

IN THE MATTER OF
MICHIGAN BEAN SHIPPERS ASSOCIATION ET AL

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

Docket 3937. Complaint, Oct. 27, 1939—Decision, Apr. 11, 1940

Where a trade organization and members thereof concerned with or engaged in the growing and handling of Michigan beans, as hereinafter set forth, namely—

I. A nonprofit corporation which (1) was organized to and did perform the function of promoting general and special interests of its members and those engaged in the growing and handling of Michigan beans throughout said State, (2) constituted an instrumentality for furthering and making effective purposes and objectives of the individual members and others, (3) was successor to trade association first organized some 40 years theretofore, and (4) elevator operator and jobber members of which, and of its predecessor, had performed essential function in providing ready cash market for farmers' beans and numerous other farm commodities and in developing additional market demand and outlets for the large amount of beans grown in State in question, in which were produced 80 percent of the white pea, or "navy," beans, comprising one-third of bulk of bean crop moving in interstate commerce, and had been instrumental in keeping local growers in contact with distant buyers and consumers widely located throughout the eastern half of the United States, and, together with their association, in securing and establishing maintenance of uniform grades of Michigan beans and securing adoption thereof in the country's market, leading, substantially through such and certain other activity, to universal recognition and acceptance of such product as of highest standard and quality, and to insuring maintenance thereof on the part of growers and the trade generally, and (5) elevator operator members of which, with property investments aggregating several million dollars, furnished employment to several thousand individuals in State in question in course of performing functions necessary to prepare farmers' crop for market; and

II. Nine member concerns engaged as jobbers, or as jobbers and elevator operators, as case might be, in business of buying and selling beans, barley, wheat, and other farm commodities, and which, for a number of years theretofore and during period concerned, in the course and conduct of their respective businesses, (1) bought beans and other farm commodities from producers and others in State in question for resale therein and in other States and Territories of the United States and in the District of Columbia, and in foreign nations, and, pursuant to sales thereof, shipped or caused to be shipped such commodities from various points in said State to purchasers at their respective locations within or without such State, as above indicated, and (2) bought and sold quantities of beans, barley, wheat, and other farm commodities in such State for shipment, in part, into the stream of commerce between and among the various States, etc., as above set forth, (3) individually and collectively purchased and sold, and shipped or caused to be shipped, from year to year, 80 percent of the annual crop of "navy" beans

and a major portion of the barley, wheat, and other farm commodities grown therein, and shipped greater portion of such crops to purchasers without such State, and (4) prior to adoption of practices below set forth, were in active and substantial competition with one another and with other elevator men and jobbers in such State in making and seeking to make purchases and sales of such various products and commodities, and, except as below set forth, continued in such competition with each other and with other members of the industries concerned, and (5) constituted majority of elevator men and jobbers buying and selling beans in the State of Michigan—

- (a) Made up and computed daily, through offices of association in question, price for choice hand-picked white pea beans in bulk to country shippers, which, designated as an "association close," they disseminated and distributed among themselves and to the industry, press and public generally, and used as a basis or guide for making quotations and consummating sales and purchases to producers and to the "trade," i. e., vendee consumers and processors of beans, including major canning companies, chain stores and others of the United States and foreign importers, and which "association close," purportedly representing average price in bulk at which beans were being bought by jobbers from shippers in State at time "close" was issued, (1) was based in fact on bids received by association only from approved or limited number of members engaged in buying or selling, (2) did not always reflect range of prices being offered by such purchasing members over any given period of time, but only prices being paid at time of making of the report, and (3) did not always supply accurate arithmetical average of prices in question, and did not in fact represent such an average or accurately reflect such prices;
- (b) Fixed and maintained (1) differentials, margin, or spread, to be received by elevator men for function performed by them in buying beans and barley from producers and reselling same to producers and others, and (2) differentials to be received by jobbers for beans and barley, between prices paid by them to elevator men and that at which they sold said products to trade, from time to time, and (3) schedules of charges for "picking" beans or determining percent of foreign materials, culls, and other demerits in threshed beans brought to elevators by producers, and separation and removal thereof from quantities as tendered by them, and established and used uniform contract embodying terms and conditions of sale for buying and selling said product;
- (c) Adopted and maintained "scoop-shovel" rule by which they agreed to refuse to buy and sell or trade in beans or other farm commodities which had been "scoop-shoveled," and defined as "scoop-shoveler" one not equipped with proper buildings and machinery to clean beans and grains as they come from farmers' vehicles before being weighed, and who does not in every instance use such facilities before making purchases of farmers' said products, and does not maintain permanent location 8 months a year in territory in which there is regular buyer equipped with necessary machinery properly to clean, weigh, and store such products, and employed such rule to discourage use of method of processing beans to grade, through use by farmers and growers at their places of business, of portable bean picker which, invented and placed on the market, made possible machine grading to a limited degree at such places of business

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and, while not eliminating necessity of hand picking at the elevators where were maintained and operated necessary equipment and labor required for grading and picking beans in substantial quantities, with a not inconsiderable concentration of labor along with expensive machinery and equipment of stationary type, would, in some years, have tendency to curtail volume of business done by local elevators; and

Where members above referred to—

(d) Made use of their said association as an instrumentality for establishing and maintaining rules, regulations, practices, and policies as aforesaid, and to secure adherence thereto by the members and by nonmember competitors; and

(e) Held meetings furthering such collective and cooperative activities;

With effect of restricting, restraining, and lessening competition by, between, and among themselves, and other members of bean industry in State of Michigan in interstate trade and commerce in beans, and with capacity and tendency to lower prices to producing public, farmers, and growers of beans and barley, and to prevent use of machines and of methods of marketing whereby "picking" can be done at farms and places where beans are grown:

Held, That such acts, methods, and practices, under the circumstances set forth, were all to the prejudice of the public and had a dangerous tendency to and did hinder and prevent price competition between and among themselves in purchase and sale of said product in commerce, and tended to place in themselves power to control prices therefor in State of Michigan, and to create in them a monopoly in the sale in commerce of beans grown in such State, and unreasonably restrain commerce therein, and constituted unfair methods of competition.

Mr. Lynn C. Paulson for the Commission.

Mr. William P. Smith, of Washington, D. C., for respondents.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the Michigan Bean Shippers Association, its officers, L. W. Todd, president, R. C. Smith, vice president, L. L. Green, vice president, Asa E. Walcott, secretary-treasurer; its directors, E. H. Bueschlen, William R. Neumann, A. L. Ward; and its members, Charles Wolohan, Inc., J. P. Burroughs & Son, Hammerslag & Tinkham, Inc., Minor Walton Bean Co., Michigan Elevator Exchange, Ryon Grain Co., Stickle-Swift, Inc., Hart Brothers, Michigan Bean Co., individually and as representative members of the said Association, all 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, Michigan Bean Shippers Association is a nonprofit corporation, organized under the laws of the State of Michigan (pursuant to the provisions of Act, No. 327, of the Public Acts of 1921 of the State of Michigan, known as the Michigan General Corporation Act), with its office at 401 Eddy Building, Saginaw, Mich. It was incorporated in the year 1934 by the members of the Michigan Bean Jobbers Association, its predecessor (a trade association that was first organized in 1892 and which was subsequently reorganized and incorporated in 1912). Said Michigan Bean Shippers Association has approximately 161 members of which those named herein are representative, and certain associate members not herein named. Its officers are: L. W. Todd, president; R. C. Smith, vice president; L. L. Green, vice president; and Asa E. Walcott, secretary-treasurer. Its directors are: R. C. Smith, L. L. Green, L. W. Todd, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and A. L. Ward. Said association is organized for the purpose and performs the function of promoting general and special interests of its members, and constitutes an instrumentality for the furthering and making effective of the purposes and objectives of the individual members, jointly and severally.

PAR. 2. Respondent, Charles Wolohan, Inc., is a Michigan corporation with its general offices at Birch Run, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, J. P. Burroughs & Son is a Michigan corporation, with its principal office located at Holman & Grand Traverse, Flint, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Hammerslag & Tinkham, Inc., is a Michigan corporation, with its principal office located at 35 Pearl Street NW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Minor Walton Bean Co. is a Michigan corporation, with its principal office located at 240 Logan Street SW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Michigan Elevator Exchange is a Michigan corporation operating under the Michigan cooperative laws, with its principal office located at 221 North Cedar Street, East Lansing, Mich. It is, and for several years last past has been, engaged in the business of

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buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

Respondent, Ryon Grain Co., is a Michigan corporation, with its principal office located at 428 Mutual Building, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Stickle-Swift, Inc., is a Michigan corporation, with its principal office located at 1804 Olds Tower, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

Respondent, Hart Bros. is a partnership, of which M. J. Hart is the senior partner and operating manager. Its principal office is located at 1418 S. Hamilton Street, Saginaw, Mich. Respondent, Hart Bros. is engaged in buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

Respondent Michigan Bean Co. is a Michigan corporation, with its principal office located at 1741 North Niagara Street, Saginaw, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

The above-named respondents do not constitute the entire membership of the respondent Michigan Bean Shippers Association, but are representative members thereof. All members of the respondent Michigan Bean Shippers Association are made parties respondent herein as a class, of which those specifically named are representative of the whole. For convenience the above-named respondents and the other members of the Association of whom those named are representative will hereinafter be referred to as member respondents.

PAR. 3. In the course and conduct of their respective businesses the member respondents: (a) buy beans and other farm commodities from producers and others in the State of Michigan for resale in other States of the United States, the Territories thereof, the District of Columbia, and foreign nations, and when such sales are made, ship or cause to be shipped said commodities from various points in the State of Michigan, to the purchasers thereof at their respective locations in the other States of the United States, the Territories thereof, the District of Columbia, and foreign nations; (b) buy and sell quantities of beans, barley, wheat, and other farm commodities in the State of Michigan, destined to enter and flow in continuous streams of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign nations.

Beans, barley, wheat, and other farm commodities are familiar articles of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, and the streams of commerce in beans, barley, wheat, and said other farm commodities between the various States of the United States, the Territories thereof, the District of Columbia and with foreign nations, are made up in substantial part from quantities of the said commodities grown in the State of Michigan.

White pea beans, commonly known as "navy" beans, make up the bulk of the bean crop flowing in interstate commerce between and among the various States of the United States and the District of Columbia. Eighty percent of the white pea beans grown in the United States are grown in the State of Michigan. In the course and conduct of their businesses the members respondents, individually and collectively, buy and sell and ship, or cause to be shipped, from year to year, 80 percent of the annual crop of this variety of beans grown in the State of Michigan and a major portion of the barley, wheat, and other farm commodities grown in that State. The greater portion of the crops of these commodities, grown from year to year in the State of Michigan, bought and sold by the member respondents, is sold and shipped or caused to be sold and shipped by them to purchasers located in ther States of the United States, the Territories thereof, the District of Columbia, and in foreign nations, and form part of the streams of commerce of these commodities between and among the States of the United States, its Territories, and with foreign nations.

In the aforesaid manner the member respondents are at all times engaged in commerce in beans and other farm commodities.

PAR. 4. Prior to the adoption of the practices hereinafter alleged, the member respondents were in active and substantial competition with one another and with other elevator men and jobbers located and doing business in the State of Michigan not named as respondents herein (some of whom have been members of the respondent association and others of whom have not been members of the respondent association) in making and seeking to make purchases and sales of beans, barley, wheat, and other farm commodities in such commerce, and, but for the facts hereinafter alleged, such active and substantial competition would have continued to the present time, and the said member respondents would now be in active and substantial competition with each other and with other members of the elevator and jobber industries.

The said respondents now constitute, and have during all of the times mentioned herein constituted, a majority of the elevator men

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and jobbers buying and selling beans, barley, wheat, and other farm commodities in the State of Michigan. The greater portion of the beans, barley, wheat, and other farm commodities grown in the State of Michigan are processed and consumed in other States of the United States in competition with beans, barley, wheat, and other farm commodities produced in other States of the United States and said member respondents, prior to the adoption of the practices herein alleged and referred to were in active and substantial competition with elevator men and jobbers located in other States of the United States who trade in beans, barley, wheat, and other farm commodities and but for the facts hereinafter alleged such competition between said member respondents and said elevator men and jobbers located in other States of the United States would have continued to be active and substantial, whereas, due to the acts and things that have been done and are being done by said member respondents, such competition is greatly diminished.

PAR. 5. Respondents, named or referred to in paragraphs 1 and 2 herein, for more than 4 years last past, have cooperated, combined, conspired, and agreed, and now cooperate, combine, conspire, and agree to do many acts and things for the purpose and with the effect of suppressing, restraining, and eliminating competition in trade and commerce, described in paragraphs 1, 2, and 3 herein, in beans and other farm commodities between and amongst themselves and other members of the industry in the State of Michigan and between and amongst themselves and other members of the industry in other States of the United States. Among the acts and things they have done and do through cooperation, combination, conspiracy, and agreement are the following :

1. They daily make up and compute or cause to be made up and computed, through the offices of the respondent Michigan Bean Shippers Association, a price for choice hand-picked white pea beans in bulk to country shippers, and disseminate and distribute or cause to be disseminated and distributed, among and between themselves, and to the industry generally, said price as an "association close."

From time to time the procedure for making up and computing such daily "Association closes" changes, but in the main and generally the practice is as follows: Certain of the member respondents, at an appointed time each day, report to the said respondent Association bids made by them on the basis of "paying prices for choice hand-picked white pea beans in bulk, to country shippers," and when these bids are received by the Association, said Association makes up and computes a figure or price which then becomes the "association close" for the remainder of the day during which the bids are re-

ported and for that portion of the next day up to the time bids are similarly reported. Said made up or computed price is not a true average of the bids reported to and received by the said Association. Bids are reported to the Association only by those of its members agreed upon by the Association for such reporting. Individual bids are revealed by the Association to any regular member thereof in good standing. Each such bidder is obligated to take at least one carload of the commodity for which he has submitted a bid and bids are good for acceptance for a fixed period of time, usually until 9 a. m. of the next business day.

Member respondents use each "association close" as a basis for making quotations and consummating sales and purchases to producers and to the trade. The "trade" as used herein, and as commonly understood by respondents, is comprised of the consumers and processors of beans and other farm commodities to whom the member respondents sell and ship the beans and other farm commodities, the important classes of such "trade" being the major canning companies, the major chain stores, and others of the United States, and foreign importers.

The daily making up and computation and dissemination of an "association close" by respondents in concert, through combination, as aforesaid, has the capacity, tendency, and effect to cause, and does cause, prices for beans and other farm commodities to become established and maintained at levels favorable to the respondents and unfavorable to those from whom they buy and to whom they sell, and thereby unduly suppresses competition and restrains trade in such commodities in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. They have from time to time fixed and maintained differentials to be received by elevator men for the function they perform in buying beans from producers and reselling them to jobbers. They have also fixed and maintained differentials for elevator men for the function they perform in buying and reselling barley, wheat, and other farm commodities in like and similar manner.

An elevator man buys beans from producers and resells them to jobbers. The spread between the price at which he buys and the price at which he sells is known to the industry and to the respondents as a "margin" and is herein referred to as a "differential." Respondents have from time to time fixed the "margin" or "differential" by agreement, and do now fix and maintain "margins" or "differentials" in a like and similar manner.

The fixing and maintaining of "margins" and "differentials" for elevator men in the manner described herein in conjunction with the

establishment and maintenance of "Association closes," forecloses all opportunity for price competition by the elevator men, and thereby tends unduly to suppress competition and create monopoly and to deprive producers of these commodities of the benefits of competition.

3. They fix and maintain from time to time, for beans and other farm commodities, "differentials" to be received by jobbers between the price paid by them, the jobbers, to elevator men, and the price they, the jobbers, sell such beans and other farm commodities to the "trade."

4. They fix and maintain schedules of charges for "picking" beans and for "docking" barley, wheat, and other farm commodities. As a part of the charges fixed and maintained, respondents keep the "pick" and the "dockage" extracted in the "picking" and "docking" processes.

"Picking" and "docking" are terms applied to the process of determining the percent of foreign materials, culls, and defective kernels in threshed beans and grains brought to elevators by producers, and the separation and removal of same from the quantities as tendered by them. They are terms having a common and recognized meaning to the respondents.

5. They have agreed to refrain from transporting beans and other farm commodities free of charge from the producers at their respective points of production to the elevator or shipping point at which the member respondents have their respective elevators and places of business.

6. They have fixed and maintained uniform storage charges for the storing of beans and other farm commodities in their respective elevators and warehouses.

The principal business of elevator operators is to buy beans, barley, wheat, and other farm commodities from the farmers and producers and resell them to jobbers and to the "trade," but in conjunction with this function, storage services are also performed by them for hire. It so happens that beans, barley, wheat, and some other farm commodities are not perishable and accordingly the farmers and growers often store their crops of these commodities with the elevator.

7. They have fixed and maintained uniform schedules of "drying" charges.

Member respondents through respondent Association have fixed a schedule of "drying" charges for beans, barley, wheat, and other farm commodities and have established and maintained a moisture and test weight table providing for uniform discounts on wheat if the grain is damaged, as smut or various foreign materials.

8. They have established and agreed to use and have used uniform contracts and terms and conditions of sale for buying and selling beans

and other farm commodities. They have agreed to refrain from deviating from such terms and conditions of sale as are established by them from time to time, and they have attempted to coerce nonrespondent members to use and maintain the contracts, terms, and conditions of sale which they (the respondents) through combination, have arrived at and established and do maintain.

9. They have adopted and maintained a rule of practice known to them and referred to by them as the "scoop-shovel" rule by which they have agreed to refuse to buy and sell or trade in beans and other farm commodities which have been "scoop-shoveled." They have defined a "scoop shoveler" "as being one who is not equipped with the proper buildings and machinery for cleaning the beans and grain as they come from farmers' vehicles before they are weighed, and one who does not use such facilities in every instance before making purchase of farmers' beans and grain, and who does not maintain a permanent location at least 8 months a year in a territory in which there is a regular buyer, equipped with the necessary machinery to properly clean, weigh, and store beans and grains." They have provided by agreement that "scoop-shovelers" or firms or individuals governed in any sense by "scoop-shoveling" are not entitled to membership in the respondent Michigan Bean Shippers Association.

It has been the long-established practice in the State of Michigan for farmers and growers to haul their beans and other farm commodities to local elevators for sale. This practice is in part a result of the fact that beans must be graded and "picked" and elevators, until recently, maintained the only equipment for grading and "picking." Grading and "picking" machinery was of a stationary type which necessitated the bringing of beans to the elevators. About 1931 a portable bean picker was invented and placed upon the market by the use of which beans could be graded and "picked" at the farmers' and growers' places of business. The use of the portable bean picker obviated the necessity of bringing the beans to the local elevators for grading and "picking" and has a tendency to curtail the volume of business done by the local elevators. The "scoop-shovel" rule referred to above was designed and adopted for the purpose of discouraging the use of the portable picker and of preventing the trade of the respondent members from being diverted into other channels.

10. They have established and maintained the practice of making price quotations to the "trade" for beans uniformly, using Alma, Mich., as a base point for all price quotations.

11. They have established and maintained other rules, regulations, practices, and policies of a like and similar character.

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The effect of the establishment and maintenance of the rules, regulations, practices, and policies described in paragraph 5, subsections (1) to (11), inclusive, of this complaint, pursuant to combination, conspiracy, and agreement as hereinabove alleged has been and is to suppress, eliminate, and restrain competition between and amongst the respondents in their respective businesses.

Said member respondents use the Michigan Bean Shippers Association as an instrumentality for establishing and maintaining the rules, regulations, practices, and policies aforesaid and also hold meetings and engage in other collective and cooperative activities to the same end, and collectively and collusively at all times referred to herein have sought to induce, persuade, and coerce, and have induced, persuaded, and coerced all those engaged in the business of buying and selling beans, barley, wheat, and other farm commodities in the State of Michigan to adhere to the said rules, regulations, and practices.

PAR. 6. Said cooperation, agreement, combination, and conspiracy and the things done thereunder and pursuant thereto and in furtherance thereof, as hereinabove alleged, have had and do have the effect of unduly and unlawfully restricting and restraining the sale of said beans, barley, wheat, and other farm commodities in trade and commerce between, among, in and with the several States of the United States, the District of Columbia, foreign nations, and Territories of the United States; of unduly and unlawfully restricting and restraining trade and commerce in said beans and other farm commodities in said commerce; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition among and between the member respondents in said commerce; of substantially lowering prices to the producing public, the farmers and growers, of beans, barley, wheat, and other farm commodities and particularly those who are obliged to sell their crops of these commodities to the said member respondents; of preventing the growth and development of new methods of marketing beans and of the use of marketing machinery and new methods of marketing whereby "picking" can be done at the farms and places where beans are grown; of eliminating competition, with the tendency and capacity of creating a monopoly in the marketing of said beans and other farm commodities in said commerce.

PAR. 7. The aforesaid acts and practices of the respondents as herein alleged are all to the prejudice of the public and respondents' competitors and constitute unfair methods of competition in com-

merce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission, on the 27th day of October 1939, issued and served its complaint in this proceeding upon said 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 act. On December 18, 1939, the respondents filed their answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by respondents by their attorney, William P. Smith, and William T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answer, and stipulation, said stipulation having been approved, accepted, and filed, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Michigan Bean Shippers Association is a nonprofit corporation, organized under the laws of the State of Michigan (pursuant to the provisions of Act, No. 327, of the Public Acts of 1931 of the State of Michigan, known as the Michigan General Corporation Act), with its office at 401 Eddy Building, Saginaw, Mich. It was incorporated in the year 1934 by the members of the Michigan Bean Jobbers Association, its predecessor (a trade association that was first organized in 1892 and which was subsequently reorganized and incorporated in 1913). At the time of the issuance of the complaint, October 27, 1939, said Michigan Bean Shippers Association had approximately 161 members of which those named herein are representative, and certain associate members not herein

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named. Its officers then were: L. W. Todd, president; E. H. Bueschlen, vice president; C. H. Estee, vice president; and Asa E. Walcott, secretary-treasurer. Its directors then were: L. D. Cline, L. W. Tinkham, L. W. Todd, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and J. G. Glaser. Said Association was organized for the purpose and has performed the function of promoting general and special interests of its members and, as hereinafter set forth those engaged in the growing and handling of Michigan beans throughout the State of Michigan. During all times referred to in the complaint, it constituted an instrumentality for the furthering and making effective of the purposes and objectives of the individual members and others, jointly and severally.

PAR. 2. Since 1892, and during all times referred to in the complaint (for more than 4 years prior to October 27, 1939), the elevator operator and jobber members of the Michigan Bean Shippers Association, and of its predecessor, the Michigan Bean Jobbers Association, have performed an essential function in providing a ready cash market for the farmers' beans and numerous other farm commodities, and have particularly sought to develop additional market demand and outlets for the large amount of beans grown in the State of Michigan. They have been instrumental in keeping the local growers in contact with the distant buyers and consumers who are widely located throughout the eastern half of the United States. The said elevator operators have a substantial business property investment aggregating several million dollars, and furnish employment to several thousand individuals in Michigan in the course of performing the functions necessary to prepare the farmers' crop for marketing. The Association and its members have been active and instrumental in securing the establishment and maintenance of uniform grades of Michigan beans and securing their adoption in the markets of the country. By this activity over many years, they have done much to secure universal recognition and acceptance of Michigan beans as being of the highest standard and quality. Compulsory inspection of the Michigan "navy" beans, instituted in 1938, which was effectuated through the active assistance and cooperation of the said Association with the Michigan State Department of Agriculture, has tended to insure the maintenance of this high quality both on the part of the growers and the "trade" generally.

PAR. 3. (a) Respondent, Charles Wolohan, Inc., is a Michigan corporation with its general offices at Birch Run, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(b) Respondent, J. P. Burroughs & Son, is a Michigan corporation, with its principal office located at Holman and Grand Traverse, Flint, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(c) Respondent Hammerslag & Tinkham, Inc., is a Michigan corporation, with its principal office located at 35 Pearl Street NW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(d) Respondent, Minor Walton Bean Co., is a Michigan corporation, with its principal office located at 240 Logan Street SW., Grand Rapids, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(e) Respondent, Michigan Elevator Exchange, is a Michigan corporation operating under the Michigan Cooperative Laws, with its principal office located at 221 North Cedar Street, East Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

(f) Respondent, Ryon Grain Co., is a Michigan corporation, with its principal office located at 428 Mutual Building, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(g) Respondent, Stickle-Swift, Inc., is a Michigan corporation, with its principal office located at 1804 Olds Tower, Lansing, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber.

(h) Respondent, Hart Bros., is a partnership, of which M. J. Hart is the senior partner and operating manager. Its principal office is located at 1418 South Hamilton Street, Saginaw, Mich. Respondent, Hart Bros., is engaged in buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

(i) Respondent, Michigan Bean Co., is a Michigan corporation, with its principal office located at 1741 North Niagara Street, Saginaw, Mich. It is, and for several years last past has been, engaged in the business of buying and selling beans, barley, wheat, and other farm commodities, as a jobber and elevator operator.

PAR. 4. (a) In the course and conduct of their respective businesses during more than 4 years prior to the issuance of the complaint (that

is, for more than 4 years prior to October 27, 1939), the member respondents (1) bought beans and other farm commodities from producers and others in the State of Michigan for resale in that State, in other States of the United States, the Territories thereof, the District of Columbia, and foreign nations, and when such sales were made, shipped, or caused to be shipped said commodities from various points in the State of Michigan to the purchasers thereof at their respective locations in that State or in the other States of the United States, the Territories thereof, the District of Columbia, and foreign nations; (2) bought and sold quantities of beans, barley, wheat, and other farm commodities in the State of Michigan, some of which were destined to enter and flow in continuous streams of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and foreign nations.

(b) Barley, wheat, and other farm commodities are familiar articles of commerce between and among the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, and the streams of commerce in barley, wheat, and said other farm commodities between the various States of the United States, the Territories thereof, the District of Columbia, and with foreign nations, are and were during all times referred to in the complaint made up in part from quantities of the said commodities grown in the State of Michigan.

(c) White pea beans, commonly known as "navy" beans, make up approximately one-third of the bulk of the bean crop flowing in the interstate commerce between and among the various States of the United States and the District of Columbia. Eighty percent of the white pea beans grown in the United States are grown in the State of Michigan. In the course and conduct of their businesses the member respondents, individually and collectively, buy and sell and ship, or cause to be shipped, from year to year, 80 percent of the annual crop of this variety of beans grown in the State of Michigan and a major portion of the barley, wheat, and other farm commodities grown in that State. The greater portion of the crops of these commodities, grown from year to year in the State of Michigan, bought and sold by the member respondents, is sold and shipped or caused to be sold and shipped by them to purchasers located in other States of the United States, the Territories thereof, the District of Columbia, and in foreign nations, and form part of the streams of commerce of these commodities between and among the States of the United States, its Territories, and with foreign nations.

(d) In the aforesaid manner the member respondents are and were at all times referred to in the complaint (that is, for more than 4 years prior to October 27, 1939), engaged in interstate commerce in beans and other farm commodities.

(e) Beans purchased by elevator operator member respondents from growers cannot enter into commerce or into the consumer market until they have been processed to the grades established by the Michigan State Department of Agriculture, and inspected in accordance with the rules and regulations prescribed by said department.

PAR. 5. (a) Prior to the adoption of the practices hereinafter found, the member respondents were in active and substantial competition with one another and with other elevator men and jobbers located and doing business in the State of Michigan not named as respondents herein (some of whom have been members of the respondent Association and others of whom have not been members of the respondent Association) in making and seeking to make purchases and sales of beans, barley, wheat, and other farm commodities in such commerce, and, except as hereinafter found, such active and substantial competition has continued to the present time, and the said member respondents are now in active and substantial competition with each other and with other members of the elevator and jobber industries.

(b) The said respondents now constitute, and during all of the times mentioned in the complaint have constituted, a majority of the elevator men and jobbers buying and selling beans in the State of Michigan.

PAR. 6. Respondents, named or referred to herein, for more than four years immediately prior to the issuance of the complaint (October 27, 1939) have concertedly through cooperation and agreement:

(a) Daily made up and computed or caused to be made up and computed, through the offices of the respondent Michigan Bean Shippers Association, a price for choice hand-picked white pea beans in bulk to country shippers, and disseminated and distributed or caused to be disseminated and distributed, among and between themselves, and to the industry, the press, and public, generally, said price as an "association close."

Said "association closes" purported to be the average price in bulk at which beans were being bought by jobbers from shippers in the State of Michigan at the time the "association close" was issued. They were not the average of such prices, nor did they accurately reflect such prices, for at least three reasons, to wit, one, under the method used in computing the said "association closes" bids were received by the

Association only from those of its members approved by the Board of Directors of the Association for such reporting with the result that only a limited number of the individuals, firms, and corporations engaged in buying and selling beans in the State of Michigan reported to the Association; two, the reports submitted to the Association by the members who did report did not always reflect the range of prices being paid by them over any given period of time, but did only reflect the price they were paying at the time of the making of the report; three, the "association close" was determined from the prices reported but was not always an accurate arithmetic average of such prices.

Member respondents used each "association close" as a basis or guide for making quotations and consummating sales and purchases to producers and to the "trade." The "trade" as used herein, and as commonly understood by respondents, is comprised of the consumers and processors of beans to whom the member respondents sell and ship the beans, the important classes of such "trade" being the major canning companies, the major chain stores, and others of the United States, and foreign importers.

(b) From time to time fixed and maintained differentials to be received by elevator men for the function they perform in buying beans and barley from producers and reselling them to jobbers and others.

An elevator man buys beans from producers and resells them to jobbers and others. The spread between the price at which he buys and the price at which he sells is known to the industry and to the respondents as a "margin" and is herein referred to as a "differential."

(c) Fixed and maintained from time to time, for beans and barley "differentials" to be received by jobbers between the price paid by them, the jobbers, to elevator men, and the price they, the jobbers, sell such beans and barley to the "trade."

(d) Fixed and maintained schedules of charges for "picking" beans.

"Picking" is a term applied to the process of determining the percent of foreign materials, culls, and other demerits in threshed beans brought to elevators by producers, and the separation and removal of same from the quantities as tendered by them. It is recognized by respondents as a term having this meaning.

(e) Established and used a uniform contract embodying terms and conditions of sale for buying and selling beans.

(f) Adopted and maintained a rule of practice known to them and referred to by them as the "scoop-shovel" rule by which they

agreed to refuse to buy and sell or trade in beans and other farm commodities which had been "scoop-shoveled." They defined a "scoop shoveler" "as being one who is not equipped with the proper buildings and machinery for cleaning the beans and grain as they come from farmers' vehicles before they are weighed, and one who does not use such facilities in every instance before making purchases of farmers' beans and grain, and who does not maintain a permanent location at least eight months a year in a territory in which there is a regular buyer, equipped with the necessary machinery to properly clean, weigh and store beans and grains." The bylaws of the Michigan Bean Shippers Association provided that "scoop-shovelers" or firms or individuals governed in any sense by "scoop-shoveling" were not entitled to membership in the respondent Association.

It has been the long-established practice for farmers and growers to haul their beans and other farm commodities to the local elevators for sale. In the State of Michigan, this practice as applied to beans is in part a result of the fact that they must be graded and "picked" and elevators maintain and operate the necessary equipment and labor required for grading and "picking" beans in substantial quantities.

These operations by the elevators furnish a not-inconsiderable amount of employment, and this concentration of available labor together with the expensive machinery and equipment which was of a stationary type, necessitated the bringing of the beans to the elevators.

Some years ago a portable bean picker was invented and placed on the market, by the use of which beans could be machine graded to a limited degree at the farmers' and growers' place of business. The use of this device, while not eliminating the necessity of hand-picking, did in some years have a tendency to curtail the volume of business done by the local elevators, and the "scoop-shovel" rule referred to above was applied to discourage the use of that method of processing the beans to grade.

(g) Said member respondents used the Michigan Bean Shippers Association as an instrumentality for establishing and maintaining the rules, regulations, practices, and policies as aforesaid and to secure adherence thereto by the said member respondents and by non-member competitors, and have also held meetings furthering such collective and cooperative activities.

PAR. 7. The doing and performing of the acts, practices, and methods as set forth in paragraph 6, (a) to (g) inclusive, hereof, had

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the capacity and tendency unduly to suppress, restrain, and lessen competition, and has restricted, restrained, and lessened competition, by, between and among the said respondents, and between and among the said respondents and other members of the bean industry in the State of Michigan, in interstate trade and commerce in beans; and have had the capacity and tendency to lower prices to the producing public, the farmers and growers of beans and barley, and have tended to prevent the use of machines and of methods of marketing whereby "picking" can be done at the farms and places where beans are grown.

PAR. 8. Neither at the present time nor at the issuance of the complaint herein were R. C. Smith, L. L. Green, or A. L. Ward, either officers or directors of the Michigan Bean Shippers Association, but these individuals were, at both of such times, officers of respondent members which are either named in the complaint or referred to as the class of which those named are representative.

CONCLUSION

The acts, methods, and practices of the respondents as herein found are all to the prejudice of the public; have a dangerous tendency to hinder and prevent, and have actually hindered and prevented, price competition between and among respondents in the purchase and sale of beans and barley in commerce within the intent and meaning of the Federal Trade Commission Act; have tended to place in respondents the power to control prices for beans and barley grown in the State of Michigan; have tended to create in the respondents a monopoly in the sale in commerce of beans grown in the State of Michigan; have unreasonably restrained such commerce in beans, 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, the answer of the respondents, and a stipulation as to the facts entered into between the respondents herein by their attorney, W. P. Smith, and W. T. Kelley, chief counsel for the Commission, which provides, among other things, that without further evidence or other intervening procedure the Commission may issue and serve upon the respondents herein findings as to facts and conclusion based thereon and an order disposing of the proceedings, and the Commission having made

its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered, That the respondents, Michigan Bean Shippers' Association, a nonprofit corporation, its officers, L. W. Todd, president, Asa E. Walcott, secretary-treasurer; its directors, Claude H. Estee, E. H. Bueschlen, William R. Neumann, and its members, Charles Wolohan, Inc., J. P. Burroughs & Son, Hammerslag & Tinkham, Inc., Minor Walton Bean Co., Michigan Elevator Exchange, Ryon Grain Co., Stickle-Swift, Inc., Hart Brothers, Michigan Bean Co., individually and as representative members of said Association, directly or through any corporate or other device, in connection with the offering for sale, sale, and distribution of beans or barely in interstate commerce or in the District of Columbia, do forthwith cease and desist from concertedly, through cooperation and agreement:

1. Establishing, making up or computing, or causing to be established, made up or computed, or publishing or disseminating, or causing to be published or disseminated, from time to time or at any time, through the offices of the Michigan Bean Shippers' Association, or any other central agency, or otherwise, a price, bid, quotation or "close" for beans: *Provided*, That this shall not prohibit collection and dissemination of prices paid or bids or quotations made in past and closed transactions, nor the publishing and disseminating of accurate and correct reports showing the range of prices paid or received in past and closed transactions.

2. Making any report or reports, or representation to the Michigan Bean Shippers' Association, or any other central agency, of price or prices, bid or bids, paid or made for beans grown in the State of Michigan, which is or are not accurate, true, and correct.

3. Fixing and maintaining the differential, charge or spread, or differentials, charges or spreads to be made or received for the function or functions performed by elevator men and/or jobbers in buying and selling beans or barley in commerce.

4. Fixing and maintaining schedules of charges, and charges for separating and removing foreign materials, culls, and other demerits from beans.

5. Adopting and maintaining any rule or rules of practice, regulation or measure, which tends to prevent the use of any machine, device or method for cleaning, grading, and processing beans, unless said machine, device or method is injurious and detrimental to the welfare of the bean industry of the State of Michigan.

6. Establishing and using a uniform contract embodying terms and conditions of sale for buying and selling beans.

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It is further ordered, That the complaint herein be, and the same hereby is, dismissed as to R. C. Smith, L. L. Green, and A. L. Ward, as officers and/or directors of the respondent, Michigan Bean Shippers Association.

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

Syllabus

IN THE MATTER OF

MILLS SALES COMPANY OF NEW YORK, INC., AND
DAVID JACOBY, EVELYN JACOBY, JOSEPH JACOBY,
ESTELLE J. KRUGER AND WALTER JACOBY, INDI-
VIDUALLY AND AS OFFICERS OF MILLS SALES COM-
PANY OF NEW YORK, INC.COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 3910. Complaint, Oct. 5, 1939—Decision, Apr. 12, 1940*

Where a corporation and four individuals who were officers thereof and formulated, directed, dictated, and controlled all of its acts, policies, and practices, as below set forth, engaged in sale and distribution of cosmetics, shaving and dental creams, drug and household sundries, pen and pencil sets, and various other articles of merchandise, and of push cards and punchboards to purchasers in various of the States and in the District of Columbia—

(a) Sold and distributed certain assortments of their merchandise together with push cards and punchboards which involved the operation of games of chance, gift enterprises, or lottery schemes, by which such merchandise might be distributed to ultimate consumers or purchasers thereof wholly by lot or chance under variety of plans and including schemes by which customer received for 5 cents paid specified articles of merchandise or nothing other than privilege of making push or punch in accordance with success or failure in securing from card or board certain specified numbers, or under similar schemes dependent upon explanatory legends placed on cards or boards by dealer purchasers thereof in case of devices arranged for such purpose; and

Supplied thereby to and placed in the hands of others means of conducting lotteries, gift enterprises, or games of chance in the sale and distribution of such merchandise as exposed, offered and sold by retail dealer purchasers thereof in accordance with such sales plan or method involving game of chance or sale of a chance to procure such articles at prices much less than normal retail prices thereof, contrary to an established public policy of the United States and in violation of criminal laws, and in competition with many who are unwilling to adopt and use said or any sales plan or method involving game of chance or sale of a chance to win something by chance or any other method contrary to public policy and refrain therefrom;

With the result that many dealers in and ultimate consumers of such merchandise were attracted by their sales plan or method because of the element of chance involved therein and above described, and were thereby induced to purchase their merchandise in preference to like and similar products offered and sold by said competitors who do not use same or similar sales plan or method and with capacity and tendency to divert unfairly to them trade from their competitors aforesaid and deprive purchasing public of benefit of free competition in merchandise in question;