

IN THE MATTER OF
**MACHINE TOOL DISTRIBUTORS, CHICAGO DISTRICT,
ITS DIRECTORS, EXECUTIVE COMMITTEE AND
MEMBERS¹**

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1882. Complaint, Dec. 11, 1930—Decision, Sept. 29, 1932

Where an association composed of persons and concerns (a) engaged in manufacture and/or sale of presses, drills, lathes, and other "machine tools" to customers consisting principally of machine shops and manufacturing establishments, (b) doing 85 percent of the business in new tool machinery in the "Chicago district", covering all of Iowa and parts of Indiana, Illinois, Wisconsin, Michigan, and Nebraska, and (c) comprising the only dealers in new machine tools in said Chicago district who accept used, in part payment for new, machinery, and who, prior to association's formation, were active competitive bidders among themselves and with others on such trade-in allowances to customers; and the directors, executive committee, and members of said association; with intent of eliminating members' competitive bidding on used machinery trade-in allowances, and limiting the same,

Adopted, maintained and enforced the so-called "Chicago Appraisal Plan", pursuant to which (1) members are obligated to register their own bid with association's central office and advise themselves of any prior offers before making their own, (2) members' offers must be firm cash offers, and (3) member making initial appraisal offer or member making latest increase may be called upon to accept used machinery involved at his appraisal figure irrespective of his securing order;

With tendency to cause members to refrain from increasing prior appraisals and to limit their bids, and with result of depriving aforesaid customers of competitive bids from them, or from the largest, local, used machinery dealer, to whom members without used machinery departments turned for appraisals, and of compelling them to accept smaller allowances for their used machinery trade-ins than they would have otherwise received and thus pay higher prices for new machinery, and with an undue tendency (a) to suppress competition in interstate commerce between said members in purchase of used, "trade-in" machinery, and in sale of new machines, and (b) deprive customers of the free and open competitive market for their used machinery, theretofore enjoyed by them; all to the prejudice of the public and member competitors:

Held, That such practices, under the conditions and circumstances set forth, were to the prejudice of the public and competitors and constituted unfair methods of competition.

¹ Erroneously named in the complaint as Chicago Machine Tool Distributors.

Mr. Everett F. Haycraft for the Commission.

Mr. Nathan Haffenberg and *Mr. Joseph Rosenbaum*, of Chicago, Ill., for respondents.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, Chicago Machine Tool Distributors, an unincorporated association with headquarters and principal place of business in Chicago, and its directors, executive committee, and members,² engaged in the manufacture or sale of heavy machinery to consumers in the several States, but principally in the "Chicago district",³ with entering into a cooperative undertaking, with intent and effect of eliminating independent competitive bidding on "trade-ins", in violation of the provisions of section 5 of such act, prohibiting the use of unfair methods of competition in interstate commerce.

Respondents, as charged, including among their members about three fourths of the dealers in heavy tool machinery in the aforesaid Chicago district, carried out their aforesaid purposes and undertaking through adoption and use of the so-called "Chicago appraisal plan",⁴ under which the various members (1) are not permitted to quote a "trade-in" allowance to a prospective purchaser and negotiator for new machinery until they have communicated with the central office, set-up under the plan referred to, (2) have been advised of bids, if any, theretofore submitted by any other members, (3) are required to make their offers or bids firm, cash offers, and (4) the member making the initial appraisal, if not increased by the others, or the one making the last increase, if any increase, is obligated to take the "trade-in", irrespective of which member secures the new business.⁵

Respondent association further, as charged, in pursuance of aforesaid plan and to insure cooperation among the members in the operation thereof, "has caused to be mimeographed and distrib-

² The various respondents are set forth in the findings, *infra*, at page 51.

³ As known in the trade, said district includes the State of Iowa and parts of the States of Illinois, Indiana, Wisconsin, Michigan, Ohio, and Nebraska.

⁴ Described in detail in the findings, *infra*, at page 53.

⁵ As alleged in the complaint, "upon consummation of any deal involving a trade-in the successful member immediately notifies the central office, so that their records may be closed, and if the successful member is not the one making the last appraisal, 'whether original or raised,' then the central office will give the successful member the name of the member making the last appraisal, 'whether original or raised,' and the successful member will then notify that member of the consummation of the deal and find out where the used or old machine or machinery is to be shipped, etc."; complaint further alleging "that all transactions between members of respondent association relating to used or old machines or machinery are required by the rules of said association to be on a cash basis."

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uted to its members, and to manufacturers, dealers, and associations of heavy tool machinery throughout the several States of the United States, circulars^a describing in detail the method of procedure to be followed by a member in putting into effect said plan. Said respondent association has also prepared and distributed among its members numerous printed forms designed for the purpose of making reports of appraisals, and said forms are used by the members for such purposes."

Said Chicago appraisal plan engaged in and carried on by respondents since October 1, 1928, "is for the purpose and has the effect and result", as charged, "of restricting, restraining, and suppressing competition in interstate commerce between the respondent members of respondent association in the purchase and sale of used or old machines or machinery which are offered in part payment on a new machine or machinery by purchaser, and the purchase and sale of new machines or machinery, and results in said purchasers being deprived of the free, open competitive market for their said used or old machines or machinery which they would have access to and enjoy in the absence of the aforesaid 'Chicago appraisal plan', which is being operated through the cooperation of said respondent Chicago Machine Tool Distributors, and the individual respondent officers, directors, executive committee and members of said association"; all to the injury and prejudice of the public and of respondents' competitors.

Upon the foregoing complaint the Commission made the following:

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions 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" (38 Stat. 717), the Federal Trade Commission, on December 11, 1930, issued and thereupon served its complaint, as required by law, upon Machine Tool Distributors, Chicago district (erroneously named therein Chicago Machine Tool Distributors), its directors, executive committee, and members, hereinafter more fully described, and referred to as respondents, in which said complaint it is charged that respondents have been and now are using unfair methods of

^a In said circular describing the "Chicago appraisal plan", the central office is stated to be "for the purpose of acting as a clearing house for all information concerning trade deals among dealers", and its duties are described as follows: "It will be the duty of the central office to receive any appraisals made by any dealers and put it in usable form, so that they will be in a position to supply any inquiring dealer relative to appraisals made. The central office shall require each dealer to confirm in writing on forms which shall be furnished, both the appraisal price and any changes in the appraisal price, and all details called for on the forms."

competition in interstate commerce, in violation of the provisions of section 5 of said act.

The said respondents having filed their answers herein, hearings were held and evidence was introduced on behalf of the Commission and of the respondents before an examiner of the Federal Trade Commission duly appointed.

Thereupon this proceeding came on for a final hearing on briefs and oral argument. Briefs having been filed on the part of the Commission and of the respondents, and counsel for the Commission and for the respondents having been heard in oral argument, and the Commission having duly considered the record and being fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondents herein are:

(a) Machine Tool Distributors, Chicago district, erroneously named in the complaint as Chicago Machine Tool Distributors, a voluntary, unincorporated association, organized on or about October 1, 1928, and composed of several persons, partnerships, and corporations, engaged in the business of manufacturing and selling, or selling, heavy machinery described in the trade as "machine tools", which included presses, drills, lathes, shapers, planers, grinders, slotters, shears, boring machines, milling machines, screw machines, etc. Said respondent, which will hereinafter be referred to as respondent association, has its headquarters and principal place of business in the city of Chicago, State of Illinois;

(b) The board of directors of said respondent association, composed of at least one representative from each member thereof. The names and locations of said directors, and the names of the members whom they represent, are as follows:

Directors	Respondent members
W. H. Taylor.....	E. W. Bliss Co., Chicago, Ill.
Herbert S. Robinson.....	Concinnati Shaper Co., Chicago.
E. L. Essley and E. P. Essley....	E. L. Essley Machinery Co., Chicago.
N. A. Booz and C. A. Odegaard..	Federal Machinery Sales Co.
R. S. Dean.....	Dean Machinery Co., successor to Manning Maxwell & Moore.
J. R. Porter and Frank Seese.....	Marshall & Huschart Machinery Co.
D. S. Woods.....	Pratt & Whitney Co., subsidiary of Niles-Bement-Pond Co.
D. F. Noble.....	Doing business as D. F. Noble Co.
A. G. Bryant.....	Joseph T. Ryerson & Son.
E. H. Wachs and C. R. Gregg....	Wachs-Gregg Co., successor to Stocker-Rumely-Wachs Co.

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Directors	Respondent members
P. E. Rice.....	Hendey Machine Corporation.
W. J. Hannum.....	Gisholt Machinery Co.
Howard K. Jackson.....	Browne & Sharpe Co., erroneously named in the complaint Browne & Sharpe Manufac- turing Co.
George Erwin.....	Kearney & Trecker Corporation.
John C. Price.....	Jones & Lamson Machine Co.
Oscar Nordstrom.....	Norton Co., erroneously named in complaint Northern Emery Wheel Co.
Clarence James.....	Leland-Gifford Co.
H. F. McCormick.....	Heald Machine Co.
C. A. Schuman.....	Richard-Badger-Packard Co., successor to Badger-Packard Machinery Co.
L. C. Aldrich.....	Landis-Tool Co.
W. A. Mitchell.....	Milwaukee Machinery Co.
.....	Warner-Swasey Manufacturing Co.
.....	General Machinery Corporation.

(c) The executive committee of the said respondent association, composed of the following individuals, elected by its board of directors from the membership of the respondent association:

J. R. Porter, chairman,
N. A. Booze, secretary,
E. P. Essley, treasurer,

E. H. Wachs,
P. E. Rice.

(d) The members of said association, named in subparagraph (b) hereof.

PAR. 2. The members of the respondent association, in the course and conduct of their said business, cause the machinery sold by each of them, respectively, to be transported, when so sold, from their respective places of business, or from the places of business of the respective manufacturers of such machinery, through and into various States of the United States to the respective purchasers thereof, in active competition with the other members of such respondent association, and with various persons, partnerships, and corporations also engaged in the manufacture and sale, or the sale, of machine tools in interstate commerce among the several States of the United States. Some of the larger and more influential members of the said respondent association, in the course and conduct of their said business, solicit and accept used machinery in part payment of the purchase price of new machinery sold by them, and upon the consummation of such transaction, cause such used machinery to be transported from the State in which it is obtained through and into other States of the United States. In their solicitation of such used machinery, said members of respondent association thus engaged prior to the formation of the said respondent association actively com-

peted in bidding for such used machinery with the other members of said respondent association likewise engaged, and with various persons, partnerships, and corporations also engaged in the solicitation of used machinery as part payment for new machinery sold or offered for sale by them in interstate commerce among the several States of the United States.

PAR. 3. On or about October 1, 1928, said respondent association, with the purpose and object of eliminating competitive bidding by its members, and to limit the amounts allowed by them for used machinery, adopted and put into effect, and have since maintained and enforced, a method of cooperation between and among the members of the said respondent association, controlling the allowance to be made by them for used machinery, known as the "Chicago appraisal plan". Under the said Chicago appraisal plan a "central office" was established for the purpose of operating as a clearing house for all information concerning trade deals among members of said respondent association when used machinery was accepted as part payment for new machinery. The appraisal procedure followed under said Chicago appraisal plan is as follows:

Each dealer will be expected to communicate with the central office designated on all deals where used tools are offered in trade to determine whether or not such tools have already been appraised by another dealer. If the tools have not been appraised said dealer should then proceed to appraise them according to his ideas with the understanding that he is making a firm offer in his appraisal. He will not make an offer to the customer until his appraisal has been made, acknowledged, and appraisal register number given him by his central office. This appraisal shall not be considered complete without its naming a definite delivery point. It is conceivable that a customer may require one of our members to remove the subject machine from its location in his shop. In other cases, customer may deliver the machine to his own platform. When special f.o.b. points of this nature are involved, the appraisal must positively include a complete explanation of the exact f.o.b. point.

By firm offer we mean that the dealer making the offer agrees to take the machinery in question, irrespective of whom shall secure the order. It is manifest, therefore, that the price given in the firm offer would naturally be such a price as the dealer making it would be willing to give for the machine in an outright purchase. This appraisal shall be confirmed the same day by mail to the central office on forms which will be furnished.

After said appraisal is made, should any dealer desire to raise the appraisal price, he may do so with the understanding that he also is making a firm offer, first advising the central office by 'phone and also confirming the same day by mail, on forms provided, of such raise and waiting until eleven o'clock of the second working day before submitting the new appraisal to the customer. The central office will immediately notify other interested dealers of the increased appraisal by 'phone (except out-of-town members), confirming by mail on proper form. Other interested dealers are not to notify the customer of

the new appraisal price, prior to eleven o'clock the morning of the second working day.

In the event that the deal involving the trade-in shall be consummated on the basis of the original appraisal, then the member dealer securing the order shall have the privilege of electing whether or not he will take the used machine at the appraised price. If he does not want it at that figure he will then turn it over to the member dealer who shall have made the initial appraisal unless he himself shall have been the initial appraiser. In the event that there shall have been one or several increases made in the appraisal, then whichever dealer shall have made the last increase shall be entitled to receive the machine at that price, regardless of whomsoever shall have secured the order for the new machine. In this latter case, you will recognize that the privilege of taking the machine at the higher appraised price is taken away from all participating member dealers other than the one having made the final appraisal.

We recommend a time limit on appraisals of thirty days from the date of the first appraisal, or any subsequent higher appraisals. In other words, each time appraisal is changed, time limit is thirty days from that date. The appraiser has the privilege of withdrawing his appraisal at the end of the thirty-day period, providing he shall notify the central office five or more working days before the thirty-day expiration date. If this privilege is not exercised the appraisal is automatically renewed at the end of each thirty days.

Where a dealer quotes a proposed customer, it is recommended that he specify in his quotation a definite expiration date which shall be on the same date of the following month. Should the day of that date be a nonworking day, then the period shall expire at the close of the first following working day.

The object of the above is to relieve any dealer from his firm offer within a reasonable time in case he so desires, as it is obvious that at times a favorable market for any particular tool can continue for a limited time only.

When a deal involving a trade-in is closed, the successful dealer shall notify the central office so that their records may be properly marked. In the event that the successful dealer was not the one who made the last appraisal, whether original or raised, then central office should give to the successful dealer the name of the dealer who made the last appraisal whether original or raised. Successful dealer will then get in touch with the appraiser and notify him of the consummation of the deal and find out where the machine is to be shipped, etc.

It should be understood that all transactions between dealers are to be on a cash basis. This follows the usual procedure on used equipment.

To make this plan successful it is necessary for all manufacturers to make their allowance through their respective dealers who are members of this organization. An exception is recognized where a machine has not given satisfaction and is replaced by another of the same manufacture.

The function performed by the central office under said Chicago appraisal plan is as follows:

It will be the duty of the central office to receive any appraisals made by any dealers and put it in usable form, so that they will be in a position to supply any inquiring dealer relative to appraisals made. The central office shall require each dealer to confirm in writing on forms which shall be furnished, both the appraisal price and any changes in the appraisal price and all details called for on the forms.

The territory affected by the said Chicago appraisal plan is as follows:

Illinois.—All north of and including the counties of Pike, Scott, Morgan, Sangamon, Christian, Shelby, Coles, and Edgar.

Indiana.—All north of and including the counties of Benton, White, Carroll, Cass, Miami, Wabash, Noble, and De Kalb.

Iowa.—The entire State.

Wisconsin.—East of and including the counties of Ashland, Price, Rusk, Chippewa, Dunn, and Pepin.

Michigan.—West of and including the counties of Branch, Calhoun, Eaton, Clinton, Gratiot, Isabella, Clare, Missaukee, Kalkaskia, Antrim, Charlevoix, and Emmet, and including the Upper Peninsula.

Nebraska.—East of and including the counties of Dakota, Thurston, Cunning, Colfax, Platte, Nance, Howard, Sherman, Buffalo, Phelps, and Harlan.

PAR. 4. Of the total volume of business in new tool machinery transacted in the Chicago district, which comprises the territory described in the foregoing paragraph, approximately 85 percent is done by the members of said respondent association. Although all of said members had agreed to observe the said Chicago appraisal plan in their dealings with their customers, as a matter of actual practice, only the larger members had operated under said plan, due to the fact that dealers in new machinery generally prefer not to accept used machinery as part payment for new machinery. Since the said Chicago appraisal plan was put into effect, on or about October 1, 1928, more than one thousand transactions have been reported to the said central office by the said members, in which used machinery belonging to customers to whom new machinery was sold, was either offered to or accepted by said members as part payment of the purchase price. The aggregate value of said used machinery amounted to approximately \$250,000. In 63 instances out of the total of 1,061 transactions raised bids were submitted, and in such instances the aggregate amount of the raised bid exceeded the aggregate amount of the original bids submitted by approximately \$8,500. The small number of instances where raised bids were submitted is the result of the observance of the following provision of the said Chicago appraisal plan:

In the event that the deal involving the trade-in shall be consummated on the basis of the original appraisal, then the member dealer securing the order shall have the privilege of electing whether or not he will take the used machine at the appraised price. If he does not want it at that figure he will then turn it over to the member dealer who shall have made the initial appraisal unless he himself shall have been the initial appraiser. In the event that there shall have been one or several increases made in the appraisal, then whichever dealer shall have made the latest increase shall be entitled to receive the machine at that price, regardless of whomsoever shall have secured the order for the new machine.

There has been and now is a tendency on the part of said members, because of the foregoing provisions of said Chicago appraisal plan, to refrain from increasing the appraisal price which has been recorded with the central office by another member, and to offer to customers and prospective customers the appraisal price which has already been offered to said customers, and recorded in the central office. The result of this tendency has been and is that the customers of said members, consisting principally of machine shops and manufacturing establishments, are deprived of competitive bidding and compelled to accept a smaller allowance for used machinery offered in trade as part payment for new machinery purchased from said members than they would have received if the said members had not adopted and observed the said provisions of the said Chicago appraisal plan. Said customers are thus compelled to pay higher prices for their new machinery, there being a direct relation between the amount allowed by said members for used machinery as part payment and the total purchase price of the new machinery sold.

PAR. 5. The members of the said respondent association are the only dealers in new machine tools located in the said Chicago district, who will accept used machinery as part payment for new machines. There are in said territory, however, three recognized dealers in second-hand or used machinery who buy and sell used machinery in large quantities for profit, and who are not members of said respondent association. The members of said respondent association who do not have used machinery departments of their own, call in one of these three used machinery dealers to make the appraisal of the used machinery offered in trade by their customers, and said appraisals are submitted by said members to the central office of the said respondent association as and for the bids of said members. In almost all instances the largest of the three used machinery dealers, one Louis Emmerman, is called upon by said members for this purpose, with the result that the customers of said members are deprived of a substantial independent competitive market for their used machinery, although in some instances such customers were able to and did receive from other smaller dealers in used machinery, or from customers in the market for used machinery who were not dealers, a cash price larger than that offered by the said members for their used machinery.

PAR. 6. The aforesaid acts and things done by the respondents herein are all to the injury of the public and the competitors of the

members of respondent association, and unduly tend to suppress competition in interstate commerce between said members in the purchase of used machinery offered in part payment for new machinery by customers of said members, and in the sale of new machinery, and unduly tend to deprive said customers of a free and open competitive market for their used machinery, which they had enjoyed prior to the formation of the respondent association and the adoption and maintenance of the said Chicago appraisal plan by said members.

CONCLUSION

The practices of the said respondents, under the conditions and circumstances described in the foregoing findings are to the prejudice of the public and the competitors of the members of said respondent association, and are unfair methods of competition in 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."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of respondents, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions 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",

It is now ordered, That the respondents named in the caption hereof as members of Machine Tool Distributors, Chicago district, their officers, directors, agents, representatives, and employees, do cease and desist from the use of the Chicago appraisal plan, or any other similar appraisal plan, in the course and conduct of their said businesses in interstate commerce, through which and by which, pursuant to agreement among themselves, they register with a central office or exchange with each other their firm bids or appraisals on used machinery offered to them as part payment for new machinery with the understanding that the member making the first or the highest appraisal or bid accept or purchase the used machinery, paying cash therefor, regardless of whether or not such bidder shall make a sale of new machinery to the customer offering the used

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machinery as part payment; or from the adoption of any other plan whereby respondent members suppress or restrict competition between and among themselves in the bidding for or appraising of used machinery offered in trade as part payment for new machinery.

It is further ordered, That the said respondents named in the caption hereof as members of Machine Tool Distributors, Chicago district, shall, each of them, within 60 days after the service upon them of a copy of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist hereinbefore set forth.

Syllabus

IN THE MATTER OF
ARTHUR GUERLIN, INC.

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 20, 1914

Docket 2015. Complaint, Mar. 3, 1932—Decision, Oct. 10, 1932

Where a corporation dealing in perfumes, talcum powders, face powders, other cosmetics, and toilet articles, made in the United States from the cheaper grade of domestic essential oils and other ingredients, in Japanese pearls purchased by it from domestic sources, and in other domestic jewelry, etc., and in sale of said various articles to retailers and peddlers, featured the words "Arthur Guerlin", its corporate name, and "Paris, New York" upon the containers of its aforesaid articles;

Notwithstanding fact (1) it had no connection with Guerlain, Inc., Paris manufacturer and importer of perfumes, toilet articles, jewelry, etc., nor with Guerlain Perfumery Corporation of Delaware, United States distributor of said concern, selling, under name "Guerlain", said concern's products, long known in United States under such name as products of superior quality made by it, and (2) said corporation's products, excepting aforesaid pearls, were both of domestic origin and ingredients, and not French toilet articles and jewelry, long highly esteemed among the trade and purchasing public, and considered by many as superior to the domestic products, in preference to which many of the public bought the French articles;

With capacity and tendency to mislead vendees and many of the purchasing public as to source or origin of products in question and induce their purchases in such mistaken belief, and with result of placing in hands of dealer and peddler vendees means of committing a fraud upon a substantial part of the purchasing public by enabling them to represent and sell said perfumes, etc., as made in or imported from Paris and/or as well-known products of French concern above referred to, and with tendency to divert business from and otherwise injure and prejudice competitors dealing in imported perfumes, etc., made in Paris, competitors dealing in purely domestic articles, competitors dealing in perfumes made of essential ingredients manufactured in Paris and imported therefrom, and variously selling their perfumes, jewelry, etc., without misrepresenting same, and competitors who do not through corporate name or label mislead or deceive vendees or purchasing public as to their products being those of another, and thereby substantially injure a competition of substance:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. Edward L. Smith for the Commission.