

IN THE MATTER OF
NATIONAL ELECTRICAL MANUFACTURERS
ASSOCIATION ET AL.

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

Docket 2565. Complaint, Nov. 16, 1935¹—Decision, Dec. 29, 1936

Where corporations engaged in (1) the manufacture of various kinds of power cable and of rubber covered building wire, largest consumers of which products were privately and publicly owned public utilities, municipal, State, and Federal Governments, and large industrial plants and office buildings, and in (2) soliciting, selling, and delivering such various products directly to the larger consumers, and in supplying the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers, and (3) controlling a large, valuable and continuous trade and commerce among the several States, and transporting and delivering or causing to be transported and delivered, in the course thereof, large quantities of material and finished products across State lines, and (4) in a position, to the extent that they acted collectively and collusively in the production and pricing of their goods, to dominate the markets in which unorganized consumers must buy the same, and, but for the matters hereinbelow set forth, in active competition with one another as to price and otherwise; acting in combination and agreement with one another and through their association and subsidiary groups and sectional organizations thereof, promoted in aid of such agreements and combinations directed to avoiding, frustrating and suppressing price competition, both prior to and during the role as Code Authority under the National Industrial Recovery Act, of said association, in using, interpreting and applying various provisions of said Code with intent and effect of supporting, supplementing and reinforcing such agreements, understandings, policies, and methods; and making use of frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the association, and systematic exchange of price information among the members; and acting in pursuance thereof—

- (a) Entered into agreements and understandings to quote, sell, and deliver their goods according to identical delivered prices, terms, and sales conditions, determined by joint or cooperative action of the members' groups, etc., as above indicated, and systematically prepared, circulated, exchanged, adopted, and used certain price lists promulgated by three of the said member manufacturers, with the assurance that such lists and changes thereof, with due notice, would be observed by the promulgating manufacturers if respected by the others, with intent and effect of avoiding and suppressing price competition among all, and with the understanding of all that purchase on a delivered price basis only would be permitted, and with inclusion of formula through which such delivered prices were to be calcu-

¹ Amended.

lated, whether for the entire United States and possessions, or within various price zones, as the case might be; and

- (b) With intent and effect of further suppressing price competition among themselves, supplemented said uniform delivered price lists by imposing uniform charge for the large wooden reels on which cable is wound for delivery and uniform allowance for return thereof, together with uniform charge for return freight, which, in some cases, was in excess of and, in other cases, less than actual cost of such return freight to plant of a given manufacturer, and adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment and uniform grades and specifications and methods of calculating prices on goods which varied therefrom; and
- (c) With intent and effect aforesaid and, more specifically, to ascertain if, when and to what extent any of such manufacturers had deviated in actual transactions from any such aforesaid identical delivered prices or any factor required by their agreements and understandings, adopted and carried on a system with the advice, assistance and cooperation of their said association, under which they agreed to and did report to each other, upon request of any member of the respective groups, detailed information as to the prices and all factors entering into or affecting the prices quoted on particular transactions, and with similar intent and effect exchanged communications and held meetings and conferences at which investigations were made into cases of alleged price cutting and criticized or otherwise disciplined offender competitors;

With result, necessarily, by reason of said delivered price policy, that said manufacturers habitually and systematically discriminated in price among their various customers after making due allowance for cost of transportation, exacted higher prices from customers having little or no transportation expense and accepted lower prices from those having heavy transportation expense, and with further result that competitors at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost of transportation of more distant customers, notwithstanding fact that such customers frequently were in competition with each other, and further result that such manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from other of their customers, less, than the actual cost thereof; and

- (d) Fixed, through cooperative group activities within the association, the selling price of a certain patented rubber covered building wire, under cover of a licensing contract between themselves as licensees and one of their number and competitor as owner of the patent and licensor, by first jointly determining upon and then having named in such license contract the identical price which they desired to obtain from their respective customers; and
- (e) Adopted identical discounts from their published list prices to cover sales to jobbers, and required of jobbers that they resell commodities in question at list price in order to avoid any price competition among the respective jobbers or between the jobbers and manufacturers respectively, and supported their said requirement by jointly determining status and eligibility of jobbers, detecting failures on part of jobbers to maintain prescribed resale price, and refusing supplies to such jobbers;

With the result that, through such agreements, understandings, rules, policies, and cooperative methods, they took away from purchasers of power cable and rubber covered building wire, advantages of normal competition which formerly existed, and would otherwise exist among them, compelled unorganized purchasers to buy commodities involved at prices and on terms determined collectively and collusively by them, and artificially enhanced amounts exacted from such purchasers above those obtainable, absent such determination, which, in some instances and insofar as exacted from public utilities and the Government as an incident to the transmission of electric light and power, became a part of the permanent investment on which consumers of electricity are called upon to pay a continual return, or, where publicly owned, at least sufficient to retire the investment therein, and in other instances became a part of utility and Government operating expenses which must be borne by consumers and rate payers, and with intent and effect of unduly and unreasonably restricting, restraining and obstructing competition in the sale of power cable and rubber covered building wire through said wrongful and unlawful combination, conspiracy and agreement thus engaged in:

Held, That such acts and things and methods of competition were all to the injury and prejudice of the public engaged in purchase or purchase and resale of electric power cable and rubber covered building wire, of competitors engaged in production and sale thereof, and of consumers of electricity, and constituted unfair methods of competition.

Mr. Walter B. Wooden and Mr. R. L. Kennedy for the Commission.
Rounds, Dillingham, Mead & Neagle, of New York City, for National Electrical Manufacturers Association, its officers, etc.

Palmer & Serles, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for American Electrical Works.

Mr. Kenneth B. Halstead, of New York City, for American Steel and Wire Co.

Chadbourne, Wallace, Parke & Whiteside, of New York City, for Anaconda Wire and Cable Co.

Reed & Chapman, of New York City, for Bishop Wire and Cable Corp.

Herrick, Smith, Donald & Farley, of Boston, Mass., for Boston Insulated Wire and Cable Co., and Simplex Wire and Cable Co.

Lichtenstein, Schwartz & Friedenberg, of Hoboken, N. J., for Crescent Insulated Wire and Cable Co.

Mr. Carlyle E. Yates, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for General Cable Corp.

Mr. Darius E. Peck, of Schenectady, N. Y., and *Wright, Gordon, Zachry & Parlin*, of New York City, for General Electric Co.

Gleason, McLanehan, Merritt & Ingraham, of New York City, for Habirshaw Cable and Wire Corp., National Electrical Products Corp., and Phelps-Dodge Copper Products Corp.

Mr. George Murray Brooks, of New York City, for The Okonite Co.

McCarter & English, of Newark, N. J., for John A. Roebling's Sons Co.

Mr. Bertram L. Marks, of New York City, for Triangle Conduit and Cable Co.

Arthur, Dry & Dole, of New York City, for United States Rubber Products, Inc.

AMENDED COMPLAINT

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," the Federal Trade Commission, having reason to believe that the respondents named and represented in the caption hereof have been and are using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The members of respondent association and of its various groups, sections, and divisions, consist of several hundred corporations, individuals, firms, and partnerships, their number varying from time to time by the separation of some and the addition of others, so that it is impracticable at any given time to name as respondents and to bring before the Commission each and all the members without manifest delay and inconvenience. Therefore, the Commission names and includes as respondents in this proceeding, the National Electrical Manufacturers Association, both separately and as representatives of all the members of the association the following officers: F. C. Jones, president, and member of board of governors; W. J. Donald, managing director; T. W. Howard, director uniform accounting and statistical department; C. M. Cogan, director engineering department; the board of governors (whose present membership is not known to the Commission) and the following members of respondent association: American Electrical Works, Philadelphia, Pa. (a Rhode Island corporation), American Steel and Wire Co., Worcester, Mass. (a New Jersey corporation); Anaconda Wire and Cable Co., New York, N. Y. (a Delaware corporation); Bishop Wire and Cable Corporation, New York, N. Y. (a New York corporation); Boston Insulated Wire and Cable Co., Boston, Mass. (a Massachusetts corporation); Crescent Insulated Wire and Cable Co., Trenton, N. J. (a New Jersey corporation); General Cable Corporation, New York, N. Y. (a New Jersey corporation); General Electric Company, Schenectady, N. Y. (a New

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York corporation); Habirshaw Cable and Wire Corporation, New York, N. Y. (a New York corporation); National Electrical Products Corporation, Pittsburgh, Pa. (a Delaware corporation); The Okonite Company, Passaic, N. J. (a New Jersey corporation); Phelps-Dodge Copper Products Corporation, New York, N. Y. (a New York corporation); John A. Roebling's Sons Company, Trenton, N. J. (a New Jersey corporation); Simplex Wire and Cable Company, Boston, Mass. (a Massachusetts corporation); Triangle Conduit and Cable Company, Brooklyn, N. Y. (a New York corporation); United States Rubber Products, Inc., New York, N. Y. (a New Jersey corporation).

PAR. 2. The power cable and wire with which this proceeding is chiefly concerned are used for the transmission of electric current of large voltages. Much of it is copper wire insulated by various processes to meet the special needs of various classes of customers. Impregnated paper cable is used for transmitting current from the power house to substations and other outlets, where, depending on the use to which it is to be put, the current is diverted into varnished cambric, rubber power, or parkway cable. Where used in buildings for lighting purposes, the current is distributed through what is known as building wire. Bare and weatherproofed wires are used for overhead transmission across long stretches of country and among other uses, for overhead trolleys on electric railways.

Among the largest consumers of these commodities are public utilities, whether privately or publicly owned; municipal, State, and Federal Governments for use in the lighting of streets, parks, highways, and public buildings; and large industrial plants and office buildings in carrying current for power and light.

Respondent manufacturers solicit, sell, and deliver these commodities directly to the larger consumers. They supply the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers.

Respondent manufacturers have control of a large, valuable, and continuous trade and commerce among the several States in the goods with which this proceeding deals, and in the course of such trade and commerce ship, transport and deliver large quantities of material and finished products across State lines, or cause them to be so transported and delivered. To the extent that respondent manufacturers act collectively and collusively in the production and pricing of their goods they are in position to dominate and manipulate the markets in which unorganized consumers must buy such goods.

PAR. 3. Respondent National Electrical Manufacturers Association is a voluntary, unincorporated organization composed of the principal

manufacturers of copper cable and wire for electrical transmission. It also includes in its membership manufacturers of electric tools, and a large variety of electrical equipment and apparatus. For each of the commodities with which this amended complaint deals the members of respondent association collectively produce, sell, and distribute the major part, and in some cases all, of the output of such commodities in the United States.

In order to accomplish more effectively the purposes of the combination and conspiracy hereinafter alleged, respondent association, its officers, board of governors, and members, have promoted, established and conducted within said association, a number of separate groups and sections, each of which is composed of manufacturers who produce and sell similar and competing kinds of electrical wire and cable or similar and competing kinds of electric tools and of electrical equipment and apparatus. A number of respondent members are manufacturers of more than one kind of the commodities referred to and accordingly affiliate themselves with more than one of the group and sectional organizations within respondent association, making separate contributions to the support of each such group. Among such groups are the respective manufacturers which produce impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable, rubber covered building wire, bare and weather-proofed wire, rigid steel conduit, fibre underground conduit, outlet boxes, and electric tools.

PAR. 4. The aforesaid respondent association, its officers, board of governors, and members, have been and are engaged in a wrongful and unlawful combination, conspiracy, and agreement in and affecting trade and commerce in power cable, copper wire for electrical transmission, and various kinds of electrical apparatus and equipment throughout the United States and its possessions, for the purpose and with the effect of unduly and unreasonably restricting, restraining, and obstructing competition in the sale of such goods. To that end the respondents by concerted action and agreement among themselves have adopted and put into effect the following policies, rules, practices, and methods of competition:

(a) As the first step in their plan to suppress or restrain price competition, respondents have created, organized and conducted subsidiary group and sectional organizations composed of manufacturers which, but for the activities herein alleged, would be in active competition with each other as to price and otherwise.

(b) Respondents have promoted and held frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the associations, and have systematically exchange

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price information among such members. In the course of such activities respondents have entered into agreements and understandings that they would quote, sell, and deliver their goods according to identical prices, terms, and sales conditions determined by the joint or cooperative action of the members of the respective groups, sections or subdivisions of respondent association organized to have jurisdiction over such goods.

PAR. 5. As instances and illustrations of the methods used in carrying out the above alleged conspiracy the Federal Trade Commission alleges the following:

(a) Respondent manufacturers of impregnated paper cable, of varnished cambric cable, of parkway cable, and of rubber power cable, respectively, have concertedly adopted and maintained fixed and uniform selling prices on said commodities, under the leadership of and in cooperation with respondents The Okonite Co., the General Electric Co., and the Habirshaw Cable and Wire Corporation. The last named respondents compiled, printed, and circulated among the other respondent manufacturers of said commodities exceedingly complex and detailed price lists, offering and assuring such other respondent manufacturers, their competitors, that if the latter would not quote and sell at less than the list prices of the respective compilers, then said compilers would maintain the prices in their respective lists and would immediately notify their said competitors of all proposed changes in price or in the methods of calculating same. Acting upon said offers and assurances respondent manufacturers of said commodities systematically prepared, circulated, exchanged, adopted, and used, the price lists so compiled as the amount to be quoted to and obtained from their customers, for the purpose and with the effect of avoiding and suppressing price competition among all of respondent manufacturers of said commodities.

(b) In the compilation, adoption, and use of said price lists, it was understood and agreed among said respondent manufacturers that no customer should be allowed to purchase except on a delivered price basis. Pursuant to such understanding and agreement, said price lists embodied and contained only delivered prices and the formula by which such prices were to be calculated. As to some products the price lists specified a single delivered price to be paid by all customers throughout the United States and including Panama Canal Zone, Puerto Rico, Hawaiian Islands, and Alaska. As to other products the price lists specified a single delivered price to be paid by all customers throughout and within each of a number of price zones, each composed of a number of States or parts of States. The purpose of said delivered price policy was to prevent respondent manufacturers from

allowing differences in the proximity of any given customer to their respective plants, to create any difference in the amount to be paid by him delivered from any source of supply.

(c) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities supplemented said uniform delivered price lists by imposing a uniform charge for the large wooden reels on which cable is wound for delivery and a uniform allowance for the return of such reels. Said price lists included a uniform charge for the return freight on such reels, which charge, in some cases, was more and in other cases less than the actual cost of such return freight to the plant of a given manufacturer.

(d) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment, uniform grades and specifications, and uniform methods of calculating prices on goods which varied from such uniform grades and specifications.

(e) For the purpose and with the effect of further suppressing price competition among themselves and specifically for the purpose of ascertaining if, when, and to what extent any of respondent manufacturers had deviated in actual transactions from the identical delivered price or from any factor therein which their conspiracy and combination demanded, respondent manufacturers of said commodities, with the advice, assistance, and cooperation of respondent association, adopted and carried on a system under which they agreed to report and did report to each other upon the request of any member of their respective groups, detailed information as to the prices and all factors entering into or affecting the prices which they had quoted on particular transactions. For a similar purpose and effect, respondent manufacturers have exchanged communications and held meetings and conferences at which investigations were made into cases of alleged price cutting and where any such offenders were criticized or otherwise disciplined by their competitors.

(f) As an incident to and a necessary result of said delivered price policy respondent manufacturers habitually and systematically discriminated in price, after making due allowance for the cost of transportation, among their various customers, exacted higher prices from customers having little or no transportation expense, and accepted lower prices from those having heavy transportation expense. As a further result of said delivered price policy, customers located at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost

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of transportation of more distant customers, notwithstanding that such customers frequently were in competition with each other. As a further result of such policy, respondent manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from others of their customers, less, than the actual cost thereof.

PAR. 6. Respondent manufacturers of rubber covered building wire, through cooperative group activities within respondent association, have fixed the selling price of a patented kind of such wire under cover of a so-called licensing contract between themselves as licensees and respondent National Electrical Products Company as owner of the patent and licensor. Said contract is not a valid licensing contract under the patent laws in that, among other things, the licensees and licensor, being competitors of each other, jointly determine the identical price which they desire to obtain from their customers and then go through the formality of having same named and imposed by the licensor on the licensees under said agreement.

PAR. 7. Respondent manufacturers of the commodities named in paragraphs 5 and 6 have adopted identical discounts from their published list prices to cover sales to jobbers and have required of jobbers that they re-sell said commodities at the list price in order that there may be no price competition among their respective jobbers or between the jobbers and manufacturers respectively, supporting such requirement by jointly determining the status and eligibility of jobbers, by detection of failures by jobbers to maintain the prescribed resale price and by refusal to supply goods to such jobbers.

PAR. 8. Some of the above alleged agreements, understandings, policies, and concerted practice of avoiding and suppressing price competition have been carried on continuously since 1929 or longer, but respondent association, as Code Authority to administer the code adopted by the industry under the National Industrial Recovery Act, used, interpreted, and applied various provisions of said Code for the purpose and with the effect of supporting, supplementing, and reinforcing such agreements, understandings, policies, and practice.

PAR. 9. Respondent members and manufacturers comprising various groups and sections of respondent association other than those whose activities are described in paragraphs 5, 6, 7, and 8 of this amended complaint have engaged in cooperative efforts to eliminate and suppress price competition among themselves by the use of methods and devices similar to but not identical with or confined to those alleged in said paragraphs.

PAR. 10. By means of the aforesaid agreements, understandings, rules, policies, and cooperative practices respondents have taken away

from purchasers of power cable and electrical transmission wire, and of other electrical apparatus and equipment the advantages of normal competition which formerly existed and would otherwise exist among respondent manufacturers. Respondents thereby compelled unorganized purchasers to purchase such commodities at prices and on terms determined collectively and collusively by respondents and artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such determination. The amounts so exacted from public utilities whether publicly or privately owned and from municipalities and the government as an incident to the transmission of electric light and power in some cases become a part of the permanent investment on which consumers of electricity are called upon to pay a continual return or if publicly owned, at least sufficient to retire the investment in such utilities. In other cases the amounts exacted become a part of utility and government operating expenses which must be borne by the consumers and rate payers.

PAR. 11. The above alleged acts and things done by respondents are all to the injury and prejudice of the public engaged in the purchase and resale of electric power cable and wire, electrical equipment and apparatus, of competitors engaged in the production and sale thereof, and of consumers of electricity, and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

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," the Federal Trade Commission, on September 26, 1935, issued and served its original complaint in this proceeding and on November 16, 1935, issued and served its amended complaint in this proceeding upon the parties named in the above caption. It included said parties as respondents in this proceeding, both separately and as representatives of all the members of respondent association, charging them with the use of unfair methods of competition in violation of the provisions of said act. After the issuance and service of said amended complaint respondents filed their respective answers thereto making general denial of the substantial allegations of said complaint. Subsequently all the respondents petitioned the Federal Trade Commission for permission to withdraw said answers

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and to file their substituted answers to the amended complaint, consenting therein that for the purposes of this proceeding, all the material allegations of said complaint might be deemed to be admitted in so far as they relate to the business of selling power cable and "Safecote" rubber covered building wire. Pursuant to permission granted by the Commission said original answers were withdrawn by said respondents and said substituted answers were filed in lieu thereof. Said respondents also consented therein that the Commission might proceed to make its findings of fact without further proceedings and that an order to cease and desist might issue in the terms hereinafter stated.

The said Commission, having duly considered the above and being fully advised in the premises, finds that this proceeding is in the interest of the public and makes these its findings as to the facts and its conclusions of fact and law drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. At the time the amended complaint was issued and served, the following corporate respondents were among the members of respondent association: American Electrical Works, Philadelphia, Pa. (a Rhode Island corporation), succeeded by Kennecott Wire and Cable Company through change of name; American Steel and Wire Co., Worcester, Mass. (a New Jersey corporation); Anaconda Wire and Cable Co., New York, N. Y. (a Delaware corporation); Bishop Wire and Cable Corporation, New York, N. Y. (a New York corporation); Boston Insulated Wire and Cable Co., Boston, Mass. (a Massachusetts corporation); Crescent Insulated Wire and Cable Co., Trenton, N. J. (a New Jersey corporation); General Cable Corporation, New York, N. Y. (a New Jersey corporation); General Electric Company, Schenectady, N. Y. (a New York corporation); Habirshaw Cable and Wire Corporation, New York, N. Y. (a New York corporation); Kennecott Wire and Cable Company, Philadelphia, Pa. (a Rhode Island Corporation) successor by change of name to American Electrical Works, National Electrical Products Corporation, Pittsburgh, Pa. (a Delaware corporation); The Okonite Company, Passaic, N. J. (a New Jersey corporation); Phelps-Dodge Copper Products Corporation, New York, N. Y. (a New York corporation); John A. Roebling's Sons Company, Trenton, N. J. (a New Jersey corporation); Simplex Wire and Cable Company, Boston, Mass. (a Massachusetts corporation); Triangle Conduit and Cable Company, Brooklyn, N. Y. (a New York corporation); United States Rubber Products, Inc., New York, N. Y. (a New Jersey corporation).

The said respondent members, through the respondent association, have promoted, established, and utilized within said association, a number of separate groups and sections, each of which is composed of manufacturers who produce and sell similar and competing kinds of electrical wire and cable. A number of respondent members are manufacturers of more than one kind of the commodities referred to and accordingly affiliate themselves with more than one of the group and sectional organizations within respondent association making separate contributions to the support of each such group. Among such groups are the respective manufacturers which produce impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable, and rubber covered building wire.

PAR. 2. The power cable and wire to which these findings relate are used for the transmission of electric current of large voltages. Much of it is copper wire insulated by various processes to meet the special needs of various classes of customers. Impregnated paper cable is used for transmitting current from the power house to substations and other outlets, where depending on the use to which it is to be put, the current is diverted into varnished cambric, rubber power, or parkway cable. Where used in buildings for lighting purposes, the current is distributed through what is known as building wire.

Among the largest consumers of these commodities are public utilities, whether privately or publicly owned; municipal, State, and Federal Governments, for use in the lighting of streets, parks, highways, and public buildings; and large industrial plants and office buildings in carrying current for power and light.

The respondent manufacturers specifically named in paragraph 1 generally solicit, sell and deliver these commodities directly to the larger consumers. Some of them supply the smaller requirements of such consumers and the entire requirements of the smaller consumers by selling and placing stocks of goods in the hands of jobbers and retailers.

Said respondent manufacturers have control of a large, valuable and continuous trade and commerce among the several States, and in the course of such trade and commerce ship, transport and deliver large quantities of material and finished products across State lines, or cause them to be so transported and delivered. To the extent that respondent manufacturers act collectively and collusively in the production and pricing of their goods they are in position to dominate the markets in which unorganized consumers must buy such goods.

PAR. 3. The respondent manufacturers specifically named in paragraph 1, by concerted action and agreement among themselves have

adopted and put into effect, the following policies, rules, practices, and methods of competition:

(a) As the first step in a plan to frustrate, suppress, or restrain price competition, said respondents have promoted, established, and utilized subsidiary group and sectional organizations within respondent association, composed of manufacturers which, but for the facts herein found, would be in active competition with each other as to price and otherwise.

(b) Said respondents have promoted and held frequent meetings and conferences among the members of the various groups, sections, and subdivisions of the association, and have systematically exchanged price information among such members. In the course of such activities, said respondent manufacturers have entered into agreements and understandings that they would quote, sell and deliver their goods according to identical delivered prices, terms and sales conditions determined by the joint or cooperative action of the members of the respective groups, sections, or subdivisions of respondent association organized to have jurisdiction over such goods.

PAR. 4. As instances and illustrations of the methods used in carrying out the above plan and practice, the Federal Trade Commission finds the following:

(a) Said respondent manufacturers of impregnated paper cable, of varnished cambric cable, of parkway cable, and of rubber power cable, respectively, have concertedly adopted and maintained fixed and uniform selling price on said commodities, under the leadership of and in cooperation with respondents, The Okonite Co., the General Electric Co., and the Hlabirshaw Cable and Wire Corporation. The last named respondents compiled, printed and circulated among the other respondent manufacturers of said commodities, exceedingly complex and detailed price lists, offering and assuring such other respondent manufacturers, their competitors, that if the latter would not quote and sell at less than the list prices of the respective compilers, then said compilers would maintain the prices in their respective lists and would immediately notify their said competitors of all proposed changes in price or in the methods of calculating same. Acting upon said offers and assurances, respondent manufacturers of said commodities systematically prepared, circulated, exchanged, adopted and used the price lists so compiled as the amount to be quoted to and obtained from their customers, for the purpose and with the effect of avoiding and suppressing price competition among all of respondent manufacturers of said commodities.

(b) In the compilation, adoption, and use of said price lists, it was understood and agreed among said respondent manufacturers that no

customer should be allowed to purchase except on a delivered price basis. Pursuant to such understanding and agreement, said price lists embodied and contained only delivered prices and the formula by which such prices were to be calculated. As to some products, the price lists specified a single delivered price to be paid by all customers throughout the United States and including Panama Canal Zone, Puerto Rico, Hawaiian Islands, and Alaska. As to other products, the price lists specified a single delivered price to be paid by all customers throughout and within each of a number of price zones, each composed of a number of States of the United States or parts of such States. The purpose of said delivered price policy was to prevent respondent manufacturers from allowing differences in the proximity of any given customer to their respective plants, to create any difference in the amount to be paid by him delivered from any source of supply.

(c) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities supplemented said uniform delivered price lists by imposing a uniform charge for the large wooden reels on which cable is wound for delivery and a uniform allowance for the return of such reels. Said price lists included a uniform charge for the return freight on such reels, which charge, in some cases, was more and in other cases less than the actual cost of such return freight to the plant of a given manufacturer.

(d) For the purpose and with the effect of further suppressing price competition among themselves, respondent manufacturers of said commodities adopted uniform terms of sale, including uniform discounts for quantity and for prompt payment, uniform grades and specifications, and uniform methods of calculating prices on goods which varied from such uniform grades and specifications.

(e) For the purpose and with the effect of further suppressing price competition among themselves, and more specifically for the purpose of ascertaining if, when, and to what extent any of respondent manufacturers had deviated in actual transactions from the identical delivered price or from any factor therein which their agreements and understandings required, respondent manufacturers of said commodities, with the advice, assistance and cooperation of respondent association, adopted and carried on a system under which they agreed to report and did report to each other upon the request of any member of their respective groups, detailed information as to the prices and all factors entering into or affecting the prices which they had quoted on particular transactions. For a similar purpose and with a similar effect, respondent manufacturers have exchanged communications and

held meetings and conferences at which investigations were made into cases of alleged price cutting and where any such offenders were criticized or otherwise disciplined by their competitors.

(f) As an incident to and a necessary result of said delivered price policy, respondent manufacturers habitually and systematically discriminated in price among their various customers after making due allowance for the cost of transportation, exacted higher prices from customers having little or no transportation expense, and accepted lower prices from those having heavy transportation expense. As a further result of said delivered price policy, customers located at or near the place of manufacture and shipment were deprived of the advantage of such location and were required to contribute to the cost of transportation of more distant customers, notwithstanding that such customers frequently were in competition with each other. As a further result of such policy, respondent manufacturers charged and collected from many of their customers, in the guise of transportation and delivery charges, more, and from other of their customers, less than the actual cost thereof.

PAR. 5. Said respondent manufacturers of rubber covered building wire, through cooperative group activities within respondent association have fixed the selling price of a patented kind of such wire known as "Safecote," under cover of a licensing contract between themselves as licensees and respondent National Electrical Products Company as owner of the patent and licensor. Said respondents, including both the licensees and licensor, are competitors of one another. They have first jointly determined upon an identical price which they desired to obtain from their respective customers and then went through the formality of having such price named and imposed by respondent licensor on respondent licensees under said contract.

PAR. 6. Said respondent manufacturers of the commodities named in paragraphs 4 and 5 herein have adopted identical discounts from their published list prices to cover sales to jobbers and have required of jobbers that they re-sell said commodities at the list price in order that there may be no price competition among their respective jobbers or between the jobbers and manufacturers respectively, supporting such requirement by jointly determining the status and eligibility of jobbers, by detection of failures on the part of jobbers to maintain the prescribed resale price, and by refusal to supply goods to such jobbers.

PAR. 7. Some of the above described agreements, understandings, policies, and methods of avoiding, frustrating and suppressing price competition have been carried on continuously since 1929 or longer, but respondent association, as Code Authority to administer the code

adopted by the industry under the National Industrial Recovery Act, used, interpreted, and applied various provisions of said code for the purpose and with the effect of supporting, supplementing, and reinforcing such agreements, understandings, policies, and methods.

PAR. 8. By means of the agreements, understandings, rules, policies, and cooperative methods described above in paragraphs 4 to 7, inclusive, respondents have taken away from purchasers of power cable and rubber covered building wire, the advantages of normal competition which formerly existed and would otherwise exist among respondent manufacturers. Respondents thereby compelled unorganized purchasers to purchase such commodities at prices and on terms determined collectively and collusively by respondents and artificially enhanced the amounts exacted from such purchasers above the amounts obtainable had there been no such determination. The amounts so exacted from public utilities whether publicly or privately owned and from municipalities and the Government as an incident to the transmission of electric light and power, in some cases became a part of the permanent investment on which consumers of electricity are called upon to pay a continual return, or if publicly owned, at least sufficient to retire the investment in such utilities. In other cases, the amounts exacted become a part of utility and Government operating expenses which must be borne by the consumers and rate payers.

CONCLUSION

By reason of the admitted agreements, understandings, rules, policies and cooperative methods described above in paragraphs 4 to 7, inclusive, the respondent association and members named in paragraph 1 have been and are engaged in a wrongful and unlawful combination, conspiracy and agreement in and affecting trade and commerce throughout the United States and its possessions, in power cable and rubber covered building wire, for the purpose and with the effect of unduly and unreasonably restricting, restraining and obstructing competition in the sale of such goods; which acts and things and methods of competition are all to the injury and prejudice of the public engaged in the purchase or purchase and resale of electric power cable and rubber covered building wire, of competitors engaged in the production and sale thereof, and of consumers of electricity; and constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914.

ORDER TO CEASE AND DESIST

This matter coming on to be heard by the Commission on the complaint filed herein on September 26, 1935, the amended complaint filed herein on November 16, 1935, and the proposed substituted answers of the respondents, National Electrical Manufacturers Association, F. C. Jones, as president and member of the board of governors, W. J. Donald, as managing director and C. M. Cogan, as director of the engineering department of National Electrical Manufacturers Association and American Electrical Works (now known as Kennecott Wire and Cable Company), American Steel and Wire Co., Anaconda Wire and Cable Co., Bishop Wire and Cable Corporation, New York N. Y., (a New York corporation), Boston Insulated Wire and Cable Co., Crescent Insulated Wire and Cable Co., General Cable Corporation, General Electric Company, Habirshaw Cable and Wire Corporation, National Electrical Products Corporation, The Okonite Company, Phelps-Dodge Copper Products Corporation, John A. Roebling's Sons Company, Simplex Wire and Cable Company, Triangle Conduit and Cable Company, United States Rubber Products, Inc., in which they state that they desire to and have hereby waived hearing on the charges set forth in the amended complaint insofar as the same refer to alleged unfair methods of competition in commerce within the intent and meaning 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 that they and each of them for the sole purpose of avoiding the trouble and expense incident to further continuation of this proceeding, refrain from contesting the proceeding, and that they and each of them consent that all the material facts alleged in said amended complaint in so far as the same are connected with the business of selling or offering for sale impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable and "Safe-cote" rubber covered building wire may be deemed to be admitted as alleged unfair methods of competition in commerce within the intent and meaning of Section 5 of said Federal Trade Commission Act but not within the intent and meaning of any other law of the United States, such proposed substituted answers not constituting an admission of any conclusions of law and not constituting an admission of fact for any other purpose nor to be used against them in any other proceeding, suit, or action, and that they and each of them consent that the Commission may without trial and without further evidence and without any intervening proceeding make and enter its findings as to the facts and issue and serve upon them and each of them an order to cease and desist from any methods of competition alleged

in the amended complaint which constitute violations of Section 5 of the Federal Trade Commission Act.

Now therefore, it is hereby ordered, That the respondents above named be and hereby are permitted to withdraw the answers heretofore filed by them, and to file their proposed substituted answers in lieu thereof, and the substitute answers tendered are received and filed.

It is further ordered, That said respondent corporations American Electrical Works (now known as Kennecott Wire and Cable Company), American Steel and Wire Co., Anaconda Wire and Cable Co., Bishop Wire and Cable Corporation, Boston Insulated Wire and Cable Co., Crescent Insulated Wire and Cable Co., General Cable Corporation, General Electric Company, Habirshaw Cable and Wire Corporation, National Electrical Products Corporation, The Okonite Company, Phelps-Dodge Copper Products Corporation, John A. Roebling's Sons Company, Simplex Wire and Cable Company, Triangle Conduit and Cable Company, and United States Rubber Products, Inc., and their successors, officers, agents, and employees, and the respondent, National Electrical Manufacturers Association, cease and desist, in connection with the business of selling and offering for sale impregnated paper cable, varnished cambric cable, rubber power cable, parkway cable and "Safecote" rubber covered building wire in interstate commerce, from doing and performing, by agreement, combination or conspiracy between or among any two or more of said respondent corporations acting directly or by or through the respondent, National Electrical Manufacturers Association, the following acts and things:

1. Fixing, maintaining, or enhancing prices, special charges, discounts, transportation charges or any terms or conditions of sale which terms or conditions constitute a substantial element in competition:

2. Providing that any price lists compiled and distributed by any of them among their competitors are to be adopted and adhered to until modifications thereof are similarly compiled and distributed with the result that such original lists and amendments are so adopted and adhered to by any of them and their competitors;

3. Imposing, attempting or threatening to impose, by any means whatsoever, any penalty on manufacturers who fail or refuse to adopt and adhere to the prices or lists compiled and distributed as stated in paragraphs (1) and (2) hereof.

4. Participating with competitors in initiating or conducting any investigation for the purpose of ascertaining and reporting for their

joint benefit if, when and to what extent any competitor has deviated from any price list or any announced or quoted price, or otherwise bringing pressure or persuasion to bear upon competitors not to deviate from any such price list or price, provided that this paragraph shall not prevent the circulation of reports of the prices, terms, conditions and like particulars of closed transactions, when not done for the purpose of policing the activities prohibited in paragraphs (1) or (2);

(5) Compiling and distributing among competitors information as to any discounts from, or terms of sale applicable to, any price or price list agreed to be adopted and adhered to as described in paragraphs (1) and (2), whether for specified quantities for prompt payment or for other reasons, including any means or methods by which to calculate prices on goods that vary in grade or specification from the grades and specifications to which such prices or price lists ordinarily apply, with the understanding that such discounts, terms of sale, or means or methods are to be adopted and adhered to by any of them and their competitors until modifications thereof are distributed among such competitors and with the result that such discounts, terms of sale, or means or methods are so adopted and adhered to;

6. Determining or attempting to determine what concerns shall be recognized as jobbers for the distribution of the products of the industry, refusing to sell concerns not jointly recognized by the manufacturers as jobbers, requiring jobbers to sell their customers at list prices or at other prices, prescribed by the manufacturers detecting and reporting jobbers who fail to maintain the prescribed resale price, and refusing to sell such jobbers, where the effect may be to prevent jobbers from competing with each other as to price on the goods of a particular manufacturer or on the goods of said manufacturers generally;

7. Refusing to sell any buyer who so elects at a price calculated f. o. b. point or place from which the goods purchased are actually shipped;

8. Requiring that customers purchase only on a delivered price basis, whether in the form of a single delivered price throughout the United States or throughout each of any number of price zones;

9. Making any payment or allowance to buyers for the return of reels on which cable or wire is wound for delivery, where such payment or allowance is other than the actual cost of return freight to place of shipment and where as a necessary incident to paying or allowing other than the actual freight, identity of delivered prices is preserved and maintained among the respective respondent manufacturers.

10. Agreeing or attempting to agree with any competing manufacturer when both are selling goods as licensees under the same patent for the purpose and with the effect of fixing a price or prices at which they shall each sell the article covered by their licenses, and for the purpose or with the effect of obtaining from their licensor a requirement that the price so arrived at shall be adhered to under the terms of their respective license agreements; provided that this paragraph shall not abridge any legal rights of a licensor under a patent or patent license agreement;

Provided, however, That the prohibitions of this order shall not apply to any lawful action taken under patents or license agreements relating thereto.

It is further ordered, That the above respondents shall, within 60 days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they and each of them have complied with this order.

IN THE MATTER OF
ARROW DISTILLERIES, INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SEC. 3
OF TITLE I OF AN ACT OF CONGRESS APPROVED JUNE 16, 1933¹

Docket 2400. Complaint, May 20, 1935—Decision, Dec. 30, 1936

Where a corporation engaged as rectifier and wholesaler of spirituous beverages, in purchasing, rectifying, blending, and bottling whiskies, gins, and other spirituous beverages and in the making of gin with a still which it used therefor by redistillation of purchased alcohol, not produced by it, over juniper berries and other aromatics, and in selling its aforesaid various products to wholesalers and retailers in substantial competition with those engaged in the manufacture by distillation of whiskies, gins, and other spirituous beverages, and in selling same in trade and commerce among the various States and in the District of Columbia, and with those engaged in purchasing, rectifying, blending, and bottling such various beverages and in similarly selling same, and including among said competitors those who, as manufacturers and distillers of whiskies, gins, and other spirituous beverages sold by them, by process of original and continuous distillation from mash, wort, or wash through continuous closed pipes and vessels until manufacture is complete, truthfully use words "distillery," "distilleries," "distillers," or "distilling" as a part of their corporate names and on their stationery, advertising, and on the labels of the bottles in which they sell and ship their said products, and those who, engaged in rectifying, blending, and bottling such various products, do not use aforesaid words as above set forth—

Represented, through use of word "Distilleries" in its corporate name, in advertising matter, on its stationery and invoices, and on the labels attached to the bottles in which it sold and shipped its said beverages, together with words "Distilled by" on labels for gin redistilled by it, "Prepared by" on labels for some of the cordials and other beverages which it compounded, and words "Bottled by" or "Prepared by" on whiskey labels, and with nothing further on the labels of some of its cordials to indicate that they were not distilled by it, and with such prefixes, insofar as reproduced in advertising matter, not legible without use of a magnifying glass, and with words "Peoria, Illinois" in close conjunction with its said corporate name on labels and advertising, and in various other ways represented to its customers, and furnished the same with the means of representing to their vendees, both retailers and ultimate consuming public, that the whiskies, gins, and other spirituous beverages contained in such bottles were by it made through process of distillation from mash, wort, or wash, notwithstanding fact it did not thus distill said various beverages thus bottled, labeled, sold, and transported by it, as commonly accepted and understood in the trade and by the public, and did not operate or control any place or places where such beverages were made by process of original and con-

¹ Count Two of the complaint, under the National Industrial Recovery Act, dismissed by reason of decision in *A. L. A. Schechter Poultry Corp. v. U. S.*, 295 U. S. 495.