken and specify the time when, the place where, and

the person before whom the witness is to testify, but such time and place and the person before whom the deposition is to be taken, so specified in the Commission's order, may or may not be the same as those named in said application to the Commission.

(c) The testimony of the witness shall be reduced to writing by the officer before whom the deposition is taken, or under his direction, after which the deposition shall be subscribed by the witness and certified in usual form by the officer. After the deposition has been so certified, it shall, together with three additional copies thereof made by such officer or under his direction, be forwarded by such officer under seal in an envelope addressed to the Commission at its office in Washington, D. C. Such deposition, unless otherwise ordered by the Commission for good cause shown, shall be filed in the record in said proceeding and a copy thereof supplied to the party upon whose application said deposition was taken, or his attorney.

(d) Such depositions shall be typewritten, on one side of only of the paper, which shall not be more than 8 ½ inches and not more than 11 inches long and weighing less than 16 pounds to the ream, folio base 17 by 22 inches, with left handed margin not less than 1 ½ inch.

(e) Unless notice be waived, no depositions shall be taken except after at least 6 day's notice to the parties, and where the deposition is taken in a foreign country, such notice be at least 15 days.

#### XV. DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant and not intended to be put in evidence, such document will not be filed, but a copy only of such relevant and material matter shall be filed.

#### RULE XVI. BRIEFS

(a) All briefs must be filed with the secretary of the Commission, and briefs on behalf of the Commission must be accompanied by proof of the service of the same as hereinafter provided, or the mailing of same by registered mail to the respondent or its attorney at the proper address. Twenty copies of each brief shall be furnished for the use of the Commission unless otherwise ordered. The exceptions, if any, to the trial examiner's report must be incorporated in the brief. Every brief, except the reply brief on behalf of the Commission, hereinafter mentioned, shall contain in the order here stated:

(b) A concise abstract or statement of the case.

(c) A brief of the argument, exhibiting a clear statement of the points of fact or law to be discussed, with the reference to the pages of the record and the authorities relied upon in support of each point.

(d) Every brief of more than 10 pages shall contain on its top flyleaves a subject index with page references, the subject index to be supplemented by a list of all cases referred to, alphabetically arranged, together with references to pages where the cases are cited.

(E) Briefs are required to be printed in 10- or 12-point type on good unglazed paper 8 by 10½ inches, with inside margins not less than 1 inch wide, and with double-leaded text and single-leaded citations.

(f) The reply brief on the part of the Commission shall be strictly in answer to respondent's brief.

(g) The opening brief in support of the complaint shall be filed within 20 days of the date of the service upon the trial attorney of the Commission of the trial examiner's report. The brief on behalf of the respondent shall be filed within 20 days from the service upon the respondent or his attorney of the brief in support of the complaint. A reply brief in support of the complaint shall be filed only when recommended by the chief counsel and then within 10 days after the filing of respondent's brief. A reply brief on behalf of respondent will not be permitted to be filed. Appearance of additional counsel in a case shall not constitute grounds for extending the time for filing brief or for final hearing.

(h) Briefs not filed with the Commission on or before the dates fixed hereunder will not be received except by special permission of the Commission.

(I) Briefs on behalf of the Commission may be served by delivering a copy thereof to the respondent's attorney or to the respondent in case respondent be not represented by attorney, or by registering and mailing a copy thereof addressed to the respondent's attorney or to the respondent in case respondent

be not represented by attorney, at the proper post-office address. Written acknowledgment of services, or the verified return of the party making the service, shall constitute proof of personnel services hereinbefore provided and mailed shall constitute proof of the service of the same.

(j) Oral arguments may be had only as ordered by the Commission on written application of the chief counsel or of respondent filed not later than 5 days after expiration of time allowed for filing of reply brief of counsel for the Commission

#### RULE XVII. FILING MOTIONS, ANSWERS, ECT.

All matter required to be filed with the Commission shall be filed with the secretary.

#### RULE XVIII.--REPORTS SHOWING COMPLIANCE WITH ORDERS

In every case where an order is issued by the Commission for the purpose of preventing violations of the law, the respondent or respondents therein named shall file with the Commission, within the time specified in said order, a report, in writing, setting forth in detail the manner and form in which the said order of the Commission has been complied with.

#### RULE XIX.--REOPENING PROCEEDINGS

In any case where an order to cease and desist, an order dismissing a complaint, or other order disposing of a proceeding has been issued by the Commission, the Commission may, at any time within ninety (90) days after entry of such order, for good cause shown, in writing, and on notice to the parties, reopen the case for such further proceeding as to the Commission may seem proper.

#### RULE XX CONTINUANCES AND EXTENSION OF TIME

The Commission may, in its discretion, grant continuances, or, good cause shown in writing and prior to the expiration of the time fixed, extend the time fixed in these rules.

#### XXI. ADDRESS OF THE COMMISSION.

All communications to the commission must be addressed to Federal Trade Commission, Washington D. C., unless otherwise specially directed.



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