

Syllabus

IN THE MATTER OF

GOODERHAM & WORTS, LTD., ET AL.

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

Docket 2989. Complaint, Nov. 23, 1936—Decision, June 10, 1938

Where a corporation engaged in the sale, between and among the various States and in the District of Columbia, of certain brands of whiskies and other alcoholic beverages, in part made and sold to it by a Canadian corporate affiliate and in part thus made and sold to it by a similar Michigan affiliate, and with sales distribution offices in New York, Chicago, Denver, and San Francisco, and in substantial competition, in sale of such products, with others thus engaged, and selling, excepting such sales as made to vendees owned or controlled by State monopolies, to carefully chosen wholesale distributors, for resale to package-store retailers, bars, and other retailers, and to wholesale distributors in the District of Columbia, upon the definite understanding and agreement that they would observe the distiller's suggested wholesale prices, set forth in price lists supplied by it to such various distributors and scheduling its prices to the wholesaler and its suggested wholesale prices to the retailer, and latter's suggested retail prices to ultimate purchaser or consumer, and would sell only to retailers who observed the suggested retail prices at which they were to sell said liquors;

In pursuance of a system or policy of merchandising, adopted to stabilize and make uniform retail prices of its said products in the District of Columbia, and whereby it fixed specified standard and uniform resale prices, discounts, and mark-ups at which its said products should be resold by wholesalers and retailers in said District, and under which it received and accepted the active support and cooperation of such wholesale and retail dealers in the maintenance of such retail prices, etc., and in order to carry out and make effective said system or policy—

- (a) Entered into agreements or understandings with wholesale and retail dealers and others in said District purporting to bind them to maintain its said retail prices, discounts, and mark-ups, and obtained and accepted the cooperation of such wholesalers, etc., in the maintenance of such prices, etc., and prevented wholesalers and retailers in said District, by virtue of such agreements or understandings, from reselling said products in said District at prices lower than said minimum resale prices thus fixed by it; and
- (b) Entered into agreements with its wholesale distributors in said District whereby (1) such distributor agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by it; to sell such products at a uniform fixed price to retailers and allow no discounts from lists of prices suggested by it; to cut off supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain such suggested minimum resale prices; to dismiss salesmen found offering or giving a discount or part of their commission to retailers; to report to it names of wholesalers who offered or were suspected of offering discounts to retailers; and to cut off supplies from price-cutting

retailers, and not reinstate them until such reinstatement had been authorized by it; and (2) it agreed to cooperate, with aid of its missionary men and other representatives, in securing and furnishing all necessary information to enforce the suggested prices; to drop from its list of distributors those found offering or giving a discount from its suggested price lists; and to supply its distributors with a list of those retailers who did not maintain minimum resale prices suggested; and in furtherance of aforesaid agreements or understandings,

- (c) Instructed its employees to report to it those distributors in said District who violated such agreements and all retailers who failed to maintain therein suggested uniform minimum resale prices, and received and acted upon such reports;
- (d) Cut off the supplies of price-cutters, to the end that its supply of products on hand with retail liquor dealers and others cutting said prices might become exhausted; and
- (e) Generally, by various other methods and means, carried into effect in said District aforesaid agreements or understandings with its wholesale distributors and retail dealer vendees in said District, to the end and with the effect of maintaining a fixed, specified, standard and uniform system of resale prices, discounts, and mark-ups at which its said products should be sold and resold as above set forth; and
- (f) Reinstated and caused to be reinstated offending price cutters of its products upon their agreement or understanding that in the future they would observe said system or scale of resale price maintenance suggested by it, by the aforesaid means and methods; and
- (g) With intent and effect of obtaining and maintaining a fixed, uniform, minimum resale price for liquors sold in and shipped into said District for resale, combined, cooperated, and agreed with certain of its wholesale distributors and retail dealer vendees to enforce, therein, its aforesaid suggested uniform minimum resale price maintenance system and policy, and agreed that (1) retail dealers' profit should be made uniform by fixing and maintaining a uniform minimum price for liquor, and that uniform prices should be maintained by certain retail dealers; (2) only such retail dealers as promised to maintain uniform minimum resale prices should be supplied with its products; and (3) wholesalers should be notified not to supply any price cutting retailers; and, pursuant to and in execution of such combinations, agreements or understandings, and with intent and effect of making them effective in said District,
- (h) Fully performed, on its part, and carried out aforesaid understandings or agreements by adopting, establishing and maintaining aforesaid policies of merchandising with relation to liquors sold in such District and liquors shipped for resale therein, whereby specified standard and uniform minimum resale prices, discounts and mark-ups were fixed at which its said products should be and were resold by wholesalers, jobbers, retailers, and others in said District;

With result that competition was suppressed among such wholesalers, jobbers, and retailers in distribution and sale of its said products, said jobbers, etc., were caused to sell the same at the prices suggested by it pursuant to understandings or agreements had with its wholesale distributors and others in such District, and they, and each of them, were prevented from selling said products at such lower prices as they might deem adequate and

warranted by their respective selling costs and competitive trade conditions generally, and purchasers of said products were deprived of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce therein, and with tendency thereby unduly to hinder and suppress competition in the resale of such products in said District and in shipment thereof for resale therein to consuming public:

Held, That such acts and practices were to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. PGad B. Morehouse for the Commission.

Covington, Burling, Rublee, Acheson & Shorb, of Washington, D. C., for Gooderham & Worts, Ltd.

Mr. Seymour Groshut, of New York City, for Greater New York Licensed Liquor Stores Ass'n, Inc.

Mr. Manuel J. Davis, of Washington, D. C., for D. C. Exclusive Retail Liquor Dealers Ass'n, and along with *Mr. Herman C. Silverstein* of Jersey City, N. J., for National Retail Liquor Package Stores Ass'n.

Mr. Daniel J. Young, of Boston, Mass., for Metropolitan Boston Retail Liquor Package Stores Ass'n, and its officers and members.

Mr. Herman C. Silverstein, of Jersey City, N. J., for New Jersey Retail Liquor Package Stores Ass'n and Augustine L. Waldron.

Weissman & Maretz, of New Haven, Conn., for Connecticut Retail Liquor Package Stores Ass'n, Inc.

Mr. Clarence P. Goldberg, of New York City, for National Institute of Wine & Spirit Distributors, Inc.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that each and all of the parties named in the caption hereof, hereinafter referred to as respondents, have been and are using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Gooderham & Worts, Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office and place of business at 1930 E. Jefferson Street, in the city of Detroit, in the State of Michigan. It is now, and for more than one year last past has been, engaged in the business of selling, in constant course of trade

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and commerce between and among the various States of the United States and in the District of Columbia, certain brands of whiskies and alcoholic beverages. It is a wholly owned subsidiary of Gooderham & Worts, Ltd., a Canadian corporation. Both the said Canadian corporation and the said respondent are engaged in the manufacture and sale of certain brands of whiskey, gin, and other alcoholic beverages. The said respondent imports certain of the Canadian brands manufactured by its parent company aforesaid into the United States for sale and distribution there. It has, and maintains, in the United States four sales distribution offices, in New York, N. Y.; Chicago, Ill.; Denver, Colo.; and San Francisco, Calif. In the course and conduct of its said business it causes the aforesaid liquors, when sold, to be transported from Canada, and from the States of New York, Illinois, Michigan, Colorado, and California, into and through various other States of the United States to the purchasers thereof, consisting of wholesale distributors and retailers located in other States of the United States and the District of Columbia; and in the conduct of its said business, this respondent has been, and is, in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale of whiskies and other alcoholic beverages in commerce between and among various States of the United States and the District of Columbia.

Respondent Greater New York Licensed Liquor Stores Association, Inc., is an incorporated trade association of retail liquor dealers located and doing business in the State of New York, organized, existing, and doing business under and by virtue of the laws of the State of New York, having its office and principal place of business at 1819 Broadway, in the city of New York, in said State. Said Association has about 300 members engaged in the retail sale of packaged liquors, including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. It is now, and has been for more than one year last past, engaged in the business of attempting to procure and obtain State and national legislation by it deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others, with respect to sales of all liquors, and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent D. C. Exclusive Retail Liquor Dealers Association is an incorporated trade association of retail liquor dealers located and doing business in the District of Columbia, said corporation having been organized, existing, and doing business under and by virtue of the laws of the United States for the District of Columbia, having its office and principal place of business at Room 829, Wood-

ward Building, in the District of Columbia. Said Association has about 120 members engaged in the retail sale of packaged liquors, including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. It is now, and for more than one year last past has been, engaged in the business of attempting to procure state and national legislation by it deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others, with respect to the sales of all liquors; and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent Metropolitan Boston Retail Liquor Package Stores Association is a voluntary unincorporated trade association, having its principal office and place of business at No. 18 Tremont Street, in the city of Boston, State of Massachusetts. Said Association consists of about 93 percent of all dealers in the said city engaged in the retail sale of packaged liquors, including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. All of the members of said Association are not known to the Commission. Those of its officers, executive committee, and representative members who are known and can be conveniently reached are respondents Matt Patterson, president; David R. Shir, secretary; William S. Huber, treasurer; and Samuel Levy, Joseph Balter, Samuel Berkman, William Dorr, Benjamin F. Folsom, William Gaffney, Joseph Hines, Charles H. Mahoney, A. J. McDonald, John McMorow, John F. Murphy, Edward O'Hearn, Benjamin Rodman, Louis Rose, Edward Sliney, Benjamin Starr, and Joseph A. Vesce, the latter seventeen respondents being representative members constituting the executive committee of said Association. All the other members of said Association are hereby made respondents without being individually named because they constitute a class too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. Said Association, its officers, executive committee, and all its members, jointly and severally, are now, and for more than one year last past have been, engaged in the business of attempting to procure state and national legislation by them deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others with respect to the sales of all liquors; and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent National Retail Liquor Package Stores Association is a corporation organized, existing, and doing business under and by

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virtue of the laws of the State of New York, with its principal office and place of business at No. 11 West 42nd Street, in the city of New York, in said State. It is now, and for more than one year last past has been, engaged in promoting the organization of local retail liquor dealers associations in various States of the United States and the District of Columbia; in attempting to obtain favorable legislation affecting retail liquor dealers, and to assist such local organizations, including those associations named as respondents herein, in enforcing observance of price maintenance policies in the retail liquor industry. In the course and conduct of its business it exacts and receives a fee of 50 cents from each member of the said local associations, and said National Retail Package Stores Association acts as the agent for the other respondent associations herein named, in assisting and promoting the aims and objects of said other associations.

Respondent New Jersey Retail Liquor Package Stores Association is a voluntary unincorporated trade association of approximately 600 retail liquor dealers located and doing business in the State of New Jersey, with its principal office and place of business at No. 17 North Warren Street in the city of Trenton in said State. Said members are engaged in the retail sale of packaged liquors, including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. All of the members of said Association are not known to the Commission. The only officer and member thereof who is known and who can be conveniently reached is the respondent Augustine L. Waldron, president of said Association. All the other members of said Association are hereby made respondents without being individually named, because they constitute a class too numerous to be brought before the Commission in this proceeding without manifest inconvenience and delay. Said Association, its officers, and all its members, jointly and severally, are now, and for more than one year last past have been, engaged in the business of attempting to procure State and national legislation by them deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others, with respect to the sales of all liquors; and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent Connecticut Retail Liquor Package Stores Association, Inc., is an incorporated trade association of retail liquor dealers located and doing business in the State of Connecticut, said corporation having been organized, existing, and doing business under and by virtue of the laws of the State of Connecticut, with its principal

office and place of business at No. 129 Church Street, in the city of New Haven, State of Connecticut. Said Association has about 325 members engaged in the retail sale of packaged liquors including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. It is now, and for more than one year last past has been, engaged in the business of attempting to procure state and national legislation by it deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others, with respect to the sales of all liquors; and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

Respondent, National Institute of Wine and Spirit Distributors, Inc., is an incorporated trade association consisting of approximately 110 members who are wholesale jobbers and importers of liquors, said corporation having been organized in 1935 for the purpose of joining all organizations of a similar name into one national organization. Said corporation was organized, exists, and does business under and by virtue of the laws of the State of New York, and has its office and principal place of business at No. 120 East 41st Street, in the city of New York, in said State. Its members are engaged in the wholesaling of various brands of alcoholic liquors, including the whiskey and other liquor products sold and distributed by respondent Gooderham & Worts, Ltd. It is now, and for more than one year last past has been, engaged in the business of attempting to procure state and national legislation by it deemed to be beneficial; enforcing observance of price maintenance policies by its own membership and others, with respect to the sales of all liquors; and otherwise promoting the common business interests and joint welfare of its respective members for their mutual profit and advantage.

PAR. 2. In the course and conduct of its business as aforesaid, respondent Gooderham & Worts, Ltd. sells and distributes its alcoholic products to carefully chosen wholesale distributors, who, in turn, sell the same to package stores retailers, bars, and other retailers, including other respondents herein named; and furnishes said wholesale distributors with price lists upon which are scheduled respondent's price to the wholesaler, the suggested wholesale price to the retailer, and the retailer's suggested selling price to the ultimate purchaser or consumer; and as hereinafter set out, said liquor is sold to said wholesale distributors by respondent upon the definite understanding and agreement that they will observe the distiller's wholesale prices and will sell only to retailers who observe such suggested retail prices.

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PAR. 3. Respondent Gooderham & Worts, Ltd., in the course and conduct of its aforesaid business, in order to stabilize and make uniform the resale prices of its said products, adopted, established, and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices, discounts, and "mark-up," at which its said products should be resold by wholesalers and retail dealers, and solicited and secured the active support and cooperation of said wholesalers, retail dealers, and the other associations and individuals herein named as parties respondent, individually and collectively, in the maintenance of said resale prices, discounts, and "mark-ups," and in order to carry out and make effective said system or policy, said respondent has entered into unlawful agreements and understandings with wholesalers and retail dealers directly, and through the various trade associations herein named as respondents, purporting to bind said wholesalers, retailers, and trade associations to the maintenance of said resale price discounts, and "mark-up," and soliciting and obtaining their cooperation in the maintenance of such prices, discounts, and "mark-ups." Pursuant to such contracts, understandings, and agreements, this respondent, its wholesale distributors, and the trade associations and individuals herein named as respondents, have undertaken to prevent, and have prevented wholesalers and retail dealers from reselling said products at prices less than the said minimum resale prices fixed by respondent as aforesaid.

Pursuant to such policy, respondent Gooderham & Worts, Ltd., has entered into agreements or understandings with its aforesaid wholesale distributors, whereby:

1. Distributors have agreed with Gooderham & Worts, Ltd., to sell only to such retailers as would agree to resell its products at minimum prices fixed and agreed upon by and between the distributors and the said respondent Gooderham & Worts, Ltd.

2. Distributors agreed to sell respondent's products at a uniform fixed price to retailers, and to allow no discounts from the fixed lists of prices agreed upon.

3. Gooderham & Worts, Ltd., agreed to maintain secret agents for the purpose of enforcing the agreed policies for price fixing.

4. Gooderham & Worts, Ltd., agreed to drop from its list of distributors those found offering or giving a discount.

5. Distributors agreed to dismiss salesmen found offering or giving a discount or part of their (salesmen's) commission to retailer.

6. Distributors agreed to report to respondent Gooderham & Worts, Ltd., the names of wholesalers who offered, or who were suspected of offering, a discount to retailers.

7. Gooderham & Worts, Ltd., agreed to supply its distributors by a prearranged scheme with the names of blacklisted retailers.

8. Distributors agreed to cut off supplies from price-cutting retailers and not to reinstate them until such reinstatement has been authorized by Gooderham & Worts, Ltd.

In furtherance of the aforesaid agreements and understandings, respondent Gooderham & Worts, Ltd., instructed its employees to report to it those distributors who violated such agreements, and all retailers who failed to maintain the uniform minimum resale prices agreed upon; forced out competitive lines of products under threats of discontinuing its supply of products to the wholesale distributors and under threats of taking away the wholesale distributors' franchises; received and acted upon all such reports; "shopped-out" the stocks of retail liquor dealers refusing to observe strictly the said minimum resale prices; cut off the supplies of all "price-cutting" retail dealers; and, generally, by various and divers other methods and means, respondent Gooderham & Worts, Ltd., did carry into effect the aforesaid agreements or understandings with its wholesale distributors and retail dealer vendees to the end and effect of maintaining a fixed, specified, standard, and uniform system of resale prices, discounts, and "mark-ups," at which its products should be sold and resold as aforesaid, and did reinstate offending price-cutting retail dealers of its products upon their agreement and promise that in the future they would strictly observe such system or scale of resale price maintenance thus dictated and forced upon them by respondent Gooderham & Worts, Ltd., by the devices, means, and methods hereinbefore set out.

Said respondent Gooderham & Worts, Ltd., independently and in cooperation with its wholesale distributors, entered into separate agreements and understandings purporting to bind certain selected retailers, and the retail trade associations, all members thereof, and all the other respondents named herein, to maintain resale prices, and in furtherance of such agreement, said respondent, through the instrumentality of its wholesale distributors and their salesmen, employed, among others, the following means:

1. A system of reporting price cutters.

2. Utilizing the information received through such reports to induce and compel the observance of said resale prices by cutting off the supply and refusing to sell its said products to those who did not observe and maintain the said resale prices, discounts, and "mark-ups" fixed by said respondent, or who sold to others who did not maintain the said resale prices, discounts, and "mark-ups" fixed by said respondent.

3. Blacklisting cut-price retailers and instructing distributors to cease supplying such retailers.

4. Making threats to blacklist cut-price retailers, and thereby forcing agreements generally to maintain resale prices.

5. Resorting to a system of shopping out the stock of those retailers who were found to either advertise or sell respondent's products below the stipulated price.

6. Other equivalent cooperative means to maintain said resale prices.

PAR. 4. The respondents Greater New York Licensed Liquor Stores Association, Inc.; D. C. Exclusive Retail Liquor Dealers Association; Metropolitan Boston Retail Liquor Package Stores Association and all its members; Matt Patterson, individually, and as president of Metropolitan Boston Retail Liquor Package Stores Association; David R. Shir, individually, and as Secretary of Metropolitan Boston Retail Liquor Package Stores Association; William S. Huber, individually, and as treasurer of Metropolitan Boston Retail Liquor Package Stores Association; Samuel Levy; Joseph Balter; Samuel Berkman; William Dorr; Benjamin F. Folsom; William Gaffney; Joseph Hines; Charles H. Mahoney; A. J. McDonald; John McMorrow; John F. Murphy; Edward O'Hearn; Benjamin Rodman; Louis Rose; Edward Sliney; Benjamin Starr; and Joseph A. Vesce, jointly and severally as representative members and as the executive committee of Metropolitan Boston Retail Liquor Package Stores Association; National Retail Liquor Package Stores Association; New Jersey Retail Liquor Package Stores Association, and all its officers, executive committee, and members; Augustine L. Waldron, individually, and as president and member of New Jersey Retail Liquor Package Stores Association; Connecticut Retail Liquor Package Stores Association, Inc.; and National Institute of Wine & Spirit Distributors, Inc., and each of them, hereinafter referred to and designated as "retail dealer respondents," acting separately as, and through the instrumentality of, said trade associations, with the purpose and effect of obtaining and maintaining a fixed, uniform minimum resale price of liquors sold by the various retail dealer members and their competitors, unlawfully conspired, combined, confederated, and agreed, with respondent Gooderham & Worts, Ltd., the retail dealer members of each association among themselves; by and through their respective associations; and through the instrumentality of respondent National Retail Liquor Package Stores Association, and with respondent Gooderham & Worts, Ltd., to accept, cooperate in, and enforce the fixed, uniform minimum resale price maintenance system and policy of

the said Gooderham & Worts, Ltd., as set out in paragraph 3 hereof, and agreed in substance and effect as follows:

1. That retail dealer respondents' profit should be increased by fixing and maintaining a uniform minimum price for liquor.

2. That fixed prices should be maintained between the retail dealer members of each respective trade association.

3. That the products of those distillers who have permitted their liquors to be retailed at a cut price shall be boycotted.

4. That only such retail dealer members of each respective trade association who promised to maintain uniform minimum resale prices should be supplied by (Gooderham & Worts, Ltd., with its products.

5. That wholesalers should be notified not to supply any price-cutting retailers, and threatened with forfeiture of their franchises if such notice were disregarded.

Pursuant to, and in execution of, the aforesaid unlawful conspiracies, combinations, confederacies, and agreements or understandings, and with the purpose and effect of making them effective, the retail dealer respondents, and each of them, executed and performed the acts and things by them agreed to be done pursuant to such unlawful conspiracies, combinations, confederacies, and agreements; appointed committees to confer with respondent Gooderham & Worts, Ltd., and with various other distiller sellers; and by means of exerting improper and unlawful pressure, influence, coercion, boycotts, and threats of boycotts, demanded and received from said respondent Gooderham & Worts, Ltd., and various other distiller sellers, the adoption, establishment, and maintenance of the aforesaid and similar systems or policies of merchandising, whereby specified, standard, and fixed uniform minimum resale prices, discounts, and "mark-ups" at which the products of said Gooderham & Worts, Ltd., and various other distiller sellers, should be and were resold by wholesalers and retail dealers.

And the various retailers constituting the membership of the various trade associations herein named as respondents, unlawfully conspired, combined, confederated, and agreed among themselves in each of their said respective trade associations to fix, and did fix, a uniform minimum price at which said liquors of Gooderham & Worts, Ltd., and other liquor products were to be sold to the public in the respective states and territories in which each of said trade associations functioned, and in furtherance and execution of said conspiracy, combination, confederation, and agreement, did spy upon all retailers, report all price cutting, make demands upon distiller sellers that they blacklist such price cutters, and sought to, and did, enforce

such demand with boycotts, and threats of boycotts, upon the said distiller sellers, and did "shop-out" the stocks of retailers who refused to maintain the uniform minimum prices by said membership agreed upon, and did reinstate such offending price cutters upon receiving their promise and agreement to refrain from further price cutting activities.

PAR. 5. The respondent Greater New York Licensed Liquor Stores Association, Inc., by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices undertaken and done pursuant to such agreements, operated to hinder, obstruct, and restrain the flow of commerce into the State of New York, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 6. The respondent D. C. Exclusive Retail Liquor Dealers Association, a corporation, by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices undertaken and done pursuant to such agreements, operated to hinder, obstruct, and restrain the flow of commerce into the District of Columbia, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 7. The respondent Metropolitan Boston Retail Liquor Package Stores Association, and all its members, its officers, and executive committee herein named as respondents, by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices undertaken and done pursuant to such agreements, operated to restrain the flow of commerce into the State of Massachusetts, and the direct effect thereof was to suppress compe-

tition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 8. The respondent National Retail Liquor Package Stores, a corporation, by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by cooperating with the aforesaid acts and practices undertaken and done by each of the respondent retail dealers pursuant to such agreements, operated to restrain the flow of commerce into the State of New York, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 9. The respondent New Jersey Retail Liquor Package Stores Association, and all its members, officers, executive committee, and Augustine L. Waldron, its president, by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices undertaken and done pursuant to such agreements, operated to restrain the flow of commerce into the State of New Jersey, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 10. The respondent, Connecticut Retail Liquor Package Stores Association, Inc., by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices

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undertaken and done pursuant to such agreements, operated to restrain the flow of commerce into the State of Connecticut, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 11. The respondent National Institute of Wine & Spirit Distributors, Inc., by the aforesaid agreements and threats of boycotts to distillers and wholesalers, and by the aforesaid acts and practices undertaken and done pursuant to such agreements, operated to restrain the flow of commerce into the State of New York, and the direct effect thereof was to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of liquors, and to prevent them from selling said liquors at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 12. The direct effect of the above alleged acts and practices agreed upon and done by respondent Gooderham & Worts, Ltd., has been to suppress competition among jobbers, wholesalers, and retail dealers in the distribution and sale of respondent's said products; to cause said jobbers, wholesalers, and retail dealers to sell said products at the prices fixed and established by said respondent pursuant to the understandings and agreements had with its wholesale distributors, and with various trade associations herein named, and to prevent them, and each of them, from selling the said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending to unduly hinder and suppress competition in the resale of said products in the channels of interstate trade.

PAR. 13. The above acts and practices of respondents, and each of them, are all to the prejudice of the public and respondents' com-

petitors, and constitute unfair methods of competition in commerce within the meaning of Section 5 of said Act of Congress entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on November 23, 1936, issued and served its complaint in this proceeding upon the respondents named in the above caption, charging them and each of them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint, and the filing of answers thereto, the Commission, by order entered herein, granted the motion of respondent Gooderham & Worts, Ltd., for permission to withdraw its answer filed March 19, 1937, and to substitute therefor an answer, in which substitute answer said respondent admitted for the purposes only of this proceeding, and any proceedings which may be brought or instituted under the Federal Trade Commission Act as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of violation of any order to cease and desist which may be issued hereunder, all of the material allegations of said complaint, insofar as the same relate to acts and practices of said respondent in the District of Columbia, or acts and practices of said respondent connected with liquor sold and shipped for resale into or in the District of Columbia, except that respondent does not admit entering into unlawful agreements and understandings with the respondent D. C. Exclusive Retail Liquor Dealers Association. Said respondent Gooderham & Worts, Ltd. also stated in said answer that the Commission might, without trial, without the taking of further evidence, and without any intervening procedure, make and enter its findings as to the facts and issue and serve upon it an order to cease and desist from the unfair methods of competition alleged in said complaint, insofar as they relate to the sale or offering for sale of liquors in the District of Columbia, or the shipping of liquors for resale in the District of Columbia. 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 Gooderham & Worts, Ltd. is a corporation organized, existing, and doing business under and by virtue of

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the laws of the State of Delaware, having its principal office and place of business at 1930 E. Jefferson Street, in the city of Detroit, in the State of Michigan. It is now, and for more than one year last past has been, engaged in the business of selling, in constant course of trade and commerce between and among the various States of the United States and in the District of Columbia, certain brands of whiskies and alcoholic beverages. It is affiliated with Gooderham & Worts, Ltd., a Canadian corporation. Respondent engages in selling certain brands of whiskies and other alcoholic beverages in part manufactured and sold to it by the said Canadian corporation, and in part manufactured and sold to it by its affiliated company, Hiram Walker & Sons, Inc., a Michigan corporation, but it itself does not manufacture any whiskey, gin or any other alcoholic beverages. It has, and maintains, in the United States four sales distribution offices, in New York, N. Y.; Chicago, Ill.; Denver, Colo.; and San Francisco, Calif. In the course and conduct of its said business it causes a substantial portion of the aforesaid liquors, when sold, to be transported from Canada, and from the States of New York, Illinois, Michigan, Colorado, and California, into and through various other States of the United States to the purchasers thereof, consisting of wholesale distributors, retailers, and others, located in other States of the United States and the District of Columbia; and in the conduct of its said business, this respondent has been, and is, in substantial competition with other corporations and with individuals, partnerships, and firms likewise engaged in the sale of whiskies and other alcoholic beverages in commerce between and among various States of the United States and the District of Columbia.

PAR. 2. In the course and conduct of its business as aforesaid, respondent Gooderham & Worts, Ltd. sells and distributes its alcoholic products to carefully chosen wholesale distributors who, in turn, sell the same to package store retailers, bars and other retailers, including other respondents herein named; and furnishes said wholesale distributors with price lists upon which are scheduled respondent's prices to the wholesaler, the suggested wholesale prices to the retailer and suggested retail prices to the ultimate purchaser or consumer; and as hereinafter set out, with the exception of such proportion of its sales as are made to corporations or other agencies owned or controlled by State monopolies, said liquor is sold to the wholesale distributors in the District of Columbia by respondent upon the definite understanding and agreement that they will observe the distiller's suggested wholesale prices, and will sell only to retailers who observe the suggested retail prices at which the retailers are to sell said liquors.

PAR. 3. Respondent Gooderham & Worts, Ltd., in the course and conduct of its business as aforesaid, in order to stabilize and make uniform the resale prices of its said products in the District of Columbia, adopted, established and has maintained a system or policy of merchandising whereby it fixed specified, standard, and uniform resale prices, discounts and "mark-ups," at which its said products should be resold by wholesalers and retail dealers in the District of Columbia, and received and accepted the active support and co-operation of said wholesalers and retail dealers in the maintenance of said resale prices, discounts, and "mark-ups" in the District of Columbia; and in order to carry out and make effective said system or policy, said respondent has entered into agreements or understandings with wholesalers and retail dealers and others in the District of Columbia, purporting to bind said wholesalers, retailers and others to the maintenance of said resale prices, discounts and "mark-ups," and has obtained and accepted their cooperation in the maintenance of such prices, discounts and "mark-ups." Pursuant to such agreements or understandings this respondent has prevented wholesalers and retail dealers in the District of Columbia from reselling said products at prices less than the said minimum resale prices fixed by respondent as aforesaid.

Pursuant to such policy in the District of Columbia, respondent, Gooderham & Worts, Ltd., has entered into agreements or understandings with its aforesaid wholesale distributors in the District of Columbia, whereby :

1. Distributors have agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by Gooderham & Worts, Ltd.

2. Distributors have agreed to sell respondent's products at a uniform fixed price to retailers, and to allow no discounts from the lists of prices suggested by Gooderham & Worts, Ltd.

3. Gooderham & Worts, Ltd. agreed to cooperate with the aid of its missionary men and other representatives in securing and furnishing all necessary information, for the purpose of enforcing the suggested prices.

4. Gooderham & Worts, Ltd. agreed to drop from its list of distributors those found offering or giving a discount from its suggested price lists.

5. Distributors agreed to cut off the supplies of all retailers found cutting prices and to compile and maintain reports or lists of those retailers who did not maintain the minimum resale prices suggested.

6. Distributors agreed to dismiss salesmen found offering or giving a discount or part of their (salesmen's) commission to retailers.

7. Distributors agreed to report to respondent Gooderham & Worts, Ltd. the names of wholesalers who offered, or who were suspected of offering, a discount to retailers.

8. Gooderham & Worts, Ltd. agreed to supply its distributors with a list of those retailers who did not maintain the minimum resale prices suggested.

9. Distributors agreed to cut off supplies from price-cutting retailers and not to reinstate them until such reinstatement had been authorized by Gooderham & Worts, Ltd.

In furtherance of the aforesaid agreements or understandings in the District of Columbia, respondent Gooderham & Worts, Ltd. instructed its employees to report to it those distributors in the District of Columbia who violated such agreements and all retailers who failed to maintain in said District the suggested uniform minimum resale prices; and received and acted upon such reports; to the end that its supply of products on hand with retail liquor dealers and others cutting said prices might become exhausted; cut off the supplies of all "price-cutting" retail dealers; and, generally, by various other methods and means, respondent Gooderham & Worts, Ltd. did carry into effect in the District of Columbia the aforesaid agreements or understandings with its wholesale distributors and retail dealer vendees in the District of Columbia to the end and effect of maintaining a fixed, specified, standard, and uniform system of resale prices, discounts and "mark-ups" at which its said products should be sold and resold as aforesaid, and did reinstate and cause to be reinstated offending price-cutting retail dealers of its products upon their agreement or understanding that in the future they would observe the system or scale of resale price maintenance suggested by respondent Gooderham & Worts, Ltd. by the means and methods hereinbefore set out.

PAR. 4. Respondent Gooderham & Worts, Ltd., with the purpose and effect of obtaining and maintaining a fixed, uniform, minimum resale price for liquors sold in the District of Columbia and shipped into the District of Columbia for resale therein, did combine, cooperate and agree with certain of its wholesale distributors and retail dealer vendees to enforce in the District of Columbia the suggested uniform, minimum resale price maintenance system and policy aforesaid of Gooderham & Worts, Ltd. and agreed in substance and effect as follows:

1. That the retail dealer's profit should be made uniform by fixing and maintaining a uniform minimum price for liquor.

2. That uniform prices should be maintained by certain retail dealers.

3. That only such retail dealers who promised to maintain uniform minimum resale prices should be supplied with the products of Gooderham & Worts, Ltd.

4. That wholesalers should be notified not to supply any price-cutting retailers.

Pursuant to and in execution of the aforesaid combinations and agreements or understandings, and with the purpose and effect of making them effective in the District of Columbia, Gooderham & Worts, Ltd., on its part fully performed and carried out the aforesaid understandings or agreements by adopting, establishing, and maintaining the aforesaid policies of merchandising with relation to liquors sold in the District of Columbia, and liquors shipped for resale in the District of Columbia, whereby specified, standard and uniform minimum resale prices, discounts, and "mark-ups" were fixed, at which the products of the said Gooderham & Worts, Ltd. should be and were resold by wholesalers, jobbers, retail dealers, and others in the District of Columbia.

PAR. 5. The direct effect of the above alleged acts and practices agreed upon and done by respondent Gooderham & Worts, Ltd. has been to suppress competition among jobbers, wholesalers and retail dealers in the District of Columbia in the distribution and sale of respondent's said products; to cause said jobbers, wholesalers and retail dealers to sell said products at the prices suggested by said respondent pursuant to the understandings or agreements had with its wholesale distributors and others in the District of Columbia and to prevent them and each of them from selling respondent's said products at such lower prices as they might deem adequate and warranted by their respective selling costs and by competitive trade conditions generally, and to deprive the purchasers of said products of the advantages in price which they otherwise would obtain from a natural and unobstructed flow of commerce in said products, thus tending unduly to hinder and suppress competition in the resale of said products in the District of Columbia and in the shipment of said products for resale in the District of Columbia to the consuming public.

PAR. 6. It appearing to the Commission that, (except for the acts and practices of respondent Gooderham & Worts, Ltd. in connection with liquors sold in the District of Columbia and shipped for resale therein as hereinabove set forth) the acts and practices of said respondent as charged in the complaint transpired and occurred either in, or with respect to alcoholic liquors shipped for resale into States or territories having "Fair Trade" laws or public policies in effect therein within the intent and meaning of the Miller-Tydings Act

(Title VIII of an Act to Provide Additional Revenue for the District of Columbia, and for other purposes, approved August 17, 1937, H. R. 7472, Public Act 314, 75th Cong., 1st sess.) the Commission has limited its order entered pursuant hereto to the acts and practices of Gooderham & Worts, Ltd., in the District of Columbia and acts and practices of Gooderham & Worts, Ltd., in connection with liquor by it sold and shipped for resale into the District of Columbia.

PAR. 7. It further appearing to the Commission that the acts and practices of all the respondents named in the caption hereof other than respondent Gooderham & Worts, Ltd. and respondent D. C. Exclusive Retail Liquor Dealers Association, transpired and occurred either in, or with respect to alcoholic liquors shipped for resale into States or territories having "Fair Trade" laws or public policies in effect therein within the intent and meaning of the Miller-Tydings Act (Title VIII of an Act to Provide Additional Revenue for the District of Columbia, and for other purposes, approved August 17, 1937, H. R. 7472, Public Act 314, 75th Cong., 1st sess.) the Commission has directed by its said order that as to them the case be closed without prejudice to the right of the Commission to reopen the same in the course of its regular procedure should future facts and circumstances warrant.

PAR. 8. The acts and practices with which respondent D. C. Exclusive Retail Liquor Dealers Association is charged in the said complaint having been incorporated and charged in a separate and new complaint, against that respondent and others, by direction of the Commission, on March 21, 1938, the Commission has by its order closed this case as to the respondent D. C. Exclusive Retail Liquor Dealers Association, without prejudice.

CONCLUSION

The aforesaid acts and practices of the respondent Gooderham & Worts, Ltd. are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the substituted answer filed herein on May 31, 1938, by respondent Gooderham & Worts, Ltd., admitting all the material allegations against it in said complaint insofar as the same relate to the sale or offering for sale of liquors in the District of Columbia or the shipping of liquors for resale in the

District of Columbia, except the allegation that it has entered into any unlawful contract, agreement or understanding, or engaged in any unlawful act or practice with the respondent D. C. Exclusive Retail Liquor Dealers Association; said admission having been made for the purposes only of this proceeding and any proceedings which may be brought or instituted under the Federal Trade Commission Act as amended and approved March 21, 1938, for the recovery of penalties therein provided in case of violation hereof; and respondent having waived the taking of further evidence and all other intervening procedure, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of the Federal Trade Commission Act.

It is ordered. That the respondent Gooderham & Worts, Ltd., in connection with the offering for sale of whiskies and other alcoholic beverages in the District of Columbia, and in connection with the shipment of whiskies and other alcoholic beverages into the District of Columbia for resale therein, do forthwith cease and desist from:

1. Entering into or enforcing any contract, agreement or understanding, verbal or written, with any retailer, jobber, wholesaler or other distributor, the purpose and effect of which is to maintain a specified standard or uniform minimum resale price, discount or "mark-up" at which respondent's said products are to be resold by such retailers, jobbers, wholesalers or other distributors;

2. Enforcing or attempting to enforce the resale of respondent's said products at specified standard or uniform minimum resale prices, discounts or "mark-ups" by any of the following methods or means:

(a) By reinstating or causing to be reinstated retailers, jobbers, wholesalers or other distributors who have been cut off, upon any agreement or understanding with such retailers, jobbers, wholesalers or other distributors, that respondent's suggested minimum resale prices, discounts or "mark-ups" will thereafter be maintained.

(b) By circulating, or threatening to circulate, among retailers, jobbers, wholesalers or other distributors, reports or lists of those retailers, jobbers, wholesalers or other distributors who have cut prices on respondent's said products.

(c) By combining or agreeing directly or indirectly with any individual or association of individuals to do or cause to be done any of the aforesaid acts or things.

(d) By combining with retailers, jobbers, wholesalers or other distributors with the purpose and effect of exhausting the supply of its products on hand with any other retailers, jobbers, wholesalers or other distributors through the purchase of said supply of its products.

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(e) By securing or endeavoring to secure, through contract, agreement or understanding, the active support or cooperation of any wholesaler, retail dealer, association or individual, individually or collectively, in the doing of any of the acts or things hereinabove prohibited.

The acts and practices with which respondent D. C. Exclusive Retail Liquor Dealers Association is charged in the aforesaid complaint having been incorporated and charged in a separate and new complaint against that respondent and others by direction of the Commission of March 21, 1938.

It is further ordered, That the case growing out of the said complaint against the said respondent D. C. Exclusive Retail Liquor Dealers Association be, and the same is hereby closed without prejudice to the right of the Commission to resume prosecution thereof, in accordance with its regular procedure, pursuant to such new complaint.

It further appearing to the Commission that the acts and practices of all the respondents named in the caption hereof other than respondent Gooderham & Worts, Ltd., and respondent D. C. Exclusive Retail Liquor Dealers Association, transpired and occurred either in, or with respect to alcoholic liquors shipped for resale into States or territories having "Fair Trade" laws or public policies in effect therein within the intent and meaning of the Miller-Tydings Act (Title VIII of an Act to Provide Additional Revenue for the District of Columbia, and for other purposes, approved August 17, 1937, H. R. 7472, Public Act 314, 75th Cong., 1st sess.),

It is further ordered, That the case growing out of the Commission's complaint against all of the above named respondents other than Gooderham & Worts, Ltd. and D. C. Exclusive Retail Liquor Dealers Association, be, and the same is hereby closed without prejudice to the right of the Commission to resume prosecution in accordance with its regular procedure whenever future facts and circumstances should appear to so warrant.

It is further ordered, That the said respondent, within 60 days from and after the date of service upon it of this order, shall file with the Commission a report or reports in writing, setting forth in detail the manner and form in which it is complying and has complied with the order to cease and desist hereinabove set forth.

Syllabus

IN THE MATTER OF

SCHENLEY DISTILLERS CORPORATION ET AL.

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

Docket 2990. Complaint, Nov. 23, 1936—Decision, June 10, 1938

Where a corporation, subsidiary of a holding company which, through its affiliates and other subsidiaries, constituted one of the largest units and agencies for the distilling and distribution of alcoholic liquors in the United States, with gross sales running into many millions, with sales offices for their products in 13 cities scattered over the country, and with a large number of salesmen who called on both retail and wholesale trade and hotels, bars, restaurants, and clubs, engaged in the business of selling and distributing the products of its said unit or group, and acting under the authority of said holding company in the policies, acts, and practices involved, and, with it, substantial periodical and newspaper advertiser, and seller, in substantial competition with others engaged in sale of such products, to carefully selected wholesale distributors who resell products in question to package stores, retailers, and bars, and to wholesale distributors in the District of Columbia, upon the definite understanding and agreement that they will (1) observe the suggested minimum resale price set forth in price lists prepared and published by it from time to time and scheduling prices of the various selling and distributing companies, making up aforesaid group or unit, to wholesaler, and suggested minimum wholesale prices to retailer, and also suggested resale prices at which latter is to sell such products to ultimate purchaser or consumer, and (2) will sell only to retailers who likewise observed suggested minimum resale prices;

In pursuance of a system or policy of merchandising adopted to stabilize and make uniform resale prices of their said products in the District of Columbia, and whereby it fixed specified standard and uniform resale prices, discounts, and mark-ups at which its said products should be resold by wholesalers and retailers in said District, and under which it received and accepted the active support and cooperation of said wholesale and retail dealers in the maintenance of such resale prices, etc., and, in order to carry out and make effective said system or policy—

- (a) Entered into agreements or understandings with wholesale and retail dealers and others in said District purporting to bind them to maintain its said retail prices, discounts, and mark-ups, and obtained and accepted the cooperation of such wholesalers, etc., in the maintenance of such prices, etc., and prevented wholesalers and retailers in said District, by virtue of such agreements or understandings, from reselling said products in said District at prices lower than said minimum resale prices thus fixed by it; and
- (b) Entered into agreements with its wholesale distributors in said District whereby (1) such distributors agreed to sell only to such retailers as would agree to resell its products at minimum prices suggested by it; to sell such products at a uniform fixed price to retailers and allow no discounts from lists of prices suggested by it; to cut off supplies of all retailers found