

Syllabus

IN THE MATTER OF
STANDARD BRANDS INCORPORATED AND STANDARD
BRANDS OF CALIFORNIA ¹

COMPLAINT, MODIFIED FINDINGS AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED

Docket 2986. Complaint, Nov. 21, 1936—Decision, May 1, 1940

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—WHETHER DUE ALLOWANCE ONLY FOR DIFFERENCES IN COST OF MANUFACTURE, SALE OR DELIVERY RESULTING FROM DIFFERING METHODS, ETC.—COST ASCERTAINMENT—ESTIMATES—COSTS—ITEMS, UNITS AND ALLOCATIONS.

In proceeding in which corporation and its subsidiary, engaged on national scale in manufacture and sale of bakers' yeast, chiefly, to some 25,000 customers, under schedule of price differentials and practices in application thereof, challenged as constituting discrimination in price in violation of aforesaid section, offered cost studies, computations, and allocations based upon lump sum estimates demonstrated by their own tabulations as erroneous, distributed results of such error throughout their cost study on basis of re-assumed correctness of demonstrated errors, applied repeatedly such lump sum estimates directly and indirectly throughout their allocations of costs, and augmented "by difference" partial cost data obtained by actual survey in order to adjust final and vital results to coincide with lump sum estimates made at outset, resorted to use of such lump sum estimates in allocations of all costs, and included in costs allocated to bakers' yeast many items of cost not incurred in manufacture, sale, and delivery of such product, and many items of cost which should be allocated equally to each pound of such yeast: *Held*, (1) That their lump sum estimates cannot be made the basis for price differentials; and (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

¹ The original findings and order are published in 29 F. T. C. 121. The effect of Commission order of May 1, modifying such original findings and order, is to include, as set forth in the new paragraph 15 of the findings, in lieu of the old paragraph 15 of the original findings, respondents' theretofore methods in sale of foil yeast as discriminatory in violation of the statute involved, and to include such methods of selling said foil yeast within the prohibitions of the order, as set forth in the paragraph thereof relating thereto, on page 1157, *infra*.

DISCRIMINATING IN PRICE—CLAYTON ACT, SEC. 2 (a)—QUANTITY DISCOUNTS AND DIFFERENTIALS—WHERE NOT JUSTIFIED BY DIFFERENCES IN COST, ETC.; BASED ON MONTHLY PURCHASE OR REQUIREMENT; APPLICABLE EQUALLY TO MULTI-UNIT-DELIVERY BUYERS; AND SPECIAL OFF-SCALE CONCESSIONS.

Where a corporation and its Pacific coast subsidiary, which were engaged in the manufacture, sale, and distribution of foil yeast, and, chiefly, of bakers' yeast of uniform grade and quality; and which—

(1) Constituted largest manufacturers of yeast in the United States, enjoyed between 55 and 65 percent of the total business, had 6 factories from the Atlantic to the Pacific, had 444 agencies and subagencies so geographically located throughout the country that the yeast would reach such agencies by common carrier within 24 hours after its manufacture and be delivered within 24 hours from such time of arrival from the refrigerated warehouses maintained exclusively for its storage, and served 25,000 customers in practically every city, town, village, and community in the United States, ranging from chain food organizations of national scope with 33 bakeries east of the Rockies and many thousands of retail stores, and baking companies of both national and sectional scope, with bakeries running into the scores, to smallest local concerns, in direct competition with the house-to-house and other selling by the larger enterprises; and

(2) Gave its customers the benefit of extensive free research and merchandising service, through advising them as to results from research activities carried on in their research laboratories and experiments made in effort to improve products made from yeast, and through experts employed to visit bakeries and render such assistance as they could to customers in overcoming difficulties encountered by said customers in manufacture of bread and allied products, through the sending of merchandising experts to instruct and advise customers as to how best to display their goods and secure business, through national advertising campaigns in periodicals and by radio, and through the furnishing of advertising material at cost, and at lower prices than otherwise comparably obtainable, to enable local bakers to tie in locally with national advertising campaigns, and through maintenance of free school for bakers, with the result that they were thereby enabled, through such services and their prestige and good will, to secure more favorable prices for their products than were competitors—

In selling their bakers' yeast under price lists and schedules which they did not publish and with contents of which no customer was acquainted, and under which, as involved in instant case and applicable to large part of country and worked out in 11 steps, purchasers of 50,000 pounds and more of bakers' yeast received price of 14 cents a pound, purchasers of 10,000 to 50,000 pounds received price of 14½ cents a pound, those purchasing from 7,500 to 10,000 pounds received price of 16 cents, and prices in remaining 8 steps ranged upward from 17 cents for monthly purchases or requirements of buyer ranging from 5,000 to 7,500 pounds, to 25 cents for those purchasing from 1 to 150 pounds—

(a) Discriminated in price between customer competitors through said scale and price differentials, which were not justified by reason of differences in costs of delivering respective quantities therein set forth, and were not shown to be such as make only due allowances for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such yeast was to such purchasers sold or delivered, and under which (1)

Nation-wide food chain, enjoying said 14-cent price on basis of purchases in aggregate for its large number of bakeries, requirements of no single one of which was such as to entitle it thereto, benefited by a saving of \$25,000 over amounts payable for corresponding quantity purchased by 14½-cent customers, by \$100,000 over 16-cent customers, and by increasing amounts up to \$550,000 over 25-cent customers; (2) customers paying highest price were discriminated against with respect to all other customers; (3) customers paying lowest prices, including Nation-wide chains, were given benefit of discrimination as against all other customers; (4) medium-sized independent baker was discriminated against with respect to his larger competitors and given benefit of discrimination as against his smaller competitors, with greatest discrimination in all instances in favor of most powerful competitor, and customer using approximately 10,000 pounds of yeast, and receiving either 16-cent or 14½-cent price, would need to increase monthly consumption of yeast by 40,000 pounds, at least, or monthly output of bread by 4,000,000 pounds to secure 14-cent price, to which, on basis alone of delivery to separate factory or bakery of any customer, no customer was entitled, and (5) under which the effect of the disparity involved, greater per unit as between extreme price brackets, was increased in total volume as between medium and lower price brackets, so that baker taking 1,499 pounds of yeast per month and paying scale price of 20 cents per pound would be discriminated against in sum of approximately \$1,080 per year, as compared with baker paying 14 cents per pound;

With result, through such scale of prices and differentials involved therein, under which cost of producing pound of bread was increased by one-seventh of a cent as between baker paying 14 cents and one paying 25 cents, of enabling large bakeries and chains to make large and substantial savings which they might employ in the keen competition shown to exist between them and the smaller bakeries, and of conferring, through aforesaid and various other important cost differentials brought about under said scale in bakery business, with its large sales and close margins, constituting substantial, material, and vital factors of competition, an advantage on purchasers of yeast at lower prices which might be reflected in many different ways in lessening or injuring of competition through use for periodical reductions in price or increase in service, sales effort, and sales appeal, to the disadvantage of the bakers against whom such discriminations are employed; and

With result that effect of such discriminations in price was and might be substantially to lessen competition and tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which they and their customers were engaged, and to injure, destroy, or prevent competition with customers receiving benefit of such discrimination; and

(b) Discriminated in price by deviating from said schedule and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through practice of applying such schedule on basis of respective customers' monthly requirements, irrespective of whether or not such requirements were purchased of them, (1) between customers, on the one hand, who purchased all of their requirements of yeast from them, and customers who thus purchased only a part of their requirements, so that, under certain circumstances, purchaser buying his entire requirement would pay more than other customer buying similar quantity of them, but with larger monthly

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requirement, and would pay, also, same amount as still other customer purchasing less, but with same monthly requirement, and (2) between customer, on the one hand, who purchased some but not all of his requirement from them, and other customer who also purchased some but not all of his requirement, so that, under certain circumstances, customer purchasing given quantity, but with larger requirement, might pay less than customer purchasing of them similar quantity, but with smaller requirement;

- (c) Discriminated in price between different purchasers of their said yeast by deviating from said schedule, and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through practice of selling to purchasers based upon their total monthly requirements or purchases instead of upon the definite quantity or volume delivered monthly to the separate plants, bakeries, factories, or warehouses of such respective customers, and under which practice food and bakery chains with numerous, widely scattered, separate bakeries or factories, deliveries to no one of which were such, as case might be, as to secure purchaser 14 cent, 14½ cent, or other more favorable price bracket, but would have fallen in price brackets ranging from 14½ cents to 19 cents and as high as 23 cents, received, through such aggregating practice, benefit of 14-cent, 14½-cent, or 15-cent price, and benefited thereby through savings secured through such discriminations in their favor and against those paying scale prices, in amounts aggregating many thousands of dollars; and
- (d) Discriminated in price between different purchasers of their said yeast by deviating from said schedule and not selling at prices based upon actual quantity or volume delivered to respective purchasers, through selling the same quantity or volume monthly to different purchasers at different prices, under practice of selling to some customers, including larger customers and certain baking companies purchasing their yeast at 14-cent price, but who consumed less than required quantity to entitle them thereto, and to others similarly securing more favorable price than that to which thus entitled, at so-called off-scale prices or concessions granted by central office, and not by division managers, extent of whose authority with smaller customers did not exceed more than two or three cent off-scale allowance, and not in good faith to meet competition, but under general price policy pursued to outstrip competitors;

With result that the effect of such price discriminations, as above set forth, was and might be substantially to lessen competition or tend to create monopoly in sale and distribution of bread and allied products in the respective lines of commerce in which they and their customers receiving benefit of such discriminatory prices were engaged, and to injure, destroy or prevent competition with customers receiving benefit of such discrimination; and

Where said corporations, in selling their foil yeast according to price scale of 27 cents a dozen for 300 pieces and up, per month, and 30 cents a dozen for under 300 pieces—

- (e) Discriminated in price between customer competitor purchasers of their said foil yeast through selling said product to independent retailers taking more than 300 pieces per month at price aforesaid of 27 cents, and selling at said price such foil yeast also to units of corporate, voluntary and cooperative groups, regardless of quantity delivered during any one month to any one unit of such groups, members of which were competitively engaged under like circumstances and conditions with independent retailers who purchased

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comparable quantities and did not receive benefit of such lower price and differential, which did not make only due allowance for differences in cost of sale and delivery resulting from differing quantities in which such foil yeast was to such purchasers sold and delivered, and under which differential, amounting annually to substantial sum, some preferred purchasers realized substantial savings annually over other purchasers who did not receive benefit thereof;

With the result that the effect of such price discrimination by said corporations might be substantially to lessen competition or tend to create a monopoly in the sale and distribution of foil yeast in respective lines of commerce in which they and their customers receiving benefits of such discriminatory prices were engaged, and to injure or prevent competition with customers receiving such benefit:

Held, That, through use of discriminatory prices as set forth in schedule in question, and otherwise as above set out and indicated, said corporation and subsidiary violated and were violating section 2 (a) of Clayton Act.

Before *Mr. John W. Norwood*, trial examiner.

Mr. James I. Rooney and *Mr. Allen C. Phelps* for the Commission.

Davis, Polk, Wardwell, Gardiner & Reed, of New York City, and *Covington, Burling, Rublee, Acheson & Shorb*, of Washington, D. C., for respondents.

COMPLAINT¹

Pursuant to the provisions of an act of Congress, approved June 19, 1936, Public 692 (the Robinson-Patman Act), amending section 2 of an act approved October 15, 1914 (the Clayton Act), the Federal Trade Commission hereby issues its complaint against Standard Brands Inc. and Standard Brands of California, stating the charges in that respect as follows:

PARAGRAPH 1. Respondent Standard Brands Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware with its office and principal place of business at 595 Madison Avenue in New York, N. Y.

Respondent Standard Brands of California is a corporation organized and existing under and by virtue of the laws of the State of California, and is a wholly owned subsidiary of the respondent Standard Brands Inc., and its offices are the same as those of respondent Standard Brands Inc.

Respondents manufacture, sell, and distribute yeast in commerce to their customers located in the several States of the United States, causing said yeast, when sold, to be shipped from their respective factories in various States of the United States to the purchasers

¹ Complaint published as amended by "Stipulation Amending Complaint and Answers, Approved by the Commission July 28, 1937," so as to include paragraph 3-A and amend paragraph 5.

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thereof located in the several States of the United States other than the States of origin of the shipments.

PAR. 2. In the course and conduct of their business as aforesaid, respondents are now, and for many years have been, in substantial competition with other corporations, partnerships, firms, and individuals engaged in the business of selling and distributing yeast in commerce between and among the various States of the United States.

PAR. 3. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, respondents, since June 19, 1936, have been, and are now, discriminating in price between different purchasers of their said product of like grade and quality by giving and allowing certain purchasers of bakers' yeast, used in the manufacture of bread and allied products, different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States.

The discrimination in price herein referred to, insofar as it applies to bakers' yeast, is brought about by the respondents selling said bakers' yeast to their customers upon the following terms:

	<i>Cents per pound</i>
50,000 pounds up per month.....	14
10,000 to 50,000 pounds per month.....	14½
7,500 to 10,000 pounds per month.....	16
5,000 to 7,500 pounds per month.....	17
3,000 to 5,000 pounds per month.....	18
1,500 to 3,000 pounds per month.....	19
1,000 to 1,500 pounds per month.....	20
500 to 1,000 pounds per month.....	21
300 to 500 pounds per month.....	22
150 to 300 pounds per month.....	23
1 to 150 pounds per month.....	25

PAR. 3-A. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, the respondents, since June 19, 1936, have been and are now discriminating in price between their purchasers of their product of like grade and quality by giving and allowing certain purchasers of bakers' yeast used in the manufacture of bread and allied products different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the sale and distribution of bread and allied products within the United States. The discrimination in price herein referred to, insofar as it applies to bakers' yeast, is brought about by the respondents selling bakers' yeast to their customers within a given bracket

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as set forth in said schedule in paragraph 3 hereof at prices different from those charged other customers in the same bracket.

PAR. 4. In the course and conduct of their business as described in paragraphs 1 and 2 hereof, respondents, since June 19, 1936, have been, and are now, discriminating in price between different purchasers of their foil yeast of like grade and quality by giving and allowing certain purchasers of foil yeast different prices than given or allowed other of their said purchasers competitively engaged, one with the other, in the resale of their foil yeast within the United States.

The discrimination in price herein referred to, insofar as the same applies to the sale of their foil yeast, is brought about by the respondents selling foil yeast to their customers upon the following terms:

	<i>Cents per dozen</i>
300 pieces or more per month-----	27
Less than 300 pieces per month-----	30

PAR. 5. The effect of said discrimination in price made by respondents, as set forth in paragraphs 3 and 3-A hereof, has been, or may be, substantially to lessen competition, or to injure, destroy, or prevent competition in the manufacture, sale, and distribution of bread and allied products; and the effect of said discrimination has been, or may be, to tend to create a monopoly in said favored customers receiving said discriminatory prices from said respondents in the distribution of said products in the United States.

PAR. 6. The effect of said discrimination in price made by respondents, as set forth in paragraph 4 hereof, has been, or may be substantially to lessen competition, or to injure, destroy, or prevent competition in the sale and distribution of foil yeast; and the effect of said discrimination has been or may be, to tend to create a monopoly in said favored customers receiving said discriminatory prices from said respondents in the distribution of foil yeast in the United States.

PAR. 7. The foregoing alleged acts of said respondents are a violation of subsection 2 (a) of section 1 of said act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes', approved October 15, 1914, as amended (U. S. C., title 15, sec. 13), and for other purposes."

REPORT, MODIFIED FINDINGS AS TO THE FACTS AND ORDER

Pursuant to the provisions of an act of Congress, approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton

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Act), as amended, by an act of Congress approved June 19, 1936, entitled "An act to amend section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes' approved October 15, 1914, as amended (U. S. C., title 15, sec. 13) and for other purposes", the Federal Trade Commission, on November 21, 1936, issued and served its complaint in this proceeding upon the respondents named herein, charging that said respondents were and had been discriminating in price between different purchasers from them of commodities of like grade and quality in commerce in violation of the provisions of section 2 (a) of said act. After the issuance of said complaint and the filing of the respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were introduced by James I. Rooney, attorney for the Commission, before John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, and in opposition to the allegations of the complaint by Theodore Kiendl and Edwin F. Blair of the firm of Davis, Polk, Wardwell, Gardner & Reed, attorneys for the above-named respondents. On June 15, 1937, said complaint was amended as of the date of its issuance, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter the proceeding regularly came on for final hearing before the Commission on the said complaint as amended, the answers thereto as amended, testimony and other evidence, briefs in support of the complaint and in opposition thereto and the oral arguments of counsel as aforesaid; and the Commission having duly considered the same and being now fully advised in the premises, and being of the opinion that the respondents have been and are violating the provisions of section 2 (a) of said Clayton Act, now makes these its findings as to the facts and its conclusions drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Standard Brands Inc. is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its offices and principal place of business at 595 Madison Avenue, New York, N. Y. Respondent Standard Brands of California is a corporation organized and existing under and by virtue of the laws of the State of California with its office and principal place of business at San Francisco, Calif., and it is a wholly owned subsidiary and under the immediate direction and control of the respondent Standard Brands Inc.

PAR. 2. Respondents are engaged, among other things, in the business of manufacturing, selling, and distributing bakers' yeast and foil

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yeast, producing approximately 120,000,000 pounds yearly, of which 10 percent to 12 percent is foil yeast and the remaining is bakers' yeast. Respondents are the largest manufacturers of yeast in the United States and enjoy between 55 percent and 65 percent of the total yeast business.

METHOD OF DOING BUSINESS

PAR. 3. The yeast is manufactured by the respondents at its six factories located respectively at Peekskill, N. Y.; Chicago, Ill.; Pekin, Ill.; San Francisco, Calif.; Sumner, Wash.; and the District of Columbia.

The yeast, all of which is of like grade and quality, is manufactured daily at these factories after which "makers' yeast" is molded into 1-pound and one-half pound cakes, wrapped, and then packed in 50-pound cartons. Because of the perishable nature of the product, prompt delivery is essential, and, to accomplish this, the respondents maintain 444 agencies and subagencies so geographically located throughout the country that the yeast will reach these agencies by common carrier within 24 hours after its manufacture and from which the yeast will be delivered to respondents' customers within 24 hours from the time it arrives there. At the agencies there are refrigerated warehouses maintained exclusively for the storage of the yeast.

At the agencies the yeast, still in the 50-pound cartons, is placed upon trucks owned and operated by the respondents, from which it is delivered to some 25,000 customers located in practically every city, town, village, and community in the United States. The original cartons are broken by the driver-salesmen where the quantity to be delivered to a customer is less than 50 pounds.

PAR. 4. The daily production of yeast at the factories is based upon requisitions from the respective agencies, which in turn are based upon sales of the preceding month, standing orders, and other anticipated requirements from customers who are for the most part regular customers and whose daily requirements of yeast can be anticipated.

Respondents require no written contracts with their customers and there are no commitments that cannot be terminated by either respondents or their customers at will. However, as a general practice and except as otherwise shown hereafter, customers paying less than 25 cents per pound for yeast and who purchase all of their requirements from the respondents are obligated to purchase definite quantities monthly, in order to secure the yeast at the more favorable prices, as shown by the price schedules hereinafter referred to.

With the exception of a few wholesale routes yeast is delivered from the same trucks to both large and small customers.

PAR. 5. In the delivery of the yeast the driver-salesman takes daily route sheets made up at the agency headquarters, calls on the customers named therein, leaves the amount of yeast they require and either collects the cash or takes the customer's receipt according to his instructions. Charge customers who receipt for the yeast are billed directly by the agency at the end of the month. Driver-salesmen solicit business from new and reclaimed prospects, but other salesmen or solicitors are employed by the respondents to sell respondents' products. Many of the routes operated from the respective agencies are exclusively bakery routes, while others are so-called mixed routes delivering yeast and other products sold by the respondents.

PAR. 6. Respondents sell their yeast under the direct supervision of the central office through its bakery merchandising department. This department operates through 16 sales divisions located respectively at Cambridge, Mass.; Albany, N. Y.; Buffalo, N. Y.; New York, N. Y.; Philadelphia, Pa.; Washington, D. C.; Cincinnati, Ohio; Cleveland, Ohio; Chicago, Ill.; Kansas City, Mo.; Salt Lake City, Utah; Seattle, Wash.; San Francisco, Calif.; St. Louis, Mo.; Dallas, Tex.; and Birmingham, Ala. Through these divisions respondents control and direct the sales of the 444 agencies and subagencies previously referred to.

PAR. 7. In the course and conduct of their business respondents maintain a research laboratory where experiments are made in an effort to improve products made from its yeast and the results obtained are furnished respondents' customers. A force of experts is also maintained for the purpose of visiting bakeries and rendering such assistance as they can to respondents' customers in overcoming difficulties encountered by said customers in the manufacture of bread and allied products. Other promotional activities of the respondents consist in the sending of merchandising experts to their customers and instructing them how best to display their goods and attract customers. Respondents also conduct national advertising campaigns in periodicals and by radio to promote the increased consumption of bakers' bread; and, they also furnish advertising material to local bakers at actual cost which enables them to tie-in locally with the national advertising campaigns. Advertising ideas and suggestions are not charged for and the cuts and folders for which charges are made are based on purchases of large quantities by the respondents and the costs to the customers are much less than if produced locally. Respondents have maintained a school for bakers, giving free instruction to all customers interested. The services maintained by the respondents and previously referred to in this

paragraph are offered as being free and at no extra charge to their customers.

PAR. 8. In the course and conduct of their business the aforesaid respondents are in competition with other corporations, partnerships, firms, and individuals which manufacture and sell yeast for use in the manufacture of bread and allied products and which sell and ship their products from the States of origin of the shipment to various points in the United States other than the State of origin of the shipment. Among the larger competitors of the respondents are Anheuser-Busch Co., St. Louis, Mo.; National Grain Yeast Co., New York, N. Y.; Red Star Yeast Co., Milwaukee, Wis.; Consumers' Yeast Co., San Francisco, Calif.; and The Federal Yeast Co., Baltimore, Md.

COMPETITION OF CUSTOMERS

PAR. 9. The customers of the respondents are both large and small and manufacture and sell bread and allied products throughout the United States and these customers are competitively engaged with one another in the sale of said products, such competition extending to practically every city, town, village, and community in the United States. Among the customers of the respondents whose activities in the sale of bread and allied products are national in scope are The Great Atlantic and Pacific Tea Co., with 38 bakeries located east of the Rocky Mountains and with 14,000 retail stores located in practically all communities east of the Rocky Mountains and whose annual output of bread amounts to 446,000,000 pounds and whose yeast consumption approximates 5,000,000 pounds per year; the Continental Baking Co., with 78 bakeries located throughout the United States and with both wholesale and retail distribution of its products throughout the United States, the retail distribution being principally by house-to-house deliveries, and whose requirements of yeast approximate 5,000,000 pounds per year; the General Baking Corporation, with 77 bakeries throughout the United States and with a distribution system for its products similar to that of the Continental Baking Co., and whose requirements of yeast approximate 4,000,000 pounds per year. Among the customers of respondents whose activities in the sale and distribution of bread and allied products are sectional in scope are Hathaway Bakeries, Inc., with distribution of its products, both wholesale and retail, throughout the New England area; the First National Stores with retail distribution through some 2,400 stores located throughout the New England area. Among other customers of the respondents there are thousands of customers whose distribution of their products are purely local.

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There are approximately 28,000 bakery concerns in the United States, each competing in the sale of its products both with competitors operating on a national scale, sectional scale, or purely locally. The smallest bakeries were thus in direct competition with the house-to-house and other selling by the larger concerns.

A pound of yeast is required in the manufacture of from 75 to 125 pounds of bread, depending upon the particular type of dough.

PRICE SCALES

PAR. 10. For many years prior to and since June 19, 1936, respondents, as a general practice and except as otherwise shown hereafter, have been and now are selling bakers' yeast as aforesaid to their customers at different prices, as set forth in the following schedules:

Schedule A

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150.....	25	3,000 to 5,000.....	18
150 to 300.....	23	5,000 to 7,500.....	17
300 to 500.....	22	7,500 to 10,000.....	16
500 to 1,000.....	21	10,000 to 50,000.....	14½
1,000 to 1,500.....	20	50,000 and up.....	14
1,500 to 3,000.....	19		

The above prices apply to all customers in the following areas:

East: South of Canadian line and north of North Carolina.

West: Arkansas, Illinois, Indiana, Iowa, Kansas, Wisconsin, Kentucky, Michigan, Minnesota, Missouri, Nebraska, West Virginia, North Dakota, Ohio, Oklahoma, South Dakota, Memphis, Tenn.

Pacific coast: California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Wyoming, Washington.

Schedule B

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150.....	27	3,000 to 5,000.....	19
150 to 300.....	25	5,000 to 7,500.....	18
300 to 500.....	24	7,500 to 10,000.....	17
500 to 1,000.....	22	10,000 to 50,000.....	14½
1,000 to 1,500.....	21	50,000 and up.....	14
1,500 to 3,000.....	20		

The above schedule applies to all customers located in the following area: Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee (except Memphis).

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Schedule C

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 60.....	30	2,000 to 3,000.....	21
60 to 150.....	28	3,000 to 5,000.....	20
150 to 300.....	27	5,000 to 7,500.....	18
300 to 500.....	25	7,500 to 10,000.....	17
500 to 1,000.....	24	10,000 to 50,000.....	14½
1,000 to 1,500.....	23	50,000 and up.....	14
1,500 to 2,000.....	22		

The above schedule applies to all customers located in Artesia, N. Mex., and the State of Texas, except El Paso.

Schedule D

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 60.....	30	1,500 to 2,000.....	22
60 to 150.....	28	2,000 to 3,000.....	21
150 to 300.....	27	3,000 to 5,000.....	20
300 to 500.....	25	5,000 to 10,000.....	19
500 to 1,000.....	24	10,000 to 50,000.....	17½
1,000 to 1,500.....	23	50,000 and up.....	17

The above schedule applies to all customers located in Albuquerque, N. Mex., and El Paso, Tex.

Schedule E

Pounds per month	Cents per pound	Pounds per month	Cents per pound
1 to 150.....	27	1,500 to 3,000.....	21
150 to 300.....	26	3,000 to 5,000.....	20
300 to 500.....	25	5,000 to 10,000.....	19
500 to 1,000.....	24	10,000 to 50,000.....	17½
1,000 to 1,500.....	22	50,000 and up.....	17

The above schedule applies to all customers in the State of Arizona.

The findings herein are confined to the sales of bakers' yeast as set forth in schedule A; however, reference is made to the schedule of prices, as set forth in schedules B, C, D, and E, because the respondents, in submitting their justification for the price differentials as shown in schedule A, took into consideration the costs in those areas where the prices set forth in said schedules B, C, D, and E were in effect, to which, reference will be made hereinafter.

Respondents do not publish any of the foregoing price lists and no customer is acquainted with their contents by the respondents. Before any price is quoted at which a customer may purchase bakers' yeast from the respondents, the customer must first indicate to the respondents what his monthly requirements will be. In most cases respondents know the monthly requirements of a prospective customer.

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The prices at which respondents sell bakers' yeast according to the foregoing schedules of prices do not necessarily depend upon the quantities actually purchased but upon the monthly requirements of yeast of the respective customers; that is, a customer whose monthly requirements of yeast might be 1,400 pounds and who purchases all of such requirements from respondents would pay, according to scale, 20 cents per pound; however, if the customer purchased only part of his requirements from the respondents he would still pay 20 cents per pound regardless of what portion of his requirements he so purchased.

DISCRIMINATIONS

PAR. 11. All further reference to price scales or price schedules, unless otherwise mentioned, will refer to schedule A of paragraph 10.

According to the scale of prices at which respondents sell their bakers' yeast, using 25 cents per pound as a base price, the graduating discounts off base price, as represented by the separate price brackets are shown in the following table:

Monthly quantity brackets (pounds)	Price scale	Discount equivalent off base price of 25 cents per pound	Monthly quantity brackets (pounds)	Price scale	Discount equivalent off base price of 25 cents per pound
	<i>Cents per pound</i>	<i>Percentage</i>		<i>Cents per pound</i>	<i>Percentage</i>
1-149	25		3,000-4,999	18	28
150-299	23	8	5,000-7,499	17	32
300-499	22	12	7,500-9,999	16	36
500-999	21	16	10,000-49,999	14½	42
1,000-1,499	20	20	50,000 and up	14	44
1,500-2,999	19	24			

¹ Base price.

If 14 cents per pound were taken as the base price, the increase in price between the next quantity brackets ranges from approximately 3 percent between the 14-cent and the 14½-cent customers to 78.5 percent between the 14-cent and 25-cent customers.

As a result of selling bakers' yeast, according to this price scale, customers purchasing at the most favorable price of 14 cents per pound, such as the Great Atlantic and Pacific Tea Co. which purchases 5 million pounds in 1 year, in the course of that time they pay the following amounts less for the quantities purchased by them than is paid for the same quantity purchased and delivered to customers in the other quantity brackets.

\$25,000 less than 14½-cent customers.

\$100,000 less than 16-cent customers.

\$150,000 less than 17-cent customers.

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\$200,000 less than 18-cent customers.
\$250,000 less than 19-cent customers.
\$300,000 less than 20-cent customers.
\$350,000 less than 21-cent customers.
\$400,000 less than 22-cent customers.
\$450,000 less than 23-cent customers.
\$550,000 less than 25-cent customers.

By this method of selling bakers' yeast, customers paying the highest price are discriminated against with respect to all other customers, while those customers paying the lowest prices, such as the chains operated on a national scale, are given the benefit of the discrimination as against all other customers of the respondents.

Furthermore, by selling according to this graduated scale of prices the medium-sized independent baker is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors. In all instances the greatest discrimination is in favor of the most powerful competitor.

In addition, the graduated scale of prices is so fixed by respondents that a customer using approximately 10,000 pounds of yeast per month and paying therefor either 16 cents or 14½ cents per pound must increase his monthly consumption of yeast at least by 40,000 pounds, or his monthly output of bread by 4 million pounds, in order to secure the 14-cent price, yet the respondents, according to their own report showing the costs of sale and delivery of bakers' yeast (to which reference will be made hereinafter), show that they do not deliver 50,000 pounds in any 1 month to any separate factory or bakery of any respective customer.

PAR. 12. By selling bakers' yeast as the respondents do, even assuming that the differentials in price as set forth in said schedule A could be justified by reason of the differences in the costs of delivering the respective quantities as set forth in said schedule, they are discriminating in price between different purchasers by deviating from this schedule. Such discriminations in price are as follows:

(a) Between customers who purchase all of their requirements of yeast from the respondents and those who purchase some but not all of their requirements of yeast from the respondents.

(b) Between customers who purchase some but not all of their requirements of yeast from respondents and other customers who purchase some but not all of their requirements of yeast from the respondents.

(c) Between customers who purchase any or all of their requirements of yeast from respondents and others who also purchase any or all of their requirements of yeast from respondents, both of whom are

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in the same quantity bracket, or in other words, those who purchase "off scale"; and,

(*d*) By selling at prices based on total consumption irrespective of the number or quantity of the individual deliveries.

As to (*a*), that is, discrimination in price between customers who purchase all of their requirements of yeast from the respondents and those who purchase part of their requirements of yeast from the respondents, for example, a customer whose requirement of yeast is 4,500 pounds a month and who purchased this entire amount from respondents pays, according to scale, 18 cents per pound, whereas, another customer whose requirements of yeast are 7,500 pounds per month and who purchased only 4,500 pounds from the respondents pays only 16 cents per pound for the 4,500 pounds purchased from the respondents. Likewise, this same customer would be discriminated against with respect to another customer having the same monthly requirements of 4,500 pounds but who only purchase 500 pounds from the respondents. Such a customer, because his monthly requirements of yeast were 4,500 pounds, would pay the respondents only 18 cents per pound for the 500 pounds purchased from them.

As to (*b*), that is, between customers who purchase some, but not all, of their requirements of yeast from the respondents, and other customers who also purchase some, but not all, of their requirements of yeast from the respondents, discriminations are brought about in the following manner: The customer whose requirements are 4,500 pounds per month and who purchases 500 pounds of this from the respondents, pays according to scale for that 500 pounds 18 cents per pound, while another customer whose requirements are 1,000 pounds per month and who purchases from the respondents only 500 pounds pays the respondents 20 cents per pound for that 500 pounds because his requirements are only 1,000 pounds per month.

As to (*c*), respondents discriminate between certain customers within a definite quantity bracket by selling to some customers at so-called off-scale prices. The larger customers purchasing their yeast at the 14-cent price, by consuming less than the required quantity to entitle them to this price, are granted this concession only by the central office. Division managers may sell below scale with smaller customers but never more than 2 cents to 3 cents off scale. The larger customers of the respondents purchasing at off-scale prices are Grocers Baking Co., Louisville, Ky.; Hathaway Bakeries, Inc., Cambridge, Mass.; National Baking Co. and Peterson Baking Co. of Omaha, Nebr.; Pechter Baking Co., New York, N. Y.; and M & M Baking Co., Dover, N. H. About 16 percent of the customers served by the respondents' agency at Minneapolis, Minn., purchase at off-scale prices, while in

the New York City area about 35 percent of the customers in the 3,000- to 5,000-pound class pay less than the price scale of 18 cents per pound.

As to (d), discrimination is brought about by respondents selling to their customers on the basis of total consumption or purchases irrespective of the number or quantity of the individual deliveries. The Great Atlantic and Pacific Tea Co. had a total national consumption per month of respondents' yeast ranging from 451,550 pounds for July 1936, to 403,625 pounds for January 1937. These amounts were delivered from the respondents' various agencies to 37 bakeries in as many locations from Louisiana to Iowa and Maine, in quantities ranging from 30,400 pounds delivered at Pittsburgh, Pa., in July, 1936, to 2,200 pounds delivered at New Orleans, La., in September 1936. At no individual bakery of this customer is 50,000 pounds delivered in 1 month. In proportion to the quantities delivered to the respective bakeries, according to the scale of prices as set forth in schedule A, the quantities delivered to 23 of the bakeries should be in the 14½ cents price bracket, to 8 in the 16 cents price bracket, to 4 in the 17 cents price bracket, to 1 in the 18 cents price bracket and to 1 in the 19 cents price bracket. However, this customer pays 14 cents per pound for all of its yeast.

The Continental Baking Corporation had a total national consumption per month of respondents' yeast in quantities ranging from 613,885 pounds for December 1936, to 565,694 for August 1936. This was delivered from respondents' various agencies monthly from July 1936 to January 1937, to 71 bakeries of this customer in as many different locations from Massachusetts to California and Texas in quantities ranging from 45,700 pounds delivered at Detroit, Mich., during December 1936, to 2,515 pounds delivered at Waterbury, Conn., in November 1936. At no one of these bakeries was 50,000 pounds delivered in 1 month. Based upon the quantities delivered at the respective 71 bakeries, according to price scale as set forth in schedule A, the quantities delivered to 21 of the bakeries should be in the 14½ cents price bracket, to 9 in the 16 cents price bracket, to 20 in the 17 cents price bracket, to 18 in the 18 cents price bracket, and to 3 in the 19 cents price bracket. However, this customer purchases its yeast at 14 cents per pound.

The Federal Bakeries, Inc., with 78 branches located over the entire country have purchased their yeast at a price of 15 cents per pound although the monthly deliveries to the respective branches do not exceed 200 pounds.

By this method of selling yeast, independent dealers operating a single plant are obligated to pay a great deal more for yeast than large chains operating several bakeries and who, with a single plant in the same area as the independent, may receive the same quantities of yeast

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at that particular branch as the independent dealer receives. The extent to which such a discrimination reaches is indicated in the case of Federal Bakeries, Inc., who, because it has 78 bakeries located over the entire country, and its total national consumption is in excess of 10,000 pounds, purchases its yeast at 15 cents a pound, although the quantity delivered to the respective branches does not exceed 200 pounds per month, whereas individual customers purchasing only 200 pounds per month are obligated to pay, according to scale, 23 cents per pound. Likewise, the Continental Baking Co. with 71 bakeries located over the entire country, under this method, in the course of one year made a saving in excess of \$116,000. That is, assuming that this customer paid the prices set out on the price scale for the quantities delivered at its respective branches, it would have paid for its yeast \$116,000 more than it did pay in the course of a year. There was in this case a discrimination in favor of Continental Baking Co. of \$116,000 as against customers paying the scale prices. The same advantages were extended by respondents to those chains whose operations are sectional in scope, such as Hathaway Bakeries, Inc., and the First National Stores.

EFFECTS OF DISCRIMINATION

PAR. 13. Respondents' scale prices had the effect of enabling large bakeries and chains to make large and substantial savings which they may employ in the keen competition shown to exist between them and the smaller bakeries. The differential in the prices charged for yeast results in increasing the cost of producing a single pound of bread by one-seventh of a cent as between the baker paying 14 cents per pound for yeast and the one paying 25 cents per pound. This difference was shown to be substantial since the average margin of profit even for a large producer is only three-tenths of a cent per pound, that is, the effect of the price differential is to increase the profit of the large bakery approximately one-third and produce a competitive disadvantage to the bakery equal to, if not in excess of, this proportion. While this disparity appears greater per unit as between the extreme price brackets, its effect is increased in total volume as between the medium and lower price brackets, and the baker taking 1,499 pounds of yeast per month and paying the scale price of 20 cents per pound would be discriminated against in sum of approximately \$1,080 per year as compared with the baker who pays 14 cents per pound for yeast. In this case, there is a smaller per-loaf cost differential but a larger total amount is involved.

The advantage to the purchasers of yeast at lower prices may be reflected in many different ways in the lessening or injuring of com-

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petition, inasmuch as it can be used for periodical reductions in price or increase in service, sales effort, and sales appeal, all of which operate to the disadvantage of the bakers against whom these discriminations are employed. While the one-seventh of a cent cost differential was shown to be a maximum between customers paying the highest and the lowest prices, the evidence shows, and we find, that this maximum differential obtained between a substantial number of large and small bakers and that a smaller but still substantial cost differential obtained between a large number of other competing bakeries. In view of the fact that bread is sold in large quantities and on close margins of profit, as shown abundantly in the record and elsewhere in these findings, such margins are substantial and are material and vital factors of competition.

The respondents do not deny selling bakers' yeast at the differentials in price charged in the complaint, and the evidence shows, and we find, that the effect of such discriminations in price is and may be substantially to lessen competition and tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondents and their customers, receiving the benefit of such discriminatory prices, are engaged, and to injure, destroy or prevent competition with customers receiving the benefit of such discrimination. We find that the differentials in price at which respondents sell their bakers' yeast are not shown to be such as make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such bakers' yeast is to such purchasers sold or delivered.

Respondents, by selling bakers' yeast as they do, even assuming that such a price scale as set forth in schedule A could be justified by reason of the differences in the costs of delivering the differing quantities to different purchasers, are discriminating in price between different purchasers of bakers' yeast because respondents are not selling at prices based upon the actual quantity or volume delivered to the respective purchasers according to said price scale but are deviating therefrom (1) by selling at prices (a) based upon the monthly requirements of the individual purchaser rather than upon the actual quantity or volume purchased monthly from the respondents, (b) based upon the total monthly requirements or purchases of the respective customers instead of upon the definite quantity or volume delivered monthly to the separate plants, bakeries, factories or warehouses of the respective customers, and (2) by selling the same quantity or volume monthly to different purchasers at different prices; and we find that the effect of such price discrimination by the respondents is, and may be, substan-

tially to lessen competition or tend to create a monopoly in the sale and distribution of bread and allied products in the respective lines of commerce in which respondents and their customers, receiving the benefit of such discriminatory prices, are engaged, and to injure, destroy, or prevent competition with customers receiving the benefit of such discrimination.

PAR. 14. The defense of meeting competition raised by the respondents applies only to those cases where the respondents sell at the so-called "off-scale" prices or to discrimination referred to in subsection (c) of paragraph 12 hereof. While it is true that in some instances respondents did sell at off-scale prices where there was keen competition and where prices lower than their scale were reported by customers to have been offered by competitors, it was not shown that these were particular prices made by respondents in good faith to meet similar quotations theretofore made by competitors. Evidence offered by respondents to rebut the prima facie case of discrimination shows clearly that competitive and other considerations were the bases of its general price policy pursued in a process of outstripping competitors, and it was not shown that the price situations in which respondents found themselves were not of their own making. Respondents, by reason of their service and goodwill, were able to secure more for their yeast than could most of their competitors. They are the largest manufacturers of bakers' yeast in the United States and do from 55 to 65 percent of the total business therein, and the evidence shows that their off-scale, as well as scale, prices conform to a general policy of price discrimination whereby subordinates were permitted to sell below scale within fixed limits, and it does not appear that such officials were limited to no more than the competitive price. The evidence shows numerous instances of off-scale selling at prices which do not appear to have been made to meet the quotations of competitors. Good faith in these scale departures does not affirmatively appear and in the circumstances shown, involving the employment of an unjustified price scale, it can not be presumed.

PAR. 15. Respondents sold in commerce immediately prior to April 1, 1940, foil yeast according to the following price scale: 300 pieces and up per month, 27 cents a dozen; under 300 pieces per month, 30 cents a dozen.

Respondents sold said foil yeast to units of corporate, voluntary and cooperative groups, at 27 cents a dozen regardless of the quantity delivered during any 1 month to any 1 unit of such groups, and to independent retailers taking more than 300 pieces per month. The members of the said groups were and are competitively engaged under like circumstances and conditions with independent retailers who did

not and do not receive such lower prices and who purchase comparable quantities. Said differentials in price do not make only due allowance for differences in the cost of sale and delivery resulting from the differing quantities in which such foil yeast is to such purchasers sold and delivered. The said differential in price amounts annually to substantial sums, so that some preferred purchasers realized substantial savings annually over other purchasers that did not receive the benefit of said differential. The Commission finds that the effect of such price discrimination by the respondents may be, substantially to lessen competition or tend to create a monopoly in the sale and distribution of foil yeast in respective lines of commerce in which respondents and their customers, receiving the benefits of such discriminatory prices, are engaged and to injure or prevent competition with customers receiving the benefit of such discrimination.

Subsequent to March 31, 1940, respondents, in the course and conduct of their business as aforesaid, in commerce, have sold and do sell to the aforementioned groups foil yeast at 28½ cents per dozen and sell to competing independent retailers, taking less than 300 pieces per month at 30 cents per dozen, and to those competing independent retailers, taking more than 300 pieces per month, at 28½ cents per dozen. Said differential in prices makes only due allowance for the differences in the cost of sale and delivery resulting from the differing quantities in which such foil yeast is to such purchasers sold and delivered.

PAR. 16. On June 14, 1937, after the Commission had denied a petition filed by the respondents requesting that the Commission make an interlocutory finding upon the evidence submitted up to that time, the respondents elected not to offer any evidence of the justification of the price differentials as set forth in schedule A heretofore referred to in paragraph 10 hereof.

Pursuant to the rules of the Commission, hearings were then closed and the trial examiner's report upon the evidence was duly filed and brief of counsel for the Commission in support of the allegations of the complaint was duly filed.

Immediately prior to the expiration of the time within which brief on behalf of the respondents was due, the respondents, on September 17, 1937, filed with the Commission a petition requesting that the proceeding be reopened and that they be permitted to offer testimony and other evidence to the effect that the differentials in price at which bakers' yeast was sold were justified by differences in cost. Respondents' petition was allowed by the Commission, and, on October 4, 1937, proceedings were reopened to permit the reception of such additional testimony and other evidence. Whereupon, the respondents

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offered in evidence a "Report on Examination of Costs of Sale and Delivery Applicable to Bakers' Yeast" (Res. Ex. 33).

PAR. 17. The cost of sale and delivery applicable to bakers' yeast, as shown in said report, referred to in paragraph 16 hereof, include:

I. Costs of sale and delivery incurred at Divisions and Agencies throughout the United States, including—

- (a) Route Selling and Delivery Costs;
- (b) Solicitation Costs; and,
- (c) Service Costs.

(hereinafter referred to as Direct Costs).

II. General Administration Costs incurred at Divisions and Agencies throughout the United States (hereinafter referred to as Indirect Costs).

In addition to the above items of cost, respondents include a small item of home-office expense, representing salaries of bakery consultants. However, they do not include manufacturing costs, transportation costs, and home-office general administrative costs (including cost of advertising) except the small item representing bakery consultants' salaries.

The months of January, February, and March, 1937, were selected by respondents as a test period, as shown in their report. Sales and costs, as shown therein and referred to hereinafter, represent average figures for 1 month based upon the 3 months' operations. In addition, certain time studies and cost studies were made by the respondents for periods other than the 3-months' period, but the underlying data thus obtained were used as a basis for making certain allocations of said average monthly costs, as described later herein.

The costs, as computed by respondents and shown in their report, applicable to serving customers whose monthly purchases of yeast fall into the separate quantity-price brackets, are shown below in comparison with the prices applicable to the respective quantities:

Bracket	Quantity (pounds)	Cost per pound	Sales price
		<i>Cents per pound</i>	<i>Cents per pound</i>
1.....	1 to 149.....	11.7854	25
2.....	150 to 299.....	10.0250	23
3.....	300 to 499.....	7.7134	22
4.....	500 to 999.....	5.7144	21
5.....	1,000 to 1,499.....	4.8942	20
6.....	1,500 to 2,999.....	2.5416	19
7.....	3,000 to 4,999.....	2.0829	18
8.....	5,000 to 7,499.....	1.4368	17
9.....	7,500 to 9,999.....	1.4735	16
10.....	10,000 to 49,999.....	.9214	14½
11.....	50,000 and up.....	(1)	14

¹ As the costs shown above for each bracket were computed on the basis of sales to individual bakeries, no costs appear in bracket 11 "50,000 pounds and up" because no individual bakery establishment purchases from the company as much as 50,000 pounds of yeast in 1 month.

In addition to bakers' yeast the respondents sell many other products, including foil yeast, coffee, tea, gelatin, frozen eggs, diamalt, baking powder, and other products. Therefore, in making their cost study they group all products into two principal classes which they define as "Bakery Products" and "Grocery Products." The respective divisions and subdivisions of the two groups of products as classified by the respondents are shown in tabular form as follows:

Bakery Products	Grocery Products
Pound yeast:	Foil yeast.
Personal delivery.	Bulk products—Tea.
Shipping sales.	Package products (including Royal
Sales to grocers.	baking powder, Dr. Price baking pow-
Bulk products (including Arkady, Dia-	der, desserts, coffee and tea).
malt, frozen eggs and fermaloid).	
Package products (including Fleisch-	
man baking powder and other leav-	
eners).	

The term "Bakers' Yeast," as used by respondents, means "Pound Yeast" as distinguished from "Foil Yeast." Respondents sell "Bakers' Yeast" principally through their personal-delivery service, but other minor sales are made which respondents style "Shipping Sales" and "Sales to Grocers." However, the term "Bakers' Yeast" is used herein to mean that portion of pound yeast which is sold through the personal-delivery service.

Total Costs of Sale and Delivery and its Allocation by Respondents between (a) Bakery Products and (b) Grocery Products

The total average monthly costs of sale and delivery, based on 3 months' operations, amounted to \$978,793.38 (in the aggregate).

Records are not kept by respondents which show all of the costs of sale and delivery of each of the two general classes of products, nor of each of the separate products, shown in the foregoing tabulation; but respondents' records do show the total sales of each of the separate products. Therefore, for the purpose of allocating the total costs to the various products, respondents have applied certain predetermined percentages (estimated percentages) to average monthly dollar sales. The percentages thus applied are as follows:

	Percent
Yeast.....	23
Bulk products.....	7.25
Package products.....	11.3

The total average monthly sales, based on three months' operations, amounted to \$6,518,015.44, the detail of which is shown in the following tabulation:

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AVERAGE MONTHLY SALES

Bakery Products:

	<i>Dollar Sales</i>
Pound yeast:	
Personal delivery.....	\$1, 413, 095. 03
Shipping sales.....	35, 368. 53
Sales to grocers.....	26, 277. 25
Bulk products.....	749, 367. 56
Package products.....	68, 505. 22
Total bakery products.....	2, 292, 613. 59

Grocery Products:

Foil yeast.....	710, 390. 63
Bulk products.....	3, 878. 26
Package products.....	3, 511, 132. 96
Total grocery products.....	4, 225, 401. 85
Total sales.....	6, 518, 015. 44

The predetermined percentages were applied to the average monthly sales whereby respondents made an estimate of the costs of sale and delivery applicable to each product. The details of this procedure, referred to hereinafter as "First Step in Respondent's Cost Allocations," are shown in the following tabulation:

First step in respondents' cost allocations

	Dollar sales	Predetermined percentages applied to dollar sales	Estimated costs
BAKERY PRODUCTS			
Pound yeast:			
Personal delivery.....	\$1, 413, 095. 03	23	\$325, 011. 86
Shipping sales.....	35, 368. 53	23	8, 134. 76
Sales to grocers.....	26, 277. 25	23	6, 043. 77
Bulk products.....	749, 367. 56	7. 25	54, 329. 15
Package products.....	68, 505. 22	11. 3	7, 741. 09
Total.....	2, 292, 613. 59		401, 260. 63
GROCERY PRODUCTS			
Foil yeast.....	710, 390. 63	23	163, 389. 84
Bulk products.....	3, 878. 26	7. 25	281. 17
Package products.....	3, 511, 132. 96	11. 3	396, 758. 02
Total.....	4, 225, 401. 85		560, 429. 03
Grand total.....	6, 518, 015. 44		961, 689. 66

After applying the predetermined percentages to dollar sales of each particular product as shown in the foregoing tabulation, it was found that the total estimated costs of all products amounted to \$961,689.66, or \$17,103.72 less than the total known cost of \$978,793.38 (aggregate only for all products). This difference between the total known costs and the total estimated costs was made up by increasing

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the estimated costs for each product by approximately 1.78 percent, the ratio which \$17,103.72 bears to \$961,689.66. The details of this procedure, referred to hereinafter as "Second Step in Respondents' Cost Allocations," are shown in the following tabulation:

Second step in respondents' cost allocations

	Estimated costs	Add 1.78 percent of estimated costs	Final estimated allocation to products of total average monthly costs
BAKERY PRODUCTS			
Pound yeast:			
Personal delivery.....	\$325,011.86	\$5,780.36	\$330,792.22
Shipping sales.....	8,134.76	144.68	8,279.44
Sales to grocers.....	6,043.77	107.49	6,151.26
Bulk products.....	54,329.15	966.25	55,295.40
Package products.....	7,741.09	137.67	7,878.76
Total.....	401,260.63	7,136.45	408,397.08
GROCERY PRODUCTS			
Foil yeast.....	163,389.84	2,905.90	166,295.74
Bulk products.....	281.17	5.00	286.17
Package products.....	396,758.02	7,056.37	403,814.39
Total.....	560,429.03	9,967.27	570,396.30
Grand total.....	961,689.66	17,103.72	978,793.38

Following the estimated allocations of the total average monthly costs to the separate products (Second Step of Respondents' Cost Allocations), respondents made an independent study and analysis (independent of the predetermined percentages) of the respective costs applicable to the two general classes of products, to wit, bakery products and grocery products. As a result of this independent study and analysis, respondents earmarked \$634,062.95 of the total average monthly costs (\$978,793.38), and applied the same directly to the two classes of products. This direct allocation of \$634,062.95 of the total average monthly cost is referred to hereinafter as "Third Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

Third step in respondents' cost allocations

	Bakery products	Grocery products	Total
Agency delivery.....	\$66,090.71	\$232,992.27	\$299,082.98
Agency bakery merchandising.....	23,504.21		23,504.21
Agency grocery merchandising.....		32,162.16	32,162.16
Agency administration.....	49,853.48	6,995.34	56,848.82
Automobiles.....	41,771.05	101,942.38	143,713.43
Division bakery merchandising.....	44,956.09	--	44,956.09
Division grocery merchandising.....	--	28,365.83	28,365.83
Division administration.....	2,497.53	2,931.90	5,429.43
Total.....	228,673.07	405,389.88	634,062.95

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After the allocation of \$634,062.95 to bakery products and grocery products as a result of the independent study and analysis by respondents (Third Step of Respondents' Cost Allocations), there remained an unallocated amount of \$344,730.43 as shown in the third column of the following tabulation. The tabulation will be referred to hereinafter as "Fourth Step in Respondents' Cost Allocations":

Fourth step in respondents' cost allocations

	Total actual average costs	Portion of total costs applied directly (direct costs)	Portion of total costs not allocated directly (in- direct costs)
Agency stock rooms.....	\$34,294.63		\$34,294.63
Agency delivery.....	323,385.59	\$299,082.98	24,302.61
Agency bakery merchandising.....	23,504.21	23,504.21	
Agency grocery merchandising.....	32,162.16	32,162.16	
Agency administration.....	182,506.72	56,848.82	125,657.90
Division stock rooms.....	17,404.33		17,404.33
Automobiles.....	144,570.63	143,713.43	857.20
Division bakery merchandising.....	44,956.09	44,956.09	
Foreign commissions.....	297.67		297.67
Division grocery merchandising.....	28,365.83	28,365.83	
Division administration.....	147,345.52	5,429.43	141,916.09
Total.....	978,793.38 (100.00%)	634,062.95 (64.78%)	344,730.43 (35.22%)

In order to allocate the total indirect costs, to wit, \$344,730.43 between the two general classes of products, respondents, having already allocated, by applying the percentages, \$408,397.08 as the costs of sale and delivery of all bakery products and \$570,396.30 as the costs of sale and delivery of all grocery products, simply deducted from these respective amounts the \$228,673.07 and \$405,389.88 (the amounts they found to be applicable to these two classes of products, respectively, by an independent study and analysis). Thus the allocations of this \$344,730.43 resulted in \$179,724.01 of it being applied to bakery products and \$165,006.42 to grocery products. This procedure is referred to hereinafter as "Fifth Step in Respondents' Cost Allocations," the details of which are shown in the following tabulation:

Fifth step in respondents' cost allocations

	Bakery products	Grocery products	Total
Total costs of sale and delivery as allocated to the two classes of products by applying predetermined percentages to dollar sales (first and second steps).....	\$408,397.08 (41.72%)	\$570,396.30 (58.28%)	\$978,793.38 (100.00%)
Portion of said costs applicable to the 2 classes of products as determined by respondents' independent study and analysis (third step).....	228,673.07 (30.06%)	405,389.88 (63.94%)	634,062.95 (100.00%)
Balance of said costs—allocated to the 2 classes of products by difference.....	179,724.01 (52.13%)	165,006.42 (47.87%)	344,730.43 (100.00%)

Allocation of Costs to Bakers' Yeast

Respondents made no independent study and analysis for the purpose of allocating costs to bakers' yeast, which is only one of the several products included in the bakery-product classification. The allocation of costs to this one product, bakers' yeast, was made only by applying said predetermined percentages to dollar sales, whereby respondents allocated \$330,792.22 of the total costs of sale and delivery to bakers' yeast (first and second steps in respondents' cost allocations).

This item of \$330,792.22 was subdivided by respondents into "Direct costs," \$192,457.95, and "Other costs" (indirect costs), \$138,334.27.

In order to apply direct costs of \$192,457.95 to personal-delivery bakers' yeast, respondents made a segregation of that portion of the total direct costs (\$228,673.07) applicable to the bakery-product classification as determined by their independent study and analysis (third step in respondents' cost allocations). To such costs (\$228,673.07), respondents applied a percentage, with slight variations, which the total amount allocated to bakers' yeast (aggregating \$345,222.92)¹ bore to the total amount (aggregating \$408,397.08) allocated to the bakery-product classification; such amounts having been previously determined by applying predetermined percentages to dollar sales (first and second steps in respondents' cost allocations). This procedure is referred to hereinafter as "Sixth step in respondents' cost allocations," the details of which are shown in the following tabulation:

Sixth step in respondents' cost allocations

	Total direct costs applicable to bakery products	Percentages applied to direct costs of bakery products	Portion of direct costs of bakery products allocated to personal-delivery bakers' yeast
Route selling and delivery costs.....	\$93,434.02	83.63	\$78,140.38
Solicitation costs.....	122,283.67	84.53	103,366.39
Service costs.....	12,955.38	84.53	10,951.18
Total.....	228,673.07	84.16	192,457.95

After allocating \$192,457.95 of direct costs to bakers' yeast there remained a difference of \$138,334.27 between such direct costs so applied and the estimated total cost of \$330,792.22 applied to bakers' yeast by the use of the predetermined percentages at the outset of respondents' study. Therefore, this amount (\$138,334.27) was assigned by respondents as such part of their unallocated costs (indirect costs) to bakers' yeast. In other words, this amount was arrived at

¹ Including sales through the personal-delivery service, shipping sales and sales to grocers.

by difference in the same manner as the total "Indirect costs" had been previously allocated to the two general classifications of products, bakery products and grocery products, as previously described herein.

This procedure is referred to hereinafter as "Seventh step in respondents' cost allocations," the details of which are shown in the following tabulation:

Seventh step in respondents' cost allocations

Total costs of sale and delivery as allocated to personal-delivery bakers' yeast by applying predetermined percentages to dollar sales (first and second steps)-----	\$330, 792. 22
Portion of direct costs which respondents have allocated to personal-delivery bakers' yeast (sixth step)-----	192, 457. 95
Balance determined by difference, styled by respondents as other costs (indirect costs)-----	138, 334. 27

Allocation of the various elements of costs to the quantity-price brackets

As previously set forth herein, a cost of \$330,792.22 was applied by respondents to sale and delivery of bakers' yeast at the outset by the use of predetermined percentages. Likewise, by the use of predetermined percentages (used directly and indirectly), respondents separated this allocated portion of \$330,792.22 into component parts as follows:

I. Direct costs:	
(a) Route selling and delivery costs-----	\$78, 140. 38
(b) Solicitation costs-----	103, 366. 39
(c) Service costs-----	10, 951. 18
Total direct costs-----	192, 457. 95
II. Other costs (indirect costs)-----	138, 334. 27

Total costs applied to sale and delivery of bakers' yeast----- 330, 792. 22

Respondents' next step was to allocate the above costs to the groups of customers whose monthly purchases of bakers' yeast fell in the respective quantity-price brackets.

The items of direct costs making up the total of \$192, 457. 95 applied to bakers' yeast, as shown above, were allocated and applied to the respective quantity-price brackets by time studies and call studies as follows:

Item I (a) \$78,140.38, route selling and delivery costs, applied to bakers' yeast, was apportioned according to time of stops of the driver-salesmen and trucks at customers' premises as determined by stop-watch studies and collected data for six days. These data showed the aggregate and proportions of time as between the purchasers of the

various bracket quantities of yeast. The apportionment of this item will be shown later in tabular form.

Item I (b) \$103,366.39, Solicitation costs, applied to bakers' yeast, was apportioned according to number of calls on customers by solicitors, foremen, and managers. The apportionment of this item will be shown later in tabular form.

Item I (c) \$10,951.18, Service costs, applied to bakers' yeast, was apportioned according to a study of actual time spent on calling on customers by service men. The apportionment of this item will be shown later in tabular form.

Following the allocations of Item I, Item II other costs (indirect costs), \$138,334.27, was allocated to the quantity-price brackets in the same proportions in which the total direct costs, I (a), I (b) and I (c) combined, had been allocated as described above. The apportionment of this item will be shown later in tabular form.

Before transforming the total so-called direct and indirect costs into costs per pound, respondents apportioned \$3,316.26, representing bakery consultants' salaries and expenses, to the quantity-price brackets on the basis of a time study.

The apportionments to quantity-price brackets of all items of cost applied to bakers' yeast by respondents are referred to hereinafter as "Eighth step in respondents' cost allocations," the details of which are shown in the following tabulation:

Eighth step in respondents' cost allocations

[Respondents' allocations of costs to quantity-price brackets]

Bracket number	Quantity-price brackets	Route selling and delivery costs ¹	Solicitation costs ²	Service costs ³	Total direct costs	Total indirect costs ⁴	Total cost of sale and delivery applied to bakers' yeast by respondents ⁵	Bakery consultants' services ⁶	Total cost applied to bakers' yeast by respondents
		Sixth step	Sixth step	Sixth step	Sixth step	Seventh step	Second step		
	<i>Pounds</i>								
1.....	1- 149	\$25,365.93	\$32,570.17	\$853.74	\$58,789.84	\$42,256.76	\$101,046.60	\$44.73	\$101,091.33
2.....	150- 299	10,643.45	22,848.22	1,293.00	34,784.67	25,002.41	59,787.08	66.80	59,853.88
3.....	300- 499	6,538.95	13,917.84	1,407.12	21,863.91	15,715.27	37,579.18	73.34	37,652.52
4.....	500- 999	6,828.23	11,581.86	2,305.00	20,715.09	14,889.52	35,604.61	158.20	35,762.81
5.....	1,000- 1,499	3,526.27	5,390.85	1,192.87	10,109.99	7,266.82	17,376.81	166.77	17,543.58
6.....	1,500- 2,999	5,793.22	5,141.36	1,769.93	12,704.51	9,131.70	21,836.21	337.99	22,174.20
7.....	3,000- 4,999	5,322.39	4,431.92	841.90	10,596.21	7,616.31	18,212.52	643.44	18,855.96
8.....	5,000- 7,499	4,147.62	2,812.25	502.77	7,462.64	5,363.97	12,826.61	418.23	13,244.84
9.....	7,500- 9,999	4,154.95	1,950.43	446.79	6,552.17	4,709.55	11,261.72	246.78	11,508.48
10.....	10,000-49,999	5,819.37	2,721.49	338.06	8,878.92	6,381.90	15,260.88	1,160.00	16,420.88
11.....	50,000 and up								
		78,140.38	103,366.39	10,951.18	192,457.95	138,334.27	330,792.22	3,316.26	334,108.48

¹ Allocated to brackets on basis of time study for 6 days.

² Allocated to brackets on basis of number of calls on customers.

³ Allocated to brackets on basis of time study.

⁴ Allocated to brackets on basis of total direct costs previously allocated to brackets as shown in the immediately preceding column.

⁵ Total amount of \$330,792.22 was estimated by respondents by applying predetermined percentages to dollar sales.

⁶ Allocated to brackets on basis of time study.

For the next step of respondents' cost allocations, they tabulated all sales of bakers' yeast (sold through personal-delivery service) throughout the United States during the month of January 1937, whereby the quantity (number of pounds) of yeast sold and delivered to each and every single bakery establishment were grouped into the separate quantity-brackets. The number of pounds assigned to each quantity-bracket was then applied to the costs already allocated to the separate brackets in order to determine the cost per pound applicable to each bracket. This procedure is referred to hereinafter as "Ninth step in respondents' cost allocations," the details of which are shown in the following tabulation.

Ninth step in respondents' cost allocations

Quantity-price brackets (pounds)	Total average monthly costs applied to bakers' yeast by respondents (eighth step)	Quantity of bakers' yeast sold through personal-delivery service in January 1937	Costs per pound
		<i>Pounds</i>	<i>Cents</i>
1-149.....	\$101,091.33	859,226	11.7654
150-299.....	59,853.88	597,049	10.0250
300-499.....	37,652.62	488,146	7.7134
500-999.....	35,762.81	625,842	5.7144
1,000-1,499.....	17,543.58	358,457	4.8942
1,500-2,999.....	22,174.20	872,442	2.5416
3,000-4,999.....	18,855.96	905,271	2.0829
5,000-7,499.....	13,244.84	921,843	1.4308
7,500-9,999.....	11,608.48	781,025	1.4735
10,000-49,999.....	16,420.88	1,782,121	.9214
50,000 and up.....			
	334,108.48	8,191,422	

The costs per pound, applicable to the respective brackets as determined by respondents and shown in the preceding tabulation, are compared with respondents' price scale near the beginning of this paragraph.

PAR. 18. In compiling the cost data as shown in respondents' report, referred to in paragraph 16 hereof, two known factors were immediately available at the outset, namely:

(a) Amount of dollar sales throughout the United States of each of respondents' separate products making up an average monthly total of \$6,518,015.44; and,

(b) Costs of sale and delivery throughout the United States of all products combined, amounting to a total monthly average of \$978,793.38 (the portions of cost applicable to each of the separate products being "unknown factors").

Respondents' methods of compiling and allocating the costs of sale and delivery resolved themselves into two principal points of procedure, namely:

- (1) Allocation of costs to the separate products; and,
- (2) Allocation of the various elements of cost, apportioned to bakers' yeast, to the separate quantity-price brackets.

The methods employed by respondents in making their allocations of costs have been outlined, step-by-step, in detail in paragraph 17 hereof.

(1) Allocation of costs to the separate products

A review and study of the step-by-step process, set forth in paragraph 17, will show that the respondents represent the actual costs of sale and delivery of bakers' yeast and all other products to be the amounts of the lump-sum estimates set against each product as shown in the "Second Step." This is not a fact as these amounts are not actual individual product costs. The only actual cost factor that has been determined is the total of \$978,793.38 representing average monthly costs of sale and delivery of all products combined throughout the United States. Respondents' records do not show the actual portions of this total which are properly applicable to any one of the several separate products.

Respondents determined by a factual cost study and analysis that, of the total average cost of \$978,793.38, an amount of \$634,062.95 (64.78 percent) might be allocated directly to the two general classes of products, that is, \$228,673.07 to bakery products and \$405,389.88 to grocery products. All other allocations of cost depend directly or indirectly upon the application of the respective percentages to the dollar sales of the respective products as shown in the "First and Second Steps."

Nowhere in the respondents' cost study does it appear that any factual study has been made to determine the correctness of the percentages that have been applied to the dollar sales of the respective products whereby the costs of sale and delivery of these products have been determined in the form of lump-sum estimates. The cost study submitted by the respondents, referring to these percentages, states that they "are based, in part, on the companies' experience and, in part, on generally recognized costs of distribution of grocery and other products and, in the opinion of its financial officers, they provide for a fair and reasonable allocation of such costs." In addition, from all the evidence, it appears that the correctness of the percentages, or the results to be obtained by the use of them, have never been determined through any factual study, but that they represent judgment and opinion only.

The factual cost study and analysis made by respondents was not made for the purpose of determining the accuracy of the percentages

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or the accuracy of the results to be obtained by the use of them but it was made upon the major premise that the percentages were correct and that the lump-sum estimated costs arrived at by applying the percentages were actual costs.

A review and study of the step-by-step process shows conclusively that the correctness of the percentages and the accuracy of results to be obtained by the use of them is assumed by the respondents. For example, by the factual cost study and analysis to determine the allocation of costs without the application of the percentages, the respondents accounted for only \$634,062.95 (64.78 percent) of the total known costs of all products. This left \$344,730.43 unaccounted for, which was allocated by difference as shown in the fifth step. For clarity, this procedure is reproduced below in tabular form.

Respondents' allocations of costs to the two general classes of products

	Bakery products	Grocery products	Total
Total costs of sale and delivery as allocated to the 2 classes of products by applying predetermined percentages to dollar sales (first and second steps).....	\$408,397.08 (41.72%)	\$570,396.30 (58.28%)	\$978,793.38 (100.00%)
Portion of said costs applicable to the 2 classes of products as determined by respondents' factual cost study and analysis (third step).....	\$228,673.07 (36.06%)	\$405,389.88 (63.94%)	\$634,062.95 (100.00%)
Balance of said costs, allocated to the 2 classes of products by difference.....	\$179,724.01 (52.13%)	\$165,006.42 (47.87%)	\$344,730.43 (100.00%)

A review of the above tabulation shows conclusively that, at the very outset, lump-sum estimates were made of the portions of costs applicable to each of the separate products; such amounts, when added, gave the lump-sum estimates which respondents applied to the two general classes of products, bakery products and grocery products. From these lump-sum estimates applied to the two general classes of products, respondents deducted that portion of costs which they applied directly as the result of a factual cost study and analysis; the difference in each instance they regarded as "indirect costs." In other words, molds were established in the beginning in the form of lump-sum estimated amounts. Following this, a factual cost study and analysis was made whereby certain direct costs were earmarked and placed into the respective molds, and the remaining amounts required to fill-out the molds in each instance were provided by respondents in the form of "other costs" or "indirect costs" on which no factual studies and analyses had been made.

In the case of bakery products, respondents applied a lump-sum estimated cost of \$408,397.08 (41.72 percent) of the total known costs.

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However, of the total direct costs, \$634,062.95, determined by a factual cost study and analysis, respondents applied only \$228,673.07 (36.06 percent) to bakery products; while, of the total \$344,730.43 indirect costs, respondents applied \$179,724.01 (52.13 percent) to bakery products.

If the factual study had been made for the purpose of determining the accuracy of the percentages, rather than taking their accuracy for granted, it is doubtful that 52.13 percent of the indirect costs, on which no factual cost study and analysis had been made, should be applied to bakery products, while only 36.06 percent of the direct costs, on which a factual cost study and analysis had been made, was thus applied.

Indirect Costs

As the result of a factual cost study and analysis of the total average monthly costs of \$978,793.38, an amount of \$634,062.95 was earmarked as coming within either the bakery-product classification or the grocery-product classification, leaving a balance of \$344,730.43 unallocated. This item of the \$344,730.43 of unallocated costs is referred to herein as "indirect costs." The elements of cost included in this item of \$344,730.43 are as follows:

Agency stockrooms:

Pay roll.....	\$25, 666. 97
Refrigerating	7, 444. 21
Miscellaneous	1, 183. 45
Total.....	<u>34, 294. 63</u>

Agency delivery:

Pay roll (unallocated portion).....	1, 952. 77
Charges on shipments to shipping customers.....	14, 686. 01
Charges on shipments of grocery products to jobbers.....	579. 43
Charges on shipments to personal delivery customers.....	6, 845. 07
Delivery expenses (28 agencies).....	239. 33
Total.....	<u>24, 302. 61</u>

Agency administration:

Pay roll—general and clerical.....	51, 129. 34
Office supplies.....	6, 287. 48
Office expenses.....	13, 487. 98
Telephone and telegraph.....	9, 125. 77
Rent.....	27, 459. 51
Miscellaneous	6, 632. 48
Repairs—building and equipment.....	5, 098. 92
Taxes.....	6, 436. 42
Total.....	<u>125, 657. 90</u>

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Division stockrooms:	
Pay roll.....	\$4,887.44
Rent—warehouse.....	1,539.26
Warehouse charges:	
Diamalt.....	1,182.10
Frozen eggs.....	5,168.93
Other.....	3,118.79
Miscellaneous expenses.....	1,507.81
Total.....	17,404.83
Automobiles (unallocated portion).....	857.20
Foreign commissions.....	297.67
Division administration:	
Pay roll:	
Managers, assistant office managers.....	23,376.38
Account and accounts record.....	22,978.60
Clerical.....	26,057.81
General.....	5,122.89
Limited pensions.....	2,368.15
Traveling expense:	
Managers, assistant office managers.....	6,082.90
Accounts department.....	1,127.66
Office supplies.....	4,812.67
Office expense.....	3,781.45
Telephone and telegraph.....	3,473.14
Convention expense:	
Bakery.....	1,630.19
Grocery.....	253.92
Group meetings.....	3,005.50
Rent.....	5,546.29
Gratuities.....	459.28
Advertising:	
Miscellaneous.....	936.78
Freight and express.....	3,009.53
Visonatic expenses.....	309.77
Taxes.....	261.37
Social security.....	18,321.72
Expense distribution.....	¹ 239.59
Expense miscellaneous.....	4,959.23
Workmen compensation insurance.....	4,280.36
Total.....	141,916.09
Grand total.....	344,730.43

¹ Denotes deduction.

This total item of indirect costs was allocated to the two general classes of products as follows:

Bakery products.....	\$179,724.01
Grocery products.....	165,006.42
Total.....	344,730.43

Of the total amount of \$179,724.01 of the indirect costs which was applied to bakery products, an amount of \$138,334.27 (76.97 percent) was applied to bakers' yeast. Of course, these allocations of the indirect costs were applied to the two general classes of products and thence to bakers' yeast by difference wholly and entirely upon respondents' assumption that their lump-sum estimates, applied to each product at the outset, were accurate and correct. Therefore, after deducting those costs which were earmarked as direct costs from the original lump-sum estimates, the difference was assumed to be indirect costs.

A review of the separate items and elements of cost as listed above will show immediately that many of such items could have been allocated directly to the two general classes of products and thence to the separate products to which they applied. For example, "Charges on shipments to shipping customers, \$14,686.01" could have been allocated directly. Likewise, "Warehouse charges—Diamalt, \$1,182.10" and "Warehouse charges—Frozen eggs, \$5,168.93", together with several other items of cost as shown in the above list could have been allocated directly to the respective products to which they applied. No part of these particular items of cost could have possibly been incurred in connection with the sales of bakers' yeast. Nevertheless, under respondents' method of calculating costs, 40.13 percent (ratio of \$138,334.27 to \$344,730.43) of these costs were applied to bakers' yeast.

Reference is made also to the item of "Taxes—Social Security—\$18,321.72" of which according to respondents' method of allocation, \$7,352.50 (40.13 percent) was applied to bakers' yeast. Nowhere in the record is there any evidence which would show what portions of the total amount of \$18,321.72 applied to persons engaged in the sale and delivery of bakers' yeast.

In arriving at their cost differentials, these so-called indirect costs were applied by respondents at a ratio of 13 times as much per pound on sales to those customers who pay 25 cents per pound for bakers' yeast as was allocated to sales to the customers who pay 14½ cents per pound for their yeast.

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For a further example of respondents' methods of apportioning individual costs, reference is made to the items of stockroom costs; "agency stockrooms, \$34,294.63" and "division stockrooms, \$17,404.33", a portion of which could have been allocated directly to frozen eggs and other products as outlined heretofore. Under respondents' method of allocation, a total amount of \$20,746.80 (40.13 percent) of the stockroom costs was allocated to bakers' yeast and this amount was then allocated to the quantity-price brackets, in the calculation of respondents' cost differentials, at the ratio of 13 to 1, that is, thirteen times as much of this cost was allocated to each pound of yeast sold to customers paying the 25-cent price as was allocated to each pound of yeast sold to customers paying the 14½-cent price. It will be noted in connection with the stockroom costs that bakers' yeast is packed in cartons at the factory, shipped to the divisions and agencies in such cartons, placed in the respective stockrooms in such cartons, removed from the stockrooms while still in the cartons, and such cartons remain unbroken when delivered to the customers. Or, in the event that a customer should take less than a carton, then the cartons are generally broken immediately prior to such delivery. In the absence of evidence to the contrary, it would appear that there could be little or no cost difference per pound in the stockroom costs applicable to bakers' yeast.

The small item of "Foreign Commissions—\$297.67" is not applicable to sales within the United States. Nevertheless, respondents have included an amount of \$119.45 (40.13 percent) of this item in the cost applied to bakers' yeast. This small item of cost is trivial and would make little difference in the calculation of respondents' cost differentials. But, it is cited to show the methods employed by respondents in their calculation of costs.

(2) *Allocation of the various elements of costs, apportioned to bakers' yeast, to the separate quantity-price brackets*

The methods by which the \$330,792.22 of costs of sale and delivery applied to bakers' yeast have been allocated to the respective quantity-price brackets, have previously been set forth in the "Eighth Step of respondents' cost allocations." To summarize: The respective items making up this total—to wit, \$78,140.38, route selling and delivery costs; \$103,366.39, solicitation costs; \$10,951.18, service costs; and \$138,334.27, indirect costs—were allocated to the respective quantity-price brackets as follows: Route selling and delivery costs on the basis of a time study; solicitation costs, on the basis of the number of calls on customers; service costs, on the basis of a time study; and, indirect

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costs, on the basis of total direct costs previously allocated to the respective brackets.

The correctness of each of the foregoing amounts cannot be determined conclusively since they were arrived at on the assumption that the lump-sum estimate of costs allocated to bakers' yeast is the actual total costs of sale and delivery of this product.

The allocation of the solicitation costs to the quantity-price brackets, having been made on the basis of calls, has not been shown to be accurate and correct, since the time spent on the separate calls varies materially; and, in addition, the evidence shows that a portion of this item represents promotional costs which have not been segregated and treated separately in respondents' computations.

The service, represented in the item of service cost, while available to all customers, the cost of it has been charged to all customers regardless of whether they have availed themselves of the service or not. The type of service represented in this item of cost together with the type of service represented in the item of bakery consultants cost, has been previously referred to in paragraph 7 hereof; and when the evidence describing these types of service was introduced by the respondents, which was prior to the time that the respondents petitioned to reopen the case in order to introduce evidence with respect to costs, it was represented as being available to all customers free of charge.

RESPONDENTS' USE OF NATION-WIDE COSTS

The complaint, as amended, alleges discrimination in price in the sale of bakers' yeast by the respondents, only according to the prices set forth in schedule A of paragraph 10 hereof. The report on the examination of costs of sale and delivery applicable to bakers' yeast (Res. Ex. 33), offered in evidence by the respondents to show the justification for the price differentials as set forth in said schedule A, made no disclosure of the fact that bakers' yeast is sold by the respondents according to any scale of prices other than that set forth in said schedule A. However, the evidence shows that the respondents do sell bakers' yeast at scales of prices other than those set forth in schedule A; namely, at prices as set forth in schedules B, C, D, and E of paragraph 10 hereof.

Respondents included the costs in those areas where bakers' yeast is sold according to the scale of prices set forth in said schedules B, C, D, and E in order to justify the price differentials set forth in schedule A.

* * * * *

After a thorough study of the report on examination of costs of sale and delivery applicable to bakers' yeast (Res. Ex. 33), and a

review of the evidence in relation thereto, and for the numerous reasons set forth herein, the Commission rejects the costs of sale and delivery applicable to bakers' yeast, submitted by respondents, as a justification for the price differentials set forth in schedule A of paragraph 10 hereof.

CONCLUSION

Respondents, in the sale and distribution of yeast, as above described, are engaged in interstate commerce. There is a constant daily current of commerce in respondents' products throughout the country. As heretofore found, after the yeast is manufactured by the respondents at its 6 factories, it is packed and immediately placed in the channels of commerce so that it will reach some 25,000 customers of the respondents located over the entire country within 48 hours with but a temporary storage at the respective warehouses, which is for the purpose of expediting its delivery. The yeast remains in the original cartons until such time as it is delivered from the respondents' trucks to their customers to meet the constant demand for such use existing on the part of said customers. The prices fixed and charged by respondents for such yeast are fixed and charged by them in the course of commerce, and such sales are sales in commerce within the meaning of section 2 (a) of the Clayton Act.

Respondents have not shown cost differences between selling and delivering the respective quantities of bakers' yeast as set forth in schedule A of paragraph 10 hereof, which are sufficient to rebut the evidence of unlawful discrimination. In their attempt to show justification for the price differentials, respondents have offered cost studies, computations and allocations based upon lump-sum estimates which were demonstrated by their own tabulations to be erroneous, and they have distributed the results of this error throughout their cost study on the basis of the reassumed correctness of the demonstrated errors. These lump-sum estimates were applied repeatedly, directly and indirectly, throughout respondents' allocations of costs and the partial cost data obtained by an actual survey were augmented "by difference" in order to adjust the final and vital results to coincide with the lump-sum estimates made at the outset.

Respondents have resorted to the use of lump-sum estimates in the allocation of all costs; they have included in the costs allocated to bakers' yeast many items of cost which were not incurred in the manufacture, sale, and delivery of bakers' yeast; and they have included many items of cost which should be allocated equally to each pound of bakers' yeast. While it may be good practice to use lump-sum estimates for internal managerial purposes, and while respond-

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ents may include any and all costs to determine the selling price, we are of the opinion: (1) That respondents' lump-sum estimates cannot be made the basis for price differentials; and (2) that costs which are not incurred in the manufacture, sale, or delivery of a product, and costs which should be allocated equally per unit to the product, cannot be made the basis for price differentials; and (3) that only such costs may be used to justify a price differential between different purchasers of a product of like grade and quality as those which reflect no more than the savings made in the functions and activities which are essential in the manufacture, sale, or delivery resulting from the differing methods or quantities in which such products are to such customers sold or delivered.

Respondents' arbitrary and erroneous allocations of cost are further demonstrated by their use of costs of sale and delivery in those areas where yeast is sold at the prices set forth in schedules B, C, D, and E, in order to justify the price differentials as set forth in schedule A. This is particularly true since the prices set forth in schedules B, C, D, and E are higher and show a greater spread in some instances than the prices set forth in schedule A.

The evidence shows that there is no differing method of sale or delivery of the respondents' personal-delivery pound yeast (bakers' yeast), as distinguished from other minor sales of yeast which respondents style "shipping sales" and "sales to grocers."

We conclude that through the use of the discriminatory prices as set forth in schedule A, and as otherwise shown herein, respondents have violated and are violating, section 2 (a) of the Clayton Act.

Commissioner Freer not participating.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, as amended, the answers of the respondents, as amended, testimony and other evidence taken before John W. Norwood, a trial examiner of the Commission theretofore duly designated by it, in support of the allegations of said complaint, as amended, and in opposition thereto, briefs filed herein, and oral arguments by James I. Rooney, counsel for the Commission, and by Theodore Kiendl and Edwin F. Blair, counsel for the respondents, and the Commission being of the opinion that said respondents have violated the provisions of section 2 (a) of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended, and having made its report, stating its findings as to the facts and its conclusions.

It is ordered, That the respondents, Standard Brands Incorporated, and Standards Brands of California, their officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale and distribution of bakers' yeast in interstate commerce, or in the District of Columbia, do forthwith cease and desist from discriminating in price between different purchasers of bakers' yeast of like grade and quality, either directly or indirectly:

1. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased or required monthly by the respective purchasers, as set forth in schedule A of paragraph 10 of said findings of fact.

2. By selling said bakers' yeast at different prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) over a period of time by the respective purchasers, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or to injure, destroy or prevent competition with respondents or any of their customers, except where said differentials in price, based upon the quantities or volume purchased from the respondents during such period of time by said respective purchasers, make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials are allowed.

3. By means of price differences resulting from selling said bakers' yeast to a single purchaser at prices based upon the total quantity or volume purchased (whether from the respondents or from any other source) during a period of time by such purchaser, irrespective of the quantities or volume delivered by the respondents to the separate plants, factories, bakeries, or warehouses of such purchaser, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce in which respondents or any of their customers are engaged, or to injure, destroy or prevent competition with respondents or any of their customers, except where said differentials in price make only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered.

4. By selling said bakers' yeast to certain of such purchasers at so-called "off-scale" prices as described in paragraph 12 of said findings of fact, even though the differentials in price of any given price scale make only due allowance for differences in the cost of manufac-

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ture, sale, or delivery resulting from the differing methods or quantities in which said bakers' yeast is to such purchasers sold or delivered during the period of time for which such differentials in price are allowed.

It is further ordered, That the respondents, Standard Brands, Incorporated, and Standard Brands of California, their officers, representatives, agents, and employees, directly or indirectly, in connection with the offering for sale, sale, and distribution of foil yeast in interstate commerce, or in the District of Columbia, do forthwith cease and desist from discriminating in price between different purchasers of foil yeast of like grade and quality, either directly or indirectly, by selling said foil yeast at different prices, to wit: 300 pieces per month and up, 27 cents per dozen; under 300 pieces per month, 30 cents per dozen, as set forth in paragraph 15 of said findings of fact as modified.

It is further ordered, That the respondents shall on or before May 1, 1940, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order, as modified.

Commissioner Freer not participating.

IN THE MATTER OF
WILLIAM S. McClymonds, Trading as Oxol Laboratories and Western Research Laboratories

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

Docket 4035. Complaint, Feb. 17, 1940—Decision, May 1, 1940

Where an individual engaged in compounding, selling and distributing a medicinal preparation designated "Quinox Capsules" and intended for use by women suffering from delayed menstruation, to purchasers located in various other States and in the District of Columbia; in advertisements of his said "Quinox Capsules" which he disseminated and caused to be disseminated by United States mails, by insertion in newspapers and periodicals having general circulation, and in circulars and other printed or written matter distributed in commerce among and between the various States and by other means in commerce, and which were intended or likely to induce purchase of his said product—

Represented that his said preparation was a cure or remedy for and constituted competent and effective treatment in cases of delayed menstruation, and that it possessed therapeutic value in treatment of, and would relieve, such condition, facts being it did not constitute such a cure or remedy, irrespective of cause of said condition, and was not a competent or effective treatment therefor, and was without any substantial therapeutic value aside from its effect as an ordinary laxative, and would not relieve such condition or have any beneficial effect thereon;

With effect of misleading and deceiving substantial portion of purchasing public into erroneous and mistaken belief that such false, deceptive and misleading statements, representations and claims were true, and of causing substantial portion of said public, because of such erroneous and mistaken belief, to purchase substantial quantities of his said medicinal preparation:

Held, that such acts and practices, under the circumstances set forth, were all to the prejudice and injury of the public and constituted unfair and deceptive acts and practices in commerce.

Mr. Jesse D. Kash for the Commission.

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 William S. McClymonds, an individual trading as Oxol Laboratories and Western Research Laboratories, hereinafter referred to as respondent, has violated the provisions of the 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: