FEDERAL TRADE COMMISSION

v.

WESTERN MEAT COMPANY.

COMPLAINT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF AN ACT OF CONGRESS APPROVED SEPTEMBER 26, 1914, AND OF SECTION 7 OF AN ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Docket 456—February 2, 1923.

SYLLABUS.

Where a corporation engaged in the purchase of live stock and in the manufacture, distribution, and sale of meat and meat products as a subsidiary of packing companies occupying a strong position in the industry, purchased all the outstanding stock of a competitor and assumed the operation and management thereof; with the result that competition between the two concerns in the purchase of live stock and in the sale of meat and meat products was entirely eliminated and commerce in the section or community was restrained:

Held, That such acquisition of stock, under the circumstances set forth, constituted an unfair method of competition in violation of section 5 of the Act of September 26, 1914, and a violation of section 7 of the Act of October 15, 1914.

COMPLAINT.

I.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Meat Company, hereinafter referred to as the respondent, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of an 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," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. That the respondent, Western Meat Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at the city of San Francisco, in said State, and is now and at all times hereinafter mentioned engaged in the business of slaughtering live stock, and of producing

and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, said products and by-products being sold by respondent in the various States of the United States, the Territories thereof, and the District of Columbia, and when sold respondent causes same to be transported from the State of California through and into other States and Territories of the United States and the District of Columbia.

PAR. 2. That the Nevada Packing Co. is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with principal place of business at Reno, in said State, having a capital stock of $353,000, and is engaged in the business of slaughtering live stock and of producing and dealing in meats and all kinds of products and by-products arising out of the slaughtering of live stock, causing said products and by-products to be transported, when sold, from the State of Nevada through and into other States of the United States and the Territories thereof, and prior to December 30, 1916, said Nevada Packing Company was in direct competition with the respondent and other persons, partnerships, and corporations similarly engaged.

PAR. 3. That on December 30, 1916, respondent acquired all of the capital stock of said Nevada Packing Company and still owns and controls the same. That as a result of the acquisition of said stock respondent took over the business of said Nevada Packing Company and has since operated and controlled same, and competition which theretofore existed between respondent and the said Nevada Packing Company was completely eliminated, and interstate commerce in products and by-products arising from the slaughtering of live stock was thereby restrained, and respondent was enabled by the acquisition of said stock to acquire, and did acquire, a monopoly in the said sale of such products in the sections and communities adjacent to Reno, Nev.

II.

And the Federal Trade Commission, having reason to believe from a preliminary investigation made by it that the Western Meat Company, herein referred to as respondent, has been and is violating the provisions of Section 7 of an Act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH 1. As grounds for said complaint, said Commission relies upon the matters and things set out in paragraphs 1, 2, and 3

of count I of this complaint to the same extent as though the allegations thereof were set out at length herein, and said paragraphs 1, 2, and 3 are incorporated herein by reference and adopted as a part of the allegations of this count.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER.

The Federal Trade Commission having issued and served its complaint herein wherein it is alleged that it had reason to believe that the above-named respondent, Western Meat Co., has been and now is using unfair methods of competition in interstate commerce in violation of Section 5 of an 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," and that said respondent Western Meat Co. has been and is violating the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and that a proceeding by it as to such alleged violation of Section 5 of the Act of September 26, 1914, would be to the interest of the public, and fully stating its charges in that respect, and respondent having entered its appearance by its attorneys, Sullivan & Sullivan and Theodore J. Roche, of San Francisco, Calif., and having duly filed its answer admitting certain of the allegations of said complaint and denying others, and hearings in said proceedings having taken place before an examiner of the Commission, and the Commission having offered evidence in support of the charges of said complaint, and respondent having offered evidence in its own defense, and both parties to this proceeding having rested, and attorneys for both parties having presented said issues herein to the Commission for final consideration and determination, and the Commission having duly considered the record herein and being fully advised in the premises, now makes its report and findings as to the facts and conclusion.

FINDINGS AS TO THE FACTS.

PARAGRAPH 1. Respondent, Western Meat Company, is a corporation organized, xisting, and doing business u..der and by virtue of the laws of the State of California, with its principal office and place of business in the city and county of San Francisco, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep, and lambs in various States and Territories of the United States, and transporting same and causing same to be transported from such States to respondent's

packing plant situated in the State of California, and after the slaughtering of said cattle, calves, hogs, sheep, and lambs in said plant, has shipped the meat and meat products resulting therefrom from such packing plant to and through various distributing branches situated in the State of California and other States of the United States, to the purchasers of said products in such various States and Territories of the United States, including the States of California and Nevada. On December 30, 1916, the outstanding capital stock of said Western Meat Company consisted of 12,500 shares of common stock of the par value of $100 each, and the said concern at that time had assets of approximately $5,000,000 in value.

PAR. 2. The Nevada Packing Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal office and place of business in the city of Reno, in said State, now, and at all times herein mentioned, engaged in the business of purchasing live cattle, calves, hogs, sheep, and lambs in various States and Territories of the United States, and in transporting same and causing same to be transported from such States to its packing plant situated in the State of Nevada, and after the slaughtering of said cattle, calves, hogs, sheep, and lambs in said plant has shipped the meat and meat products resulting therefrom from such packing plant to the purchasers of said products in various States and Territories of the United States, including the States of Nevada and California.

PAR. 3. On December 30, 1916, respondent, Western Meat Company, acquired all of the issued and outstanding capital stock of the Nevada Packing Company, which consisted of 3,530 shares of common stock of the par value of $100 each. At the time of said acquisition Louis F. Swift, president of Swift & Company, meat packers, and other stockholders of Swift & Company, owned approximately 45 per cent of the stock of the Western Meat Company, and officers of Armour & Company, Morris & Company, and Cudahy Packing Company owned in the aggregate 30 per cent of said stock. Louis F. Swift was instrumental in causing said acquisition of said stock to be made by respondent, and said acquisition was made only after assurance of no objection on the part of Armour & Company.

PAR. 4. In January, 1914, Louis F. Swift was president and director of the Western Meat Co., and he resigned during that month at the annual meeting of the stockholders and F. L. Washburn was made president and director of the company. The following letter from Louis F. Swift to E. B. Shugert, treasurer of the Western Meat

Co., dated January 6, 1914, is indicative of the Swift control of the Western Meat Co.:

Please have it understood with Mr. Washburn that it may be that we will want to change back again later on to the present officers, and I do not want him to feel hurt if such should prove to be the case. In the meantime want him to understand that there is to be no change in the manner of conducting the business from the present, viz, it will be directed from Chicago, as heretofore.

The said letter of instructions was received and accepted by the interested parties. Shortly after the stock of the Nevada Packing Co. was purchased by the Western Meat Co. with the approval of Louis F. Swift, president of Swift & Co., a letter was sent to F. L. Washburn, president of respondent, by Louis F. Swift, under date of January 31, 1917, as follows:

I would suggest that you arrange that matters between the Nevada Packing Company, Reno, and Chicago, be handled similarly to those between the Western Meat Company and Chicago, viz:

On all matters of policy, etc., communications should be addressed to Louis F. Swift, Chicago.

On sales and trading between the companies, satisfactory to address the departments interested.

Will you please arrange?

Kindly acknowledge receipt.

The instructions of said Swift as set forth in the foregoing letter were carried out and from that date the business policy of respondent was controlled by said Swift, president of Swift & Company.

PAR. 5. At the date of the acquisition of the capital stock of the Nevada Packing Company by the Western Meat Company, competition existed between said Nevada Packing Company and the Western Meat Company, particularly in the States of Nevada and California in the purchase of live stock and in the sale and shipment of meat products; buyers of live stock for the Nevada Packing Company and the Western Meat Company endeavored to purchase live stock from the same producers in the States of Nevada and California and other States; and salesmen of both the Nevada Packing Company and the Western Meat Company solicited orders for meat and meat products from the same trade in the States of Nevada and California and other States in competition with each other.

PAR. 6. From December 30, 1916, to the date of the taking of testimony in this case in June, 1920, respondent Western Meat Company has operated the packing plant of the Nevada Packing Company, and, connected with the business of such operation, has continuously purchased and shipped to said plant from various points in the States of Nevada and California and adjacent States live

cattle, calves, hogs, sheep, and lambs, and after slaughtering same, sold and shipped the meat and meat products resulting therefrom to various purchasers in the States of Nevada and California and elsewhere, and still continues so to do, and as a part of its said business respondent serves substantially all of the trade that was served by Nevada Packing Company while it was in business in competition with respondent as hereinbefore set out.

PAR. 7. The effect of the acquisition by respondent of the capital stock of the Nevada Packing Company, and the control and operation of the Nevada Packing Company's plant and business by respondent which followed said acquisition, and still exists, was and is the entire elimination and suppression of the competition which had theretofore existed between respondent, Western Meat Company, and said Nevada Packing Company in the buying of live stock and in the sale of meats and meat products, resulting from the slaughtering thereof, throughout the States of Nevada and California, and was and is to restrain commerce in the purchase and sale of meat and meat products commonly known as the meat-packing industry in the States of Nevada and California.

CONCLUSION.

The acquisition and continued control and ownership of the capital stock of the said Nevada Packing Co., a corporation, by respondent, and the total suppression of competition between the said Nevada Packing Co. and the respondent resulting from such control and operation by respondent under the conditions and circumstances set forth in the foregoing findings as to the facts, were and are unfair methods of competition within the meaning of Section 5 of an 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," and were and are in violation of the provisions of Section 7 of an Act of Congress approved October 15, 1914, entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes."

ORDER.

The Federal Trade Commission, having issued and served its complaint herein, and respondent, Western Meat Company, having entered its appearance by its attorneys, Messrs. Sullivan & Sullivan and Theodore J. Roche, of San Francisco, Calif., duly authorized and empowered to act in the premises, and having filed its answer; and thereafter hearings in this proceeding having taken place before an examiner of the Commission and evidence having been presented before said examiner on behalf of the Commission and on behalf

of respondent; and the presentation of such evidence having been closed, respectively, by the attorneys for the Commission and by the attorneys for the respondent, and thereafter the attorneys for the Commission and attorneys for respondent having duly filed their briefs in this proceeding with the Commission and having submitted said issues for consideration and determination, and the Commission having fully considered the record and having been fully advised in the premises as heretofore, has made and entered its findings as to the facts and its conclusion that respondent has violated the provisions of 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," and also the provisions of Section 7 of the Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," which said report and findings are hereby referred to and made a part hereof:

Now, therefore, it is ordered, That the respondent, Western Meat Company, shall forthwith cease and desist from violating the provisions of Section 5 of said 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," and also the provisions of Section 7 of said Act of Congress approved October 15, 1914, entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and particularly to so divest itself absolutely of all capital stock of the Nevada Packing Company as to include in such divestment the Nevada Packing Company's plant and all property necessary to the conduct and operation thereof as a complete, going packing plant and organization, and so as to neither directly or indirectly retain any of the fruits of the acquisition of the capital stock of said Nevada Packing Company, a corporation.

It is further ordered, That in such divestment no stock or property above mentioned to be divested shall be sold or transferred, directly or indirectly, to any stockholder, officer, director, employee, or agent of, or anyone otherwise directly or indirectly connected with or under the control or influence of, respondent or any of its officers, directors, or stockholders, or the officers, directors, or stockholders of any of respondent's subsidiaries or affiliated companies.

It is further ordered, That respondent, Western Meat Company, shall within six months from the service of this order submit in writing its report showing how this order has been carried out, including the names of the purchasers of said capital stock and the amount of money received or to be received therefor.