

IN THE MATTER OF
PITTSBURGH PLATE GLASS COMPANY, ET AL.

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. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT OF CONGRESS APPROVED JUNE 19, 1936

Docket 3154. Complaint, June 16, 1937—Decision, Oct. 30, 1937

Where (1) eight manufacturers of window glass, owning and controlling practically all the factories producing such product in the United States and producing most of such product sold and distributed therein, and able to influence prices and terms at which, and conditions under which, such product was sold throughout the United States, and in competition among themselves, except to the extent that their said competition had been lessened, restricted or restrained, or their potential competition forestalled, by practices and methods below described and set forth, and in competition with other competitor manufacturers, except as such competition or potential competition had been hindered, etc., as above described; (2) the association of which such eight manufacturers, along with a ninth company, owner of the stock of one of said manufacturing concerns and affiliated with five of their number and engaged as exclusive selling agent for said manufacturing concerns and four of the other manufacturers above set forth were members; and (3) association of distributors of such products including window glass particularly, of which one of said manufacturers, with eight manufacturing plants at various points in the United States and with approximately seventy warehouses in many different States, was member, and of which the other seven manufacturers were associate members, and the members of which distributors' association were in competition with one another and with other competitor distributors in resale and distribution of products in question to dealers and consumers in the various localities and trade areas of the United States, except insofar as such competition or potential competition had been hindered, etc., as hereinbefore set forth, by the acts and practices hereinafter described, directly and substantially, affecting such competition and that among manufacturers of such products, and the members of which distributors' association, with five divisions covering the United States, constituted group of distributors so large and influential in the trade as to be able, by themselves and in cooperation with aforesaid manufacturers first referred to, to influence flow of trade in channels of commerce in window glass throughout the country and terms and conditions under which distributors thereof buy such products; and (4) the officers, directors, and members of said two associations, and the executive committeemen of said latter association; associated and allied together to carry into effect certain policies, practices and methods relating to sale and distribution of window glass as below described—

Agreed and conspired, and combined and confederated together and with others, and united in and pursued a common and concerted course of action and undertaking among themselves and with others, to adopt, follow, carry

out, enforce, and maintain certain policies, sales methods and trade practices upon which they had agreed and to which they adhered, and which they attempted to and did impose, by coercion and compulsion, upon glass distributors and dealers who were not permitted, or did not desire, to be members of said distributors' association, and upon others, to the actual or potential injury of some of such distributors and dealers and of ultimate purchasers and consumers of glass generally; and in pursuance of said agreement, course of action and undertaking above referred to, and as respects said policies, sales methods, and trade practices, and through official and unofficial meetings of their associations, discussions, bulletins, circulars, etc., distributed among the members and others, and the seeking and obtaining of promises and assurances from one another and exchange of information with one another with respect to their businesses and activities, and through action of aforesaid distributors in inducing the granting of such discriminatory prices, as below set forth, by said manufacturers, and in receiving and accepting the same—

- (a) Classified all buyers of window glass from manufacturers as "quantity buyers" or "carload lot buyers," and formulated, printed and circulated among themselves list of such "quantity buyers," whose classification as such was dependent upon purchase of a minimum of from 3,000 to 5,000 50-foot boxes of window glass for stock per year, and made it the policy and practice of such manufacturers to issue only one window glass price list showing prices to "quantity buyers" only, and issued to and intended for their use exclusively, and confined, as a policy and practice, to a restricted trade area sales of window glass by "quantity buyers," who rarely, if ever, accepted orders for such product for transmission to the manufacturer from dealers located outside their respective designated trade areas, and granted or denied admittance to list of "quantity buyers," as policy and practice, only after complete investigation by secretary of said manufacturers' association to determine eligibility of such buyers, with final decision made by the association, and refused sales of window glass in carload lots by said manufacturers directly to any buyer except "quantity buyers";
- (b) Published, exclusively, price lists for window glass to "carload lot buyers," through said distributors' association, and distributed same only by members thereof, and required and compelled all such "carload lot buyers" and others not classified as "quantity buyers" and placed on said list, to purchase window glass from such so-called "quantity buyers" or from aforesaid manufacturer members through such buyers, and all such other buyers to pay up to $7\frac{1}{2}\%$ more for window glass of same grade and quality than price quoted to and paid by "quantity buyers," with manufacturer, as agreed, to receive $2\frac{1}{2}\%$, and "quantity buyer" 5%, over such quoted list price on sales to such "carload lot buyers," and made numerous sales from said manufacturers to "carload lot buyers" at such higher prices and on aforesaid basis, referring orders to said manufacturers from such "carload lot buyers" to so-called "quantity buyers" and filling same by direct shipment to former with aforesaid $2\frac{1}{2}\%$ markup over manufacturer's list price and understanding that "quantity buyer" would add and receive additional markup of 5%, as above set forth; and
- (c) Precluded, under policies and practices adopted, any two or more dealers from making pooled purchases of window glass in carload lots, or "car-

load lot buyer" of such product from reconsigning or diverting such carload to some other dealer, and supervised and directed practices and policies of dealers reselling window glass to other dealers and consumers and, generally, controlled distribution and outlets for such products, and adopted, generally, policy and practice, tendency of which was to lessen and restrain competition in sale and distribution of window glass in the United States, and prevented dealers who did not conform to their practices, policies, and prices from buying window glass at manufacturer's list price or in carload lots, and acted in concert to control channels of distribution and require dealer conformance to such practices and methods;

With capacity and tendency to, and effect of, tending to (1) concentrate in such "quantity buyers" opportunity to purchase window glass from manufacturer at manufacturer's discount from list price, (2) standardize prices at, and conditions under, which window glass was sold by manufacturers in carload lots to other than those classified as such "quantity buyers," (3) bring about an unlawful discrimination in prices at which such product is sold by the manufacturer to different purchasers, (4) unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in window glass trade and industry and tend to deprive purchasing and consuming public of advantages in price, service, or other considerations which they would receive and enjoy under conditions of normal and unobstructed, or free and fair, competition in said trade and industry, and operate as a restraint upon and detriment to the freedom of fair and legitimate competition therein, (5) tend to increase cost to purchasers of such product, (6) discriminate against small business enterprises engaged or desiring to engage in sale or distribution of said product, (7) tend to obstruct establishment of new distributors thereof, (8) lessen and restrain price competition among manufacturers in sale thereof in carload lots to other than "quantity buyers," (9) burden, hamper and interfere with normal and natural flow of trade in commerce therein into, through and from the various States, and injure competitors of individual distributor-respondents by unfairly diverting business and trade from them, and otherwise depriving them unfairly of competitive advantage which they would receive under conditions of free and open competition, and (10) prejudice and injure dealers, distributors and others who do not conform to program or methods above set forth, or desire to do so, but are so compelled by concerted action of said manufacturers and distributors and their associations, etc.; and

Where aforesaid various concerns, manufacturers, and distributors, as above set forth, and their associations, officers, etc.—

- (d) Conspired and confederated together to bring about, and did bring about and make effective, a policy and system whereby manufacturers aforesaid discriminated in price between different purchasers of window glass of like grade and quality, as above set forth, with effect of lessening competition between and among manufacturers in said line of commerce and of injury, destroying, and preventing competition between and among such "quantity buyers" and such "carload lot buyers," and between and among the customers of such buyers buying such product for resale to consumers; and

Where manufacturers aforesaid—

- (e) Discriminated in price between different purchasers buying window glass of like grade and quality in interstate commerce for resale to dealers and

consumers, by charging some of their said purchasers of such product higher prices than those charged others of their said purchasers competitively engaged with one another in resale of said product within the United States, and consisting in imposition of $2\frac{1}{2}\%$ markup by the manufacturers upon all "carload lot buyers" over and above manufacturer's list price at which window glass had been and was being sold to so-called "quantity buyers"; and

Where aforesaid distributor members—

(f) Knowingly induced said manufacturer members thus to discriminate in price as above set forth, and knowingly received such discriminations in price on purchases of window glass made by them;

With result that the general effect of said systematic discriminations in price, so made by said manufacturers and induced and received by said distributors, had been or might be substantially to lessen competition and tend to create a monopoly in sale and distribution of window glass, and to injure, destroy, and prevent competition between and among said distributors and their competitors, and between and among customers of each:

Held, That such acts and practices had a dangerous tendency unduly to hinder competition in window glass trade throughout the United States, and to create a monopoly thereof in the hands of aforesaid manufacturers and distributors and their associations, etc., and constituted unfair methods of competition, in violation of Sec. 5 of an Act of Congress approved September 20, 1914, and that discriminatory acts and practices last above set forth constituted violation of Sec. 2 (a) and Sec. 2 (f) of an Act of Congress approved June 19, 1936.

Mr. Allen C. Phelps for the Commission.

Smith, Buchanan, Scott & Ingersoll, of Pittsburgh, Pa., for Pittsburgh Plate Glass Co.

Marshall, Melhorn, Davies, Wall & Block, of Toledo, Ohio, for Libbey-Owens-Ford Glass Co.

Reed, Smith, Shaw & McClay, of Pittsburgh, Pa., for American Window Glass Co.

Sperry & Snider, of Clarksburg, W. Va., for Fourco Glass Co., Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., with whom also appeared *Mr. William J. Brennan*, of Sistersville, W. Va., for Schoy Sheet Glass Co., and *Kessinger, Hill & Arterburn*, of Vincennes, Ind., for Blackford Window Glass Co.

Hines, Rearick, Dorr & Hammond, of New York City, for The Window Glass Manufacturers Ass'n, and its officers.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for the National Glass Distributors Ass'n, its officers, executive committee, and members thereof, with whom also appeared *Marshall, Melhorn, Davies, Wall & Block*, of Toledo, Ohio, for George L. Heater and Toledo Plate and Window Glass Co.

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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 Act) and pursuant to the provisions 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" (The Clayton Act), as amended by "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), and for other purposes" (The Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondents hereinabove designated have been and are using unfair methods of competition in commerce as "commerce" is defined in said Federal Trade Commission Act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public interest; and the Federal Trade Commission having reason to believe that the said respondents have violated and are now violating the provisions of Subsection "a" and Subsection "f" of Section 2 of said Clayton Act as amended, hereby issues its complaint against said respondents, stating its charges as follows:

Count 1

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Grant Building, Pittsburgh, Pa.

Respondent Libbey-Owens-Ford Glass Co. is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Nickel Building, Toledo, Ohio.

Respondent American Window Glass Co. is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Farmers Bank Building, Pittsburgh, Pa.

Respondent Fourco Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Harding Glass Co. is a corporation organized and existing under the laws of the State of Arkansas with its principal office and place of business located at Fort Smith, Ark.

Respondent Adamston Flat Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Rolland Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Scohy Sheet Glass Co. is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Sistersville, W. Va.

Respondent Blackford Window Glass Co. is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at Vincennes, Ind.

PAR. 2. Respondent The Window Glass Manufacturers Association is an unincorporated association with its principal office and place of business located at 19 W. 44th St., New York, N. Y. The officers of said association are, or were in 1936 respondent William L. Monroe, president, who is likewise president of respondent American Window Glass Co., Pittsburgh, Pa.; respondent Frank Bastin, vice president, who is the president of respondent Blackford Window Glass Co., Vincennes, Ind.; and respondent Charles R. Stevenson, secretary-treasurer, of 19 W. 44th St., New York, N. Y. The membership of said respondent association consists of respondents Adamston Flat Glass Co., American Window Glass Co., Blackford Window Glass Co., Harding Glass Co., Libbey-Owens-Ford Glass Co., Pittsburgh Plate Glass Co., Rolland Glass Co., and Scohy Sheet Glass Co. The board of directors of said respondent association consists of one representative of each of said respondent members. Said respondent members are hereinafter collectively referred to for convenience as "respondent manufacturers."

PAR. 3. Respondent The National Glass Distributors Association is an unincorporated association with its principal office and place of business located at 2217 Tribune Tower, Chicago, Ill.

The officers of said respondent association are, or were in 1936 respondent G. G. Postlewait, president and vice president, a representative of respondent Postlewait Glass Co., Kansas City, Mo.; respondent N. J. Klein, vice president, a representative of respondent Patek Bros. Inc., Milwaukee, Wis.; respondent J. J. Gibian, vice president, a representative of respondent Schrenk & Co., Hoboken, N. J.; respondent W. F. Bennett, vice president, a representative of respondent Bennett Glass Co., Salt Lake City, Utah; respondent T. W. Pritchard, vice president, a representative of respondent Pritchard Paint & Glass Co., Charlotte, N. C.; and respondent

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North Storms, secretary-treasurer, of 2217 Tribune Tower, Chicago, Ill.

The executive committee of said respondent association is composed of approximately twenty-four individuals who respectively represent individual members. Among such executive committeemen are, or were in 1936, respondent S. C. Gilmore, a representative of respondent Hires Turner Glass Co.; respondent George L. Heater, a representative of respondent Toledo Plate and Window Glass Co.; respondent A. H. Brawner, a representative of respondent W. P. Fuller and Co.; respondent S. E. Binswanger, a representative of respondent Binswanger and Co.; and respondents T. E. Jackson and R. B. Tucker, representatives of respondent Pittsburgh Plate Glass Co. at Dallas, Tex. and Pittsburgh, Pa. respectively. Said named executive committeemen are representative members of said committee, and all of said committeemen are also made respondents herein, as a class, of which those specifically named are representative of the whole.

The membership of said respondent association is principally made up of corporations, firms, and partnerships dealing in and distributing glass products, particularly window glass. Among the members of said respondent association are respondent Postlewait Glass Co., a corporation, with its principal office and place of business in Kansas City, Mo.; respondent Patek Bros. Inc., a corporation, with its principal office and place of business located at Milwaukee, Wis.; respondent Schrenk & Co., a corporation, with its principal office and place of business located at Hoboken, N. J.; respondent Bennett Glass Co., a corporation, with its principal office and place of business located in Salt Lake City, Utah; respondent Pritchard Paint & Glass Co., a corporation, with its principal office and place of business located in Charlotte, N. C.; respondent Hires Turner Glass Co.; a corporation, with its principal office and place of business located at Philadelphia, Pa.; respondent Toledo Plate and Window Glass Co., a corporation, with its principal office and place of business located at Toledo, Ohio; respondent W. P. Fuller and Co., a corporation, with its principal office and place of business located at San Francisco, Calif.; respondent Binswanger and Co., a corporation, with its principal office and place of business located at Richmond, Va. The above-named members of said association do not constitute the entire membership thereof but are representative members of said association. All members of said association are also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are herein-

after collectively referred to for convenience as "respondent distributors."

Respondent manufacturers, except respondent Pittsburgh Plate Glass Co., are associate members of said respondent National Glass Distributors Assn. Respondent Pittsburgh Plate Glass Co. is a member of said respondent association with approximately thirty-eight distributing establishments, for each of which it holds a full membership in said association.

PAR. 4. Respondent Pittsburgh Plate Glass Co. is engaged in the business of manufacturing window glass and other glass products, and of selling and distributing the same throughout the United States. It maintains and operates factories or manufacturing plants at Creighton, Pa., Ford City, Pa., Ellwood, Ind., Kokomo, Ind., Crystal City, Mo., Mt. Vernon, Ohio, Clarksburg, W. Va., and Henriette, Ohio. It also maintains and operates approximately seventy-three warehouses and controls approximately forty-two stores located in many different states of the United States, from which it sells and distributes its manufactured glass products to dealers and consumers located in the same and different States. In the sale and distribution of its glass products respondent causes the same to be shipped and transported from its said factories to such warehouses and to purchasers in the various States and from the said warehouses and stores to buyers located in many cases in states other than the State in which such warehouse or store is located. The major portion of respondent's said products are so transported from one State to another and between and among the several States of the United States. In the course and conduct of its said business, said respondent is engaged in making sales of and distributing its said products in the course of interstate commerce. Said respondent in numerous cases sells its glass products to distributors who are in competition with it in the sale of such products to other dealers and consumers.

PAR. 5. Respondents Libby-Owens-Ford Glass Co., American Window Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Scohy Sheet Glass Co., Blackford Window Glass Co., and Harding Glass Co., are, and each of them is engaged in the business of manufacturing window glass and flat glass products and of distributing and selling the same in many different States of the United States. Certain of these respondents manufacture and sell other glass products. In the course and conduct of their respective businesses, said respondents and each of them causes to be shipped and transported the products so manufactured by them from the place of manufacture to, into and through States of the United States other than said state of manufacture, and receive and accept orders for such products

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which are filled by the shipment of such goods, to, into and through the various States of the United States. Each of said respondents is engaged in making sales of and distributing their said products in the course of interstate commerce.

PAR. 6. Respondent Fourco Glass Co. owns the capital stock of and controls respondent Harding Glass Co. Respondent Fourco Glass Co. is engaged in the business of selling and distributing the window glass manufactured by respondents Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Scohy Sheet Glass Co. and Blackford Window Glass Co. In the course and conduct of its business said respondent Fourco Glass Co. sells the products of said named respondents and acts generally as an exclusive selling agent for them on a commission basis. In the sale and distribution of said products respondent Fourco Glass Co. accepts orders for the same from purchasers and allocates said orders among and transmits them to said manufacturers. Said orders are so accepted from and transmitted to and through states of the United States other than the State of West Virginia, where said respondent has its principal place of business. Respondent Fourco Glass Co. is engaged in selling and distributing said products in the course of interstate commerce. Said respondent Fourco Glass Co. is an associate member of respondent National Glass Distributors Association.

PAR. 7. Respondent manufacturers are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers of glass products, particularly window glass, who sell and distribute said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by one or more of respondent manufacturers. These non-member manufacturers also cause their glass products to be shipped and transported from the various points of production or importation in certain states through and into other states of the United States. They are also in competition among themselves and with respondent manufacturers except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition forestalled as a result of the use by respondent manufacturers of the practices and methods hereafter described. Respondent The Window Glass Manufacturers Association and its officers and directors are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent manufacturers, and substantially among respondent

manufacturers and other manufacturers, and also directly affect competition in the sale of window glass and other glass products, between and among dealers and distributors who sell said products for the manufacturer or buy them for resale and resell the same in commerce in and among the various States of the United States.

PAR. 8. Respondent National Glass Distributors Association was organized in 1914 for the avowed purpose of promoting the general welfare of its members engaged in the window glass jobbing business. Its membership purports to be limited to any form of enterprise (including jobbing warehouses owned, operated or controlled by manufacturers) whose business consists of the purchasing for resale of flat glass from manufacturers, (foreign and domestic); and the selling of same to glass dealers and to other wholesale buyers who purchase such products for re-sale and/or utilization; the warehousing and maintaining of such products in jobbing establishments commensurate with the needs of the community and the incidental rehandling, cutting, processing, or otherwise working or handling such products, excluding such processing as changes the products of this trade into the products of another trade or industry; but said membership includes many manufacturers, processors, and enterprises who do not do business in the manner stated, do not have the facilities specified, and who sell to consumers. The membership is divided into five (5) divisions covering the United States: Eastern Division with approximately 26 members; Western Division with approximately 66 members; Pacific Coast Division with approximately 15 members; Southeast Division with approximately 11 members; and Southwest Division with approximately 27 members. The activities and policies of said association are directed by its officers and executive committee named as respondents herein. Said association and its officers and executive committee are not engaged in commerce but are engaged in unfair methods, as hereafter described, which directly and substantially affect competition among manufacturers and among distributors and dealers selling and distributing glass products in interstate commerce in the United States.

PAR. 9. Respondent distributors, being the members of The National Glass Distributors Association, are in competition with one another in the sale or resale and distribution of glass products to dealers and consumers in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter specifically described and set forth. There are numerous other dealers and distributors dealing in glass products

who are engaged in the resale and distribution of such products to dealers and consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent distributors, except insofar as such competition has been hindered, lessened, restricted or restrained by or potential competition among them forestalled by the use by respondent distributors and the other respondents named herein of the practices and methods hereafter described. All or nearly all of respondent distributors and their competitors above mentioned are engaged in purchasing glass products which are transported from one state to and through other states as a result of such purchases and in reselling said products in many instances to buyers ordering such products for delivery in States other than the State in which the seller and the product are located when the order is so placed. All of said respondent distributors are engaged in unfair methods, as hereafter set forth, which directly and substantially affect competition among themselves, and between themselves and other dealers, and among manufacturers of glass products.

PAR. 10. Respondent manufacturers above named, who constitute the membership of respondent Window Glass Manufacturers' Association, own and control practically all of the factories producing window glass in the United States and produce most of the window glass sold and distributed in this country. Such respondent manufacturers are able to and do determine and control the prices and terms at which and conditions under which window glass is sold and distributed by manufacturers throughout the United States. Said members of respondent National Glass Distributors Association constitute a group of distributors so large and influential in the trade as to be able by themselves and in cooperation with respondent manufacturers to control and influence the flow of trade and channels of distribution in window glass throughout the country, as well as the prices at which, and the terms and conditions under which non-member distributors of window glass buy and resell such products.

PAR. 11. Respondent officers, directors and members of the Window Glass Manufacturers' Association are banded and allied together in said association to carry into effect certain policies, practices, and methods relating to the manufacture, sale and distribution of window glass, hereinafter more particularly described. Respondent officers, executive committeemen, and members of respondent National Glass Distributors' Association are likewise banded and allied together in their said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, also hereinafter more specifically described. Said respondent officers,

directors, executive committeemen, and members direct and control the policies of their respective associations and act collectively and concertedly through said associations as a medium of enforcing such policies and making the same effective.

PAR. 12. Respondents named herein have since about 1935 agreed and conspired, combined and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce, fix, and maintain throughout the United States, certain monopolistic prices, policies, sales methods and trade practices, hereinafter described, which said respondents have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon and on glass manufacturers, distributors and dealers who were not permitted to be or did not desire to be members of either of respondent associations, and others, to the substantial or potential injury of some of such manufacturers, distributors, and dealers and of ultimate purchasers and consumers of glass generally.

PAR. 13. The said monopolistic policies, sales methods, trade practices and prices referred to in the preceding paragraph and which were so adopted, fixed and put into effect are as follows:

1. A policy and practice of requiring that all buyers of window glass from respondent manufacturers be arbitrarily classified either as "quantity buyers" or "carload lot buyers."

2. A policy and practice of requiring that each of respondent manufacturers publish only one window glass price list, showing prices to those classified as "quantity buyers" only and issued to and available to such "quantity buyers" exclusively.

3. A policy and practice of requiring that price lists for window glass to "carload lot buyers" be published only by respondent National Glass Distributors' Association, and distributed only by the members of said association.

4. A policy and practice of requiring that all "carload lot buyers" and other buyers except those classified as "quantity buyers" be required and compelled to purchase window glass from such so-called "quantity buyers" or from respondent manufacturers through such "quantity buyers."

5. A policy and practice of requiring that all "carload lot buyers" and other buyers except those classified as "quantity buyers" be required and compelled to pay 7½% more or a greater excess for window glass of the same grade and quality than the price quoted to and paid by those classified as "quantity buyers."

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6. A policy and practice of requiring that said $7\frac{1}{2}\%$ differential be divided, $2\frac{1}{2}\%$ to the manufacturer and 5% to the so-called "quantity buyer."

7. A policy and practice of requiring that quotations of price for window glass by those classified as "quantity buyers" be confined to a restricted trade area of the particular authorized "quantity buyer" and that such particular "quantity buyer" accept no orders for window glass for transmission to the manufacturer from dealers located outside a designated trade area.

8. A policy and practice of requiring that a "white list" of so-called "quantity buyers" be agreed upon, published and adhered to, and that no dealer not included in such "white list" be permitted to purchase window glass direct from the manufacturer at the price quoted by the manufacturer to those included in such list.

9. A policy and practice of requiring that admittance to such "white list" of quantity buyers be denied to all dealers until after complete investigation by the secretary of the respondent Window Glass Manufacturers Association and that admission to said list be arbitrarily denied for any reason sufficient to said secretary or to said association.

10. A policy and practice resulting in blacklisting certain dealers as ineligible for admittance to said "quantity buyers' white list" or as ineligible to continue to be included on such "white list."

11. A policy and practice of precluding any two or more dealers from making pooled purchases of window glass in carload lots.

12. A policy and practice of precluding a carload lot buyer of window glass from reconsigning or diverting said carload to some other dealer.

13. A policy and practice of enabling the so-called "quantity buyers" to purchase window glass from the manufacturers at the manufacturers' list price and of denying this privilege to all other buyers.

14. A policy and practice used by respondent manufacturers of simultaneously issuing and of using identical price lists for window glass, and making effective substantially the same trade discounts from each manufacturer's list.

15. A policy and practice used by respondent manufacturers of agreeing upon and fixing and maintaining the prices at which and the terms upon which their said window and other glass should be and was offered for sale and sold.

16. A policy and practice by which prices on window glass to "carload buyers" was and is fixed and maintained at $7\frac{1}{2}\%$ more than the price quoted by respondent manufacturers to said approved "quantity buyers."

17. A policy and practice of supervising and directing the practices and policies of dealers reselling window glass to other dealers and consumers, of causing resale prices for such window glass to be fixed and maintained and generally of controlling resale markets and outlets for such product.

18. Generally, a policy and practice which was designed to and tended to monopolize the manufacture, sale, and distribution of window glass in the respondents named herein.

PAR. 14. That for the purpose of making such sales practices and policies and pricing methods effective, and of requiring compliance therewith and observance thereof by all dealers in window glass throughout the United States, said respondent associations, acting through their officers, directors, and executive committee, and with the knowledge, consent, approval, and active cooperation and participation of respondent members and other members, and the individual respondents named herein or one or more of them, acting in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have collectively as groups or individually done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said associations at which the policies and practices hereinabove described were discussed, adopted and agreed to, and issued and distributed bulletins, circulars, letters, price lists, and other printed matter, and distributed the same among the members of said associations and others, announcing the adoption of the policies, practices and requirements referred to and the imposition of the same upon all affected thereby.

3. Classified all buyers of window glass from manufacturers throughout the United States either as "quantity buyers" or "carload lot buyers."

4. Each of respondent manufacturers has published a single window glass price list quoting prices to approved "quantity buyers" only and issued said price lists to such "quantity buyers" exclusively.

5. Respondent National Glass Distributors Association has issued price lists for window glass to "carload lot buyers" for glass to be purchased from respondent manufacturers.

6. Respondent manufacturers have and do refuse to sell window glass in carload lots directly to any buyer except approved "quantity buyers."

7. Respondent manufacturers have compelled all "carload lot buyers" of window glass to purchase such glass through the members

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of the National Glass Distributors Association or through approved "quantity buyers."

8. Members of the National Glass Distributors Association have issued price lists to "carload lot buyers" and made the same available only to certain buyers whom they considered eligible to buy in carload lots.

9. Respondent distributors have refused to accept orders for carload lots of window glass for transmission to the manufacturers from dealers located outside of their respective restricted trade areas.

10. Respondents generally have formulated and published a "white list" of "quantity buyers" who were authorized to purchase direct from the manufacturers at the manufacturers' list price and arbitrarily included and excluded certain dealers from said "white list."

11. Respondent manufacturers have issued identical price lists simultaneously and offered substantially the same trade discounts from each particular list.

12. Respondents generally have issued bulletins, circulars and other printed matter listing the names and addresses of said authorized "quantity buyers" and setting forth the plan and policy which would be followed in marketing window glass to dealers in the United States.

13. Respondents generally have sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described.

14. Respondent manufacturers have sold window glass to numerous "carload lot buyers" at prices $7\frac{1}{2}\%$ greater than those at which sales were made to "quantity buyers" for glass of the same grade and quality.

15. Respondent manufacturers have diverted orders for carloads of window glass from "carload lot buyers" to so-called "quantity buyers" and filled such orders by direct shipment to the carload lot buyer at a $7\frac{1}{2}\%$ mark-up over the manufacturers' list prices for such products.

16. Respondent manufacturers have agreed upon and fixed and maintained the prices, terms and trade discounts at which their said window glass was offered for sale and sold.

17. Respondent distributors have induced respondent manufacturers to grant them discriminatory prices and have received and accepted such discriminatory prices.

18. Respondents generally have exchanged information with reference to their respective businesses and activities which was used in furtherance of the policies and methods referred to.

19. Respondents generally have supervised and investigated the practices and policies of dealers engaged in reselling window glass to other dealers and to consumers and the prices at which such product was so resold, and have prevented some dealers who did not conform to their practices, policies, and prices from buying window glass at the manufacturers' list price or in carload lots, and have acted concertedly to maintain certain resale prices agreed upon, to control resale markets and to coercively require recalcitrant dealers to conform to such practices and methods.

PAR. 15. The capacity, tendency, and effect of said plan, agreement, combination, conspiracy, undertaking, policies, and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To monopolize in said respondent manufacturers the business of manufacturing and of selling and distributing window glass to distributors in the United States.

2. To monopolize in said respondent distributors the opportunity to purchase window glass from the manufacturers at the manufacturers' list price.

3. To fix and maintain the prices at and conditions under which such window glass is sold by the manufacturers.

4. To fix and maintain the prices at and conditions under which window glass is resold by distributors to dealers and consumers.

5. To bring about an unlawful discrimination in the prices at which window glass is sold by the manufacturers to different purchasers.

6. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the window glass trade and industry and to deprive the purchasing and consuming public of advantages in price, service, and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to otherwise operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

7. To substantially increase the cost to purchasers of such window glass.

8. To suppress, eliminate, and discriminate against small business enterprises which are or have been engaged or desire to engage in manufacturing, selling, or distributing window glass.

9. To obstruct and prevent the establishment of new distributors of window glass.

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10. To suppress and eliminate all price competition among manufacturers in the sale of window glass and among distributors in the resale thereof.

11. To eliminate all sales of window glass through sales agencies or brokers.

12. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in window glass, into, through and from the various States of the United States; and to injure the competitors of individual respondents by unfairly diverting business and trade from them, depriving them thereof, and otherwise driving or freezing them out of business.

13. To prejudice and injure manufacturers, dealers, distributors, and others who do not conform to respondent's program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein alleged.

PAR. 16. The above alleged acts and things done by respondents have a dangerous tendency unduly to hinder competition in the window glass trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce within the 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 26th, 1914.

Count 2

PARAGRAPH 1. Paragraphs 1 to 15 inclusive of count 1 hereof are hereby adopted and made a part of this charge as fully as if set out herein verbatim.

PAR. 2. All of the respondents herein named have since sometime prior to June 16, 1936, conspired and confederated together to bring about and have brought about and made effective a policy and system whereby respondent manufacturers discriminate and have discriminated in price between different purchasers of window glass of like grade and quality, in the manner hereinabove set forth, with the effect of lessening competition and tending to create a monopoly in said line of commerce and with the effect of injuring, destroying and preventing competition between and among such "quantity buyers" and such "carload lot buyers" and between and among the customers of such buyers purchasing such product for resale to consumers.

PAR. 3. In the course and conduct of their respective businesses as above described, respondent manufacturers since sometime prior to June 19th, 1936, have discriminated in price and are now discriminating in price between different purchasers buying window glass

of like grade and quality in interstate commerce for re-sale to dealers and consumers, by charging some of their said purchasers of window glass higher prices than those charged other of their said purchasers, competitively engaged one with the other in the resale of said products within the United States. Said discriminations consist in the imposition of a mark-up of $7\frac{1}{2}\%$ upon all "carload lot buyers" over and above the manufacturers' list price at which window glass has been and is being sold to the so-called "quantity buyers."

PAR. 4. Respondent members of the National Glass Distributors Association have knowingly induced said respondent manufacturers to so discriminate in price as charged in the preceding paragraph hereof and have knowingly received such discriminations in price on purchase of window glass made by them.

PAR. 5. The general effect of said systematic discriminations in price so made by respondent manufacturers and induced and received by respondent distributors has been or may be substantially to lessen competition and tend to create a monopoly in the manufacture, sale, and distribution of window glass and to injure, destroy and prevent competition between and among respondent distributors and their competitors and between and among customers of each.

PAR. 6. The foregoing alleged acts of the said respondents are in violation of Section 2A and Section 2F of said Act of Congress approved June 19, 1936 entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), and for other purposes."

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 Act) and pursuant to the provisions 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" (the Clayton Act), as amended by "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914 as amended (U. S. C. Title 15, Section 13), and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission, on June 16,

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1937, issued, and subsequently served, its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce, in violation of the provisions of said Federal Trade Commission Act, and with acts and practices in violation of subsections (a) and (f) of Section 2 of said Robinson-Patman Act.

After the issuance and service of said complaint, said respondents filed their answer to the complaint, in which respondents admitted, for the purposes of this proceeding only, all the material allegations of said complaint, except those contained in sub-paragraphs 14 and 15, paragraph 13, sub-paragraphs 11 and 16 of paragraph 14 and sub-paragraph 10 of paragraph 15, thereof. Said respondents also consented in said answer that the Commission might proceed to make its findings of fact without further proceedings and that an order might issue and be served upon the respondents requiring them to cease and desist from the unfair methods of competition and the violations of law alleged in the complaint. 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 this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Pittsburgh Plate Glass Company is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Grant Building, Pittsburgh, Pa.

Respondent Libbey-Owens-Ford Glass Co. is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Nicholas Building, Toledo, Ohio.

Respondent American Window Glass Co. is a corporation organized and existing under the laws of Pennsylvania with its principal office and place of business located in the Farmers Bank Building, Pittsburgh, Pa.

Respondent Fourco Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Harding Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Fort Smith, Ark.

Respondent Adamston Flat Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Rolland Glass Co. is a corporation organized and existing under the laws of the State of West Virginia with its principal office and place of business located at Clarksburg, W. Va.

Respondent Scohy Sheet Glass Co. is a corporation organized and existing under the laws of the State of West Virginia, with its principal office and place of business located at Sistersville, W. Va.

Respondent Blackford Window Glass Co. is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business located at Vincennes, Ind.

PAR. 2. Respondent The Window Glass Manufacturers Association is an unincorporated association with its principal office and place of business located at 19 W. 44th St., New York, N. Y. The officers of said association in 1936 were respondent William L. Monro, president, who is likewise president of respondent American Window Glass Co., Pittsburgh, Pa.; respondent Frank Bastin, vice president, who was the president of respondent Blackford Window Glass Co., Vincennes, Ind.; and respondent Charles R. Stevenson, secretary-treasurer, of 19 W. 44th St., New York, N. Y. The officers of said Association are at present William L. Monro, president, who is likewise president of respondent American Window Glass Company; Eugene Rolland, vice president who is president of respondent Rolland Glass Company; and respondent, Charles R. Stevenson, secretary-treasurer. The membership of said respondent association consists of respondents Adamston Flat Glass Co., American Window Glass Co., Blackford Window Glass Co., Harding Glass Co., Libbey-Owens-Ford Co., Pittsburgh Plate Glass Co., Rolland Glass Co., and Scohy Sheet Glass Co. Said respondent members are hereinafter collectively referred to for convenience as "respondent manufacturers."

PAR. 3. Respondent The National Glass Distributors Association is an unincorporated association with its principal office and place of business located at 2217 Tribune Tower, Chicago, Ill.

The officers of said respondent association in 1936 were respondents G. G. Postlewait, president and vice president, a representative of respondent Postlewait Glass Co., Kansas City, Mo.; respondent N. J. Klein, vice president, a representative of respondent Patek Bros. Inc., Milwaukee, Wis.; respondent J. J. Gibian, vice president, a representative of respondent Schrenk & Co., Hoboken, N. J.; respondent W. F. Bennett, vice president, a representative of respondent

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Bennett Glass Co., Salt Lake City, Utah; respondent T. W. Pritchard, vice president, a representative of respondent Pritchard Paint & Glass Co., Charlotte, N. C.; and respondent North Storms, secretary-treasurer, of 2217 Tribune Tower, Chicago, Ill. The present officers of said respondent association are: president, William Plummer, Jr., a representative of respondent Hires Turner Glass Co., Philadelphia, Pa.; vice presidents, Ben Newton of Semon Bache & Co., New York, N. Y.; N. J. Klein of Patek Brothers, Inc., Milwaukee, Wis.; Wallace F. Bennett of Bennett Glass & Paint Co., Salt Lake City, Utah; T. W. Pritchard of Pritchard Paint & Glass Co., Charlotte, N. C.; G. G. Postlewait of Postlewait Glass Co., Kansas City, Mo.; and Harold Florman of Florman Manufacturing Co., Pueblo, Colo.; and secretary-treasurer, respondent North Storms.

The executive committee of said respondent association is composed of approximately twenty-four individuals who respectively represent individual members. Among such executive committeemen in 1936 were respondent S. C. Gilmore, a representative of respondent Hires Turner Glass Co.; respondent George L. Heater, a representative of respondent Toledo Plate and Window Glass Co.; respondent A. H. Brawner, a representative of respondent W. P. Fuller and Co.; respondent S. E. Binswanger, a representative of respondent Binswanger and Co.; and respondents T. E. Jackson and R. B. Tucker, representatives of respondent Pittsburgh Plate Glass Co. at Dallas, Tex., and Pittsburgh, Pa. respectively. Said executive committee at the present time is composed of: J. J. Gibian of Schrenk & Company, Hoboken, N. J.; Geo. E. Hills of Boston Plate & Window Glass Co., Boston, Mass.; E. J. Lienert of Buffalo Plate & Window Glass Corp., Buffalo, N. Y.; Adolph Maeulen, of Williamsport Mirror & Glass Co., Williamsport, Pa.; J. J. Tanyan, of Pittsburgh Plate Glass Co., Brooklyn, N. Y.; G. Frank Wallace of Syracuse Glass Company, Syracuse, N. Y.; R. J. Clemens of Standard Glass & Paint Company, Des Moines, Iowa; A. E. Clerihew of Forman, Ford & Co., Minneapolis, Minn.; Arthur Dole, Jr., of Hooker Glass & Paint Mfg. Co., Chicago, Ill.; George L. Heater of The Toledo Plate & Window Glass Co., Toledo, Ohio; L. B. Huguenor of Pittsburgh Plate Glass Co., Chicago, Ill.; C. W. Kendle of Central Glass Co., Louisville, Ky.; D. H. Startzman of The Wm. Glenny Glass Company, Cincinnati, Ohio; Robert J. Fulton of Raphael Glass Co., Los Angeles, Calif.; Rudolph Habenicht of Habenicht & Howlett, San Francisco, Calif.; Ben Tyre of Tyre Bros. Glass & Paint Co., Inc., Los Angeles, Calif.; S. E. Binswanger of Binswanger & Company, Richmond, Va.; H. A. Birchall of Pittsburgh Plate Glass Co., Roanoke, Va.; B. G. Spille of Hires Turner Glass Co., Washington,

D. C.; M. S. Binswanger of Binswanger & Co., Memphis, Tenn.; C. L. Dickmann of C. L. Dickmann Glass Co., Muskogee, Okla.; T. E. Jackson of Pittsburgh Plate Glass Co., Dallas, Tex.; A. G. Hardy of Pittsburgh Plate Glass Co., Denver, Colo.; W. R. McFarland of McMurtry Manufacturing Co., Denver, Colo.; G. A. Vaughan of Southwestern Sash & Door Co., Albuquerque, N. Mex.; and R. B. Tucker of Pittsburgh Plate Glass Co., Pittsburgh, Pa.

The membership of said respondent association is principally made up of corporations, firms, and partnerships dealing in and distributing glass products, particularly window glass. Among the members of said respondent association are respondent Postlewait Glass Co., a corporation, with its principal office and place of business in Kansas City, Mo.; respondent Patek Bros., Inc., a corporation, with its principal office and place of business located at Milwaukee, Wis.; respondent Schrenk & Co., a corporation, with its principal office and place of business in Hoboken, N. J.; respondent Bennett Glass Co., a corporation, with its principal office and place of business located in Salt Lake City, Utah; respondent Pritchard Paint & Glass Co., a corporation, with its principal office and place of business located in Charlotte, N. C.; respondent Hires Turner Glass Co.; a corporation, with its principal office and place of business located at Philadelphia, Pa.; respondent Toledo Plate and Window Glass Co., a corporation, with its principal office and place of business located at Toledo, Ohio; respondent W. P. Fuller and Co., a corporation, with its principal office and place of business located at San Francisco, Calif.; respondent Binswanger and Co., a corporation, with its principal office and place of business located at Richmond, Va. The above named members of said association do not constitute the entire membership thereof but are representative members of said association. All members of said association were also made respondents herein, as a class, of which those specifically named are representative of the whole. Said respondent members are hereinafter collectively referred to for convenience as "respondent distributors."

Respondent manufacturers, except respondent Pittsburgh Plate Glass Co., are associate members of said respondent National Glass Distributors Assn. Respondent Pittsburgh Plate Glass Co. is a member of said respondent association with approximately seventy distributing establishments, for thirty-eight of which it holds a full membership in said association.

PAR. 4. Respondent Pittsburgh Plate Glass Co. is engaged in the business of manufacturing window glass and other glass products, and of selling and distributing the same throughout the United

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States. It maintains and operates factories or manufacturing plants at Creighton, Pa., Ford City, Pa., Ellwood, Ind., Kokomo, Ind., Crystal City, Mo., Mt. Vernon, Ohio, Clarksburg, W. Va., and Henryetta, Okla. It also maintains and operates approximately seventy warehouses located in many different States of the United States, from which it sells and distributes its manufactured glass products to dealers and consumers located in the same and different States. In the sale and distribution of its glass products respondent causes the same to be shipped and transported from its said factories to such warehouses and to purchasers in the various States and from the said warehouses to buyers located in many cases in States other than the State in which such warehouse is located. The major portion of respondent's said products are so transported from one State to another and between and among the several States of the United States. In the course and conduct of its said business, said respondent is engaged in making sales of and distributing its said products in the course of interstate commerce. Said respondent in numerous cases sells its glass products to distributors who are in competition with it in the sale of such products to other dealers and consumers.

PAR. 5. Respondent Libbey-Owens-Ford Glass Co., American Window Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Schohy Sheet Glass Co., Blackford Window Glass Co., and Harding Glass Co., are and each of them is engaged in the business of manufacturing window glass and flat glass products and of distributing and selling the same in many different States of the United States. Certain of these respondents manufacture and sell other glass products. In the course and conduct of their respective businesses, said respondents and each of them causes to be shipped and transported the products so manufactured by them from the place of manufacture to, into and through States of the United States other than said State of manufacture, and receive and accept orders for such products which are filled by the shipment of such goods, to, into and through the various States of the United States. Each of said respondents is engaged in making sales of and distributing their said products in the course of interstate commerce.

PAR. 6. Respondent Fourco Glass Co. owns the capital stock of and controls respondent Harding Glass Co. Respondent Fourco Glass Co. is engaged in the business of selling and distributing the window glass manufactured by respondents Harding Glass Co., Adamston Flat Glass Co., Rolland Glass Co., Schohy Sheet Glass Co., and Blackford Window Glass Co. In the course and conduct of its business said respondent Fourco Glass Co. sells the products of said named respondents and acts generally as an exclusive selling agent for

them on a commission basis. In the sale and distribution of said products respondent Fourco Glass Co. accepts orders for the same from purchasers and allocates said orders among and transmits them to said manufacturers. Said orders are so accepted from and transmitted to and through States of the United States other than the State of West Virginia, where said respondent has its principal place of business. Respondent Fourco Glass Co. is engaged in selling and distributing said products in the course of interstate commerce.

PAR 7. Respondent manufacturers are in competition among themselves, except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition among them forestalled by their practices and methods hereinafter particularly described and set forth. There are other manufacturers of glass products, particularly window glass, who sell and distribute said products in the various States of the United States, and who, in the ordinary course of their business, seek the same customers that are sought by one or more of respondent manufacturers. These nonmember manufacturers also cause their glass products to be shipped and transported from the various points of production or importation in certain States through and into other States of the United States. They are also in competition among themselves and with respondent manufacturers except insofar as their said competition has been hindered, lessened, restricted, or restrained or potential competition forestalled as a result of the use by respondent manufacturers of the practices and methods hereafter described. Respondent The Window Glass Manufacturers Association and its officers and directors are not engaged in commerce, but are engaged in unfair methods, hereafter described, which directly affect competition among respondent manufacturers, and also directly affect competition in the sale of window glass and other glass products, between and among dealers and distributors who sell said products for the manufacturer or buy them for resale and resell the same in commerce in and among the various States of the United States.

PAR. 8. Respondent National Glass Distributors Association was organized in 1914 for the avowed purpose of promoting the general welfare of its members engaged in the window glass jobbing business. Its membership purports to be limited to any form of enterprise (including jobbing warehouses owned, operated or controlled by manufacturers) whose business consists of the purchasing for resale of flat glass from manufacturers (foreign and domestic); and the selling of same to glass dealers and to other wholesale buyers who purchase such products for resale and/or utilization; the warehousing and maintaining of such products in jobbing establishments

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commensurate with the needs of the community and the incidental rehandling, cutting, processing, or otherwise working or handling such products, excluding such processing as changes the products of this trade into the products of another trade or industry; but said membership includes some manufacturers; and also includes enterprises who do not do business in the manner stated, do not have the facilities specified, and who sell to consumers. The membership is divided into five (5) divisions covering the United States: Eastern Division with approximately 34 members; Western Division with approximately 66 members; Pacific Coast Division with approximately 17 members; Southeast Division with approximately 11 members; Southwest Division with approximately 27 members; and Rocky Mountain Division with approximately 6 members. The activities and policies of said association are directed by its officers and executive committee. Said association and its officers and executive committee are not engaged in commerce but are engaged in unfair methods, as hereafter described, which directly and substantially affect competition among manufacturers and among distributors and dealers selling and distributing glass products in interstate commerce in the United States.

PAR. 9. Respondent distributors, being the members of The National Glass Distributors Association, are in competition with one another in the sale or resale and distribution of glass products to dealers and consumers in the various localities and trade areas in the United States in which they respectively operate, except insofar as their said competition has been hindered, lessened, restricted or restrained or potential competition among them forestalled by their practices and methods hereinafter specifically described and set forth. There are numerous other dealers and distributors dealing in glass products who are engaged in the resale and distribution of such products to dealers and consumers in the various localities and trade areas in the United States in competition with one another and with one or more of respondent distributors, except insofar as such competition has been hindered, lessened, restricted or restrained by or potential competition among them forestalled by the use by respondent distributors and the other respondents named herein of the practices and methods hereafter described. All or nearly all of respondent distributors and their competitors above mentioned are engaged in purchasing glass products which are transported from one State to and through other States as a result of such purchases and in reselling said products in many instances to buyers ordering such products for delivery in States other than the State in which the seller and the product are located when the

order is so placed. All of said respondent distributors are engaged in unfair methods, as hereafter set forth, which directly and substantially affect competition among themselves, and between themselves and other dealers, and among manufacturers of glass products.

PAR. 10. Respondent manufacturers above named, who constitute the membership of respondent Window Glass Manufacturers' Association, own and control practically all of the factories producing window glass in the United States and produce most of the window glass sold and distributed in this country. Such respondent manufacturers are able to influence the prices and terms at which and conditions under which window glass is sold by manufacturers throughout the United States. Said members of respondent National Glass Distributors Association constitute a group of distributors so large and influential in the trade as to be able by themselves and in cooperation with respondent manufacturers to influence the flow of trade and channels of distribution in window glass throughout the country, as well as the prices at which, and the terms and conditions under which distributors of window glass buy such products.

PAR. 11. Respondent officers, directors, and members of the Window Glass Manufacturers' Association have been associated and allied together in said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, hereinafter more particularly described. Respondent officers, executive committeemen and members of respondent National Glass Distributors' Association have been likewise associated and allied together in their said association to carry into effect certain policies, practices and methods relating to the sale and distribution of window glass, also hereinafter more specifically described. Said respondent officers, directors, executive committeemen, and members form and control the policies of their respective associations and act collectively and concertedly through said associations as a medium of making the same effective.

PAR. 12. Respondents named herein have since about 1935 agreed and conspired, combined and confederated together and with others, and have united in and pursued a common and concerted course of action and undertaking, among themselves and with others, to adopt, follow, carry out, enforce and maintain throughout the United States, certain policies, sales methods, and trade practices, hereinafter described, which said respondents have agreed to and adhered to themselves and which they have attempted to and have, by coercion and compulsion imposed upon glass distributors and dealers who were not permitted to be or did not desire to be members of respondent distributors association, and others, to the actual or potential

injury of some of such distributors and dealers and of ultimate purchasers and consumers of glass generally.

PAR. 13. The said policies, sales methods and trade practices referred to in the preceding paragraph and which were so adopted and put into effect are as follows:

1. A policy and practice by which all buyers of window glass from respondent manufacturers were classified either as "quantity buyers" defined as buyers purchasing a minimum of from 3,000 to 5,000 50-foot boxes of window glass for stock per year, or "carload lot buyers," and a list of such quantity buyers was formulated, printed and circulated among respondents.

2. A policy and practice by which each of respondent manufacturers published only one window glass price list, showing prices to those classified as "quantity buyers" only and issued to and intended for use by such "quantity buyers" exclusively.

3. A policy and practice as a result of which price lists for window glass to "carload lot buyers" were published exclusively by respondent National Glass Distributors' Association, and distributed only by the members of said association.

4. A policy and practice by which all "carload lot buyers" and other buyers except those classified as "quantity buyers" and placed on the "quantity buyers" list were required and compelled to purchase window glass from such so-called "quantity buyers" or from respondent manufacturers through such "quantity buyers."

5. A policy and practice by which all "carload lot buyers" and other buyers except those classified as "quantity buyers" were required and compelled to pay up to 7½% more for window glass of the same grade and quality than the price quoted to and paid by those classified as "quantity buyers."

6. A policy and practice of agreeing that on sales of window glass to carload lot buyers, the manufacturers were to receive 2½% and the quantity buyers 5% over the quoted list price charged quantity buyers by the manufacturers.

7. A policy and practice by which sales of window glass by those classified as "quantity buyers" were confined to a restricted trade area of the particular authorized "quantity buyer" and such particular "quantity buyer" accepted no orders or rarely accepted orders for window glass for transmission to the manufacturer from dealers located outside a designated trade area.

8. A policy and practice by which admittance to such list of "quantity buyers" was granted or denied only after complete investigation by the secretary of the respondent Window Glass Manufacturers

Association to determine eligibility as quantity buyers, the final decision being made by the association.

9. A policy and practice of precluding any two or more dealers from making pooled purchases of window glass in carload lots.

10. A policy and practice of precluding a carload lot buyer of window glass from reconsigning or diverting said carload to some other dealer.

11. A policy and practice of supervising and directing the practices and policies of dealers reselling window glass to other dealers and consumers, and generally of controlling distribution and outlets for such product.

12. Generally, a policy and practice which tended to lessen and restrain competition in the sale and distribution of window glass in the United States.

PAR. 14. That for the purpose of making such sales practices and policies and pricing methods effective, and of requiring compliance therewith and observance thereof by all dealers in window glass throughout the United States, said respondent associations, acting through their officers, directors and executive committee, and with the knowledge, consent, approval, and active cooperation and participation of respondent members and other members, and the individual respondents named herein or one or more of them, acting in furtherance of and in pursuance of the general plan, undertaking, conspiracy, and policy, have done the following things:

1. Formulated, adopted, followed, carried out, enforced, imposed, and made effective the policies, practices, and methods described in the preceding paragraph.

2. Held official and unofficial meetings of said associations at which the policies and practices hereinabove described were discussed, adopted, and agreed to, and issued and distributed bulletins, circulars, letters, and other printed matter, and distributed the same among the members of said association and others, announcing the adoption of and the intention to adhere to the policies and practices referred to.

3. Classified all buyers of window glass from manufacturers throughout the United States either as "quantity buyers" or "carload lot buyers."

4. Each of respondent manufacturers has published a single window glass price list quoting prices to approved "quantity buyers" only and issued said price lists to such "quantity buyers" exclusively.

5. Respondent National Glass Distributors Association has issued price lists for window glass to "carload lot buyers" for glass to be purchased from respondent manufacturers.

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6. Respondent manufacturers have refused to sell window glass in carload lots directly to any buyer except approved "quantity buyers."

7. Respondents generally have issued bulletins, circulars and other printed matter listing the names and addresses of authorized "quantity buyers" and setting forth the plan and policy which would be followed in marketing window glass to dealers in the United States.

8. Respondents generally have sought and obtained promises and assurances of cooperation from one another in establishing and making effective the sales practices, policies and pricing methods hereinabove described.

9. Respondent manufacturers have indirectly sold window glass to numerous "carload lot buyers" at prices $7\frac{1}{2}\%$ more than the prices at which sales were made to "quantity buyers" for glass of the same grade and quantity.

10. Respondent manufacturers have referred orders for carloads of window glass from "carload lot buyers" to so-called "quantity buyers" and filled such orders by direct shipment to the carload lot buyer with a $2\frac{1}{2}\%$ mark-up over the manufacturers' list price, and with the understanding that said quantity buyers would add and receive an additional mark-up of 5%.

11. Respondent distributors have induced respondent manufacturers to grant them discriminatory prices as hereinbefore stated and have received and accepted such discriminatory prices.

12. Respondents generally have exchanged information with reference to their respective businesses and activities which was used in furtherance of the policies and methods referred to.

13. Respondents generally have supervised and investigated the practices and policies of dealers engaged in reselling window glass to other dealers and to consumers and the prices at which such product was so resold to effectuate the practices herein found to have been used; and have prevented some dealers who did not conform to their practices, policies and prices from buying window glass at the manufacturers' list price or in carload lots, and have acted concertedly to control channels of distribution and to require dealers to conform to such practices and methods.

PAR. 15. The capacity, tendency and effect of said plan, agreement, combination, conspiracy, undertaking, policies and methods, and the said acts and practices of said respondents in pursuance thereof, are and have been:

1. To tend to concentrate in said quantity buyers the opportunity to purchase window glass from the manufacturers at the manufacturers' discount from the list price.

2. To standardize the prices at and conditions under which window glass is sold by the manufacturers in carload lots to other than those classified as quantity buyers.

3. To bring about an unlawful discrimination in the prices at which window glass is sold by the manufacturers to different purchasers.

4. To unreasonably lessen, eliminate, restrain, stifle, hamper, and suppress competition in the window glass trade and industry and to tend to deprive the purchasing and consuming public of advantages in price, service and other considerations which they would receive and enjoy under conditions of normal and unobstructed or free and fair competition in said trade and industry; and to operate as a restraint upon and a detriment to the freedom of fair and legitimate competition in such trade and industry.

5. To tend to increase the cost to purchasers of such window glass.

6. To discriminate against small business enterprises which are engaged or desire to engage in selling or distributing window glass.

7. To tend to obstruct the establishment of new distributors of window glass.

8. To tend to lessen and restrain price competition among manufacturers in the sale of window glass in carload lots to other than quantity buyers.

9. To burden, hamper, and interfere with the normal and natural flow of trade and commerce in window glass, into, through and from the various States of the United States; and to injure the competitors of individual distributor-respondents by unfairly diverting business and trade from them, and otherwise depriving them unfairly of competitive advantages which they would receive under conditions of free and open competition.

10. To prejudice and injure dealers, distributors and others who do not conform to respondents' program or methods or who do not desire to conform to them, but are compelled to do so by the concerted action of respondents herein.

PAR. 16. All of the respondents herein named have since sometime prior to June 19, 1936, conspired and confederated together to bring about and have brought about and have made effective a policy and system whereby respondent manufacturers discriminate and have discriminated in price between different purchasers of window glass of like grade and quality, in the manner hereinabove set forth, with the effect of lessening competition between and among manufacturers in said line of commerce and with the effect of injuring, destroying and preventing competition between and among such

Conclusion

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"quantity buyers" and such "carload lot buyers" and between and among the customers of such buyers purchasing such product for resale to consumers.

PAR. 17. In the course and conduct of their respective businesses as above described, respondent manufacturers since sometime prior to June 19th, 1936, have discriminated in price between different purchasers buying window glass of like grade and quality in interstate commerce for resale to dealers and consumers, by charging some of their said purchasers of window glass higher prices than those charged other of their said purchasers, competitively engaged one with the other in the resale of said products within the United States. Said discriminations consist in the imposition of a markup of $2\frac{1}{2}\%$ by the manufacturer upon all "carload lot buyers" over and above the manufacturers' list price at which window glass has been and is being sold to the so-called "quantity buyers."

PAR. 18. Respondent members of the National Glass Distributors' Association have knowingly induced said respondent manufacturers to so discriminate in price as set forth in the preceding paragraph hereof and have knowingly received such discriminations in price on purchases of window glass made by them.

PAR. 19. The general effect of said systematic discriminations in price so made by respondent manufacturers and induced and received by respondent distributors has been or may be substantially to lessen competition and tend to create a monopoly in the sale and distribution of window glass and to injure, destroy and prevent competition between and among respondent distributors and their competitors and between and among customers of each.

CONCLUSION

The aforesaid acts and practices of respondents have a dangerous tendency unduly to hinder competition in the window glass trade throughout the United States, and to create a monopoly thereof in the hands of respondents and constitute unfair methods of competition in commerce within the 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 26th, 1914; and the acts and practices set forth in paragraphs 16 to 19 inclusive of the said respondents are in violation of Section 2 (a) and Section 2 (f) of said Act of Congress approved June 19, 1936, entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October

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15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer filed herein on October 26, 1937, by respondents, admitting all the material allegations of the complaint, except those contained in sub-paragraphs 14 and 15, paragraph 13, sub-paragraphs 11 and 16 of paragraph 14 and sub-paragraph 10 of paragraph 15 of said complaint, for the purpose of this proceeding only, and waiving the taking of further evidence and other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said 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"; and the provisions of an Act of Congress approved June 19, 1936 entitled "An Act to amend Section 2 of the Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Section 13), and for other purposes."

It is ordered, That respondent, The Window Glass Manufacturers Association, and its officers, directors, and members, in connection with the manufacture, sale and distribution of window glass in interstate commerce by respondents, Pittsburgh Plate Glass Company, Libbey-Owens-Ford Glass Company, American Window Glass Company, Fourco Glass Company, Harding Glass Company, Adamston Flat Glass Company, Rolland Glass Company, Seohy Sheet Glass Company, and Blackford Window Glass Company, or either or any of them, forthwith cease and desist:

1. From combining or conspiring among themselves or with other respondents to engage in, or pursuant to any such combination or conspiracy, directly or indirectly, from engaging in, any of the following acts, practices, or policies:

1. Formulating, adopting, or using any standard of classification of jobbers, wholesalers, or distributors dealing in window glass to be used as a test of eligibility for such dealers to purchase window glass from the manufacturers thereof;

2. Compiling or publishing any list of jobbers, wholesalers, or distributors for use by members of said Window Glass Manufacturers Association or other manufacturers for the purpose of accomplishing anything prohibited by this order.

3. Investigating, or collecting or disseminating information concerning the pricing policies, trade practices, facilities, or function of any jobber, wholesaler, or distributor dealing in window glass for the purpose of accomplishing anything prohibited by this order.

4. Collectively selecting the customers to whom members of said Window Glass Manufacturers Association will make direct sales of window glass;

5. Hindering, obstructing or preventing any jobber, wholesaler, or distributor from freely purchasing or obtaining window glass usually handled by members of the said Window Glass Manufacturers Association in the course of their business, or from freely competing with the members of the National Glass Distributors Association or others engaged in similar business;

6. Hindering, obstructing, or preventing two or more jobbers, wholesalers, or distributors from pooling purchases of window glass, or from reconsigning or diverting purchases of window glass;

7. Hindering, obstructing or preventing any jobber, wholesaler or distributor from purchasing or ordering window glass in carload lots from any manufacturer and directing the manufacturer to ship it to any desired designated point.

8. Giving oral, written, or other notices or communications to jobbers, wholesalers, or distributors dealing in window glass that any business concern is not entitled to purchase and obtain window glass upon the same terms and conditions usually accorded by members of the Window Glass Manufacturers Association to their customers generally.

9. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor dealing in window glass from dealing with one or more of the members of the Window Glass Manufacturers Association upon as favorable terms and conditions as are usually accorded by said manufacturers to their customers generally.

10. Cooperating with or aiding any jobber, wholesaler, or distributor in putting into effect any understanding or agreement to add any amount to the manufacturer's price for window glass in carload lots for direct shipment in order to arrive at the invoice price of such glass to the purchaser thereof.

It is further ordered, That respondent, The National Glass Distributors Association, its officers, executive committee, and members, in connection with the purchase, sale and distribution of window glass in interstate commerce by the members of said Association, or either or any of them, forthwith cease and desist:

From combining or conspiring among themselves or with others, to engage in, or pursuant to any such combination or conspiracy,

directly or indirectly, from engaging in, any of the following acts, practices or policies:

1. Inducing, persuading, or compelling members of respondent Window Glass Manufacturers Association to, or themselves formulating, adopting or using any standard of classification of jobbers, wholesalers, or distributors dealing in window glass or any test of eligibility for such dealers to purchase window glass from the manufacturers thereof, or classifying jobbers, wholesalers, or distributors dealing in window glass as quantity buyers and carload buyers;

2. Compiling or publishing any list of jobbers, wholesalers, or distributors for use by members of said Window Glass Manufacturers Association or other manufacturers, or investigating, collecting, or disseminating information concerning the pricing policies, trade practices, facilities, or function of any jobber, wholesaler, or distributor dealing in window glass for the purpose of accomplishing anything prohibited by this order;

3. Agreeing upon any amount to be added by them to the manufacturers' price for window glass in carload lots for direct shipment, in order to arrive at the invoice price of such glass to the purchaser thereof;

4. Coercing or compelling certain jobbers, wholesalers, or distributors dealing in window glass to purchase window glass in carload lots from or through other competing jobbers, wholesalers, or dealers;

5. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor from freely purchasing or obtaining window glass usually handled by members of said Window Glass Manufacturers Association in the course of their business, or from freely competing with the members of the National Glass Distributors Association or others engaged in similar business;

6. Aiding, assisting or encouraging members of the Window Glass Manufacturers Association collectively to select the customers to whom they will make direct sales of window glass in carload lots;

7. Hindering, obstructing, or preventing two or more jobbers, wholesalers, or distributors from pooling purchases of window glass, or from reconsigning or diverting purchases of window glass;

8. Giving oral, written, or other notices or communications to manufacturers of window glass, that certain business concerns are not entitled to purchase and obtain window glass upon the same terms and conditions usually accorded by manufacturers to their customers generally;

9. Hindering, obstructing, or preventing any jobber, wholesaler, or distributor dealing in window glass from dealing with one or more of the members of the Window Glass Manufacturers Associa-

tion upon as favorable terms and conditions as are usually accorded by said manufacturers to their customers generally;

10. Inducing, persuading, or compelling any manufacturer of window glass to charge any jobber, wholesaler, or distributor more for window glass than the price usually accorded their customers generally;

11. Inducing, persuading, or compelling any jobber, wholesaler, or distributor to refrain from selling or accepting orders for window glass in carload lots for shipment to points outside of a certain restricted trade territory, designated or agreed upon.

It is further ordered, That respondents, Pittsburgh Plate Glass Company, Libbey-Owens-Ford Glass Company, American Window Glass Company, Fourco Glass Company, Harding Glass Company, Adamston Flat Glass Company, Rolland Glass Company, Scohy Sheet Glass Company, and Blackford Window Glass Company forthwith cease and desist from:

1. Discriminating in price between carload lot purchases of window glass, to whom shipment is made direct from the factory, by charging some of such purchasers, or causing them to be charged, two and one-half percent more than the price charged other of such purchasers for window glass of the same grade and quality, and of comparable strength, sizes, and kinds.

2. Discriminating in price between carload lot purchasers of window glass, to whom shipment is made direct from the factory, by charging some of such purchasers any amount more than the price charged other of such purchasers for window glass of the same grade and quality and of comparable strength, size and kinds, in violation of Section 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, but the foregoing is not intended to prevent the jobbing warehouses of a manufacturer, whose functions parallel those of an independent jobber, from selling carload lots on a brokerage basis at prices commonly obtained by such independent jobbers.

It is further ordered, That respondent members of the National Glass Distributors Association forthwith cease and desist from:

1. Receiving or accepting any discriminatory price or the benefit of any discrimination in price prohibited by the preceding section of this order;

2. Inducing or attempting to induce any manufacturer of window glass to discriminate in price in the manner prohibited by the preceding section hereof.

It is further ordered, That the respondents shall, within 60 days after service upon them of this order, file with the Commission a

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report in writing setting forth in detail the manner and form in which they have complied with this order.

ORDER DISMISSING AS TO CERTAIN RESPONDENTS

This matter coming on to be heard by the Commission upon the record, and it appearing to the Commission that respondents Frank Bastin and S. C. Gilmore, named in the complaint in this proceeding, are deceased and that the Commission being fully advised in the premises;

It is ordered, That the complaint herein as against said respondents Frank Bastin and S. C. Gilmore be, and the same hereby is, dismissed.

IN THE MATTER OF
THE WM. M. HARDIE COMPANY

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

Docket 3209. Complaint, Aug. 21, 1937—Decision, Nov. 1, 1937

Where a corporation engaged in manufacture and sale of candy, including certain assortments which were so packed and assembled as to involve, or which were designed to or might involve, use of a lottery scheme when sold and distributed to ultimate consumers thereof, and which were composed of two packages separately packed, as a subterfuge and in an effort to avoid effect of selling candy to be distributed by lottery scheme, and sometimes separately billed, but with knowledge and intent that assortments might be, and in many cases would be, resold at retail by lottery scheme, and containing, respectively, number of small penny pieces of uniform size and shape, a few of which had centers of a color different from that of those of majority, and number of larger pieces or bars of candy, to be given without charge to those securing, by chance, one of said penny pieces, colored center of which differed, as aforesaid, from that of the majority of pieces—

Sold, to wholesalers, jobbers, and retailers, for display and resale to purchasing public in accordance with aforesaid sales plan, said assortments, and thereby supplied to and placed in the hands of others the means of conducting, and by which they did conduct, lotteries in the sale of its said products in accordance with such plan, contrary to public policy long recognized by the common law and criminal statutes and to an established public policy of the United States Government, and in competition with many who, unwilling to offer or sell candy so packed and assembled as above described, or otherwise arranged and packed for sale to purchasing public, as to involve a game of chance, refrain therefrom;

With capacity and tendency to induce purchasers to buy its said product in preference to candy offered and sold by its competitors, and with result that many dealers in and ultimate purchasers of candy were attracted by said method and manner of packing same and by element of chance involved in sale thereof as above described, and were thereby induced to purchase its candy, so packed and sold by it, in preference to that offered and sold by its competitors who do not use same or equivalent method, and with tendency and capacity, because of said game of chance, to divert trade and custom from its competitors as aforesaid, exclude from candy trade all competitors who are unwilling to and do not use such or an equivalent method as unlawful, lessen competition therein, and tend to create a monopoly thereof in it and such other distributors as do use same or equivalent method, deprive purchasing public of benefit of free competition in trade in question, and eliminate from said trade all actual, and exclude therefrom all potential competitors who do not adopt and use such or an equivalent method: