

IN THE MATTER OF
SALT PRODUCERS' ASSOCIATION ET AL

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

Docket 4320. Complaint, Sept. 18, 1940—Decision, Nov. 10, 1941

Where a salt producers' association; twenty salt producers, members thereof with one exception, manufacturing, selling, and distributing a large percentage of all the salt produced in the United States, and in active and substantial competition with each other and with other members of the industry prior to and but for the practices below described; and a corporation which they employed for the purposes below set forth, together with its president and treasurer—

Entered into and carried out certain agreements, combinations, and conspiracies with intent and effect of restraining, monopolizing, and suppressing and eliminating competition in the interstate sale of salt; and pursuant thereto and in furtherance thereof—

- (a) Concertedly fixed and maintained uniform prices, terms, and conditions in the sale of salt; set up a system of price zones throughout the United States and agreed to and did cooperate in the maintenance of delivered prices which they fixed and established within each of such zones;
- (b) Agreed to and did exchange price lists and information for use in fixing delivered zone prices, discounts, and terms and conditions of sale;
- (c) Agreed to and did curtail production of salt; and
- (d) Agreed to and did file invoices and other reports with said association to secure enforcement of such agreements; and

Where said association, pursuant to such understandings, etc.,—

- (e) Collected from and distributed among such producers and other participants in said agreements useful statistics, lists showing the current delivered prices, terms, and conditions of sale, names of dealers and distributors to be allowed special discounts, and other information; and

Where corporation above referred to, employed by producers herein from about November 1935 to about August 1939, and its president and treasurer;

Following their preliminary survey of the business concerned and distribution among producers herein of composite figures (and to each separate producer, corresponding figures pertaining to it alone) covering volume of sales and average yield f. o. b. plant for delivered price zones established, plant capacity, marketing expense, and financial returns; report of its conclusion that there was a large excess productive capacity, that composite net earnings were small in relation to investment, that composite figure of sales expenses was inordinate in relation to prices received, and that such conditions were caused by efforts of each participant to obtain an increased portion of the total volume of business without due regard to net return and sales expense; and advice that the consequences of continuance of such practice would inevitably be an inadequate return upon investment to the individual participant, and excessive and uneconomic marketing costs;

- (f) Collected and disseminated aforesaid business figures monthly with sales figures reduced to common denominator terms for the several grades of salt in—

volved; prepared and distributed to participants a composite annual financial statement; at monthly meetings of the association explained current statistics prepared by them and submitted charts indicating current volume and net dollar realization for the various zones, along with opinion as to the trend of demand and the volume of consumption to be expected; sent a separate monthly chart to each participant showing relation of his current volume to total expected demand, in comparison with relation of his prior volume to past total volume; audited participants' statistical data at their offices advising each individual management that, in sale of a homogenous product such as salt, they could increase their normal volume relationship only by taking some of another producer's volume at lowered prices which would inevitably be met by other participants, with result of further reducing return upon investment; and urged any participating management producing at a greater rate than its past production to consider the injurious consequences to it if it continued to produce at such higher ratio; and

Where said producer members, incident to aforesaid surveys and program; as stated—

- (g) Cooperatively reported and submitted the intimate details of their businesses the analysis of experts jointly employed, and obtained from them a harmonized estimate of current and future market conditions, and thereby, and through use of other methods as above set forth, acted in concert to preserve a static condition of their respective businesses with regard to production, sales, and delivered prices, and to maintain price zones within which they made effective such prices from their widely separated producing plants; and

Where aforesaid non-member participant—

- (h) Cooperated with the members of said association in carrying out the agreements, combinations and conspiracies herein set forth;

With the result that the normal conflict of contending competitive forces engendered by an honest desire for gain was thereby restrained and suppressed, and that competition in price and otherwise to which the public had long looked for protection was destroyed, and with the effect of unduly restricting and restraining the sale of salt in trade in commerce; of eliminating competition as aforesaid; and of substantially enhancing prices to the consuming public and maintaining prices at artificial levels, and otherwise depriving the public of the benefits that would flow from normal competition:

Held, That the acts and practices above described, under the circumstances set forth, were all to the prejudice of the public, had a dangerous tendency to and did actually hinder and prevent price competition between and among said producers in the sale of salt in commerce, placed in them the power to control and enhance prices, created in them a monopoly in the sale of salt in commerce, unreasonably restrained such commerce, and constituted unfair methods of competition.

Mr. Floyd O. Collins and Mr. DeWitt T. Puckett for the Commission.

Miller, Gorham, Wescot & Adams, of Chicago, Ill., for Salt Producers Association, Barton Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Saginaw Salt Products Co., Union Salt Co. and Watkins Salt Co.

Complaint

34 F. T. C.

Putney, Twombly & Hall, of New York City, for Avery Salt Co., Detroit Rock Salt Co., and International Salt Co.

Williams, Martindell, Carey & Brown, of Hutchinson, Kans., for Carey Salt Co.

Mr. Lester E. Waterbury, of New York City, for Diamond Crystal Salt Co., Inc.

Carroll, McElwain & Ballantine, of Louisville, Ky., for Jefferson Island Salt Co., Inc.

Hennings, Green, Henry & Evans, of St. Louis, Mo., for Hardy Salt Co.

Stearns & McBride, of Chicago, Ill., for Morton Salt Co. and Ruggles & Rademaker Salt Co.

Mandeville, Waxman, Buck, Teeter & Harpending, of Elmira, N. Y., for Worcester Salt Co.

Mr. Thomas Creigh, of Chicago, Ill., and *Mr. Gilbert H. Montague*, of New York City, for American Salt Corp.

Wise, Corlett & Canfield, of New York City, for Stevenson, Jordan & Harrison, Inc., and various officers and employees of said corporation.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission having reason to believe that the association, corporations, firms, and individuals, hereinafter described and named as respondents, have 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:

PARAGRAPH 1. Respondent, Salt Producers Association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office at 2137 Book Building, Detroit, Mich. It was organized and for the past several years has acted as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of salt.

PAR. 2. Respondent, Avery Salt Co., is a corporation organized and existing under and by virtue of the laws of the State of West Virginia, with its principal office and place of business at American Bank Building, New Orleans, La. Said respondent corporation is a wholly owned subsidiary of respondent International Salt Co., hereinafter mentioned.

PAR. 3. Respondent, Barton Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business in Hutchinson, Kans.

PAR. 4. Respondent, Carey Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kansas, with its principal office and place of business in Hutchinson, Kans.

PAR. 5. Respondent, Cayuga Rock Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Myers, N. Y.

PAR. 6. Respondent, Colonial Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at 2065 Manchester Road, Akron, Ohio.

PAR. 7. Respondent, Detroit Rock Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 12841 Saunders Street, Detroit, Mich.

PAR. 8. Respondent, Diamond Crystal Salt Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office at St. Clair, Mich., and its principal place of business at 250 Park Avenue, New York, N. Y.

PAR. 9. Respondent, International Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its principal office and place of business in Scranton, Pa.

PAR. 10. Respondent, Jefferson Island Salt Co., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Kentucky, with its principal office and place of business at 401 West Main Street, Louisville, Ky.

PAR. 11. Respondent, Hardy Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri, with its principal office and place of business at 800 South Vandeventer Street, St. Louis, Mo.

PAR. 12. Respondent, Morton Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill.

Complaint

34 F. T. C.

PAR. 13. Respondent, Myles Salt Co., Ltd., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Louisiana, with its principal office and place of business at 1048 Constance Street, New Orleans, La.

PAR. 14. Respondent, Mulkey Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business at 154 Bagley Avenue, Detroit, Mich.

PAR. 15. Respondent, Ohio Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business in Wadsworth, Ohio.

PAR. 16. Respondent, Ruggles & Rademaker Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Illinois, with its principal office and place of business at 208 West Washington Street, Chicago, Ill. Said respondent corporation is a wholly owned subsidiary of respondent Morton Salt Co., hereinbefore mentioned.

PAR. 17. Respondent, Saginaw Salt Products Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Michigan, with its principal office and place of business in Saginaw, Mich.

PAR. 18. Respondent, Union Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal office and place of business at Sixty-fifth Street and New York Central R. R., Cleveland, Ohio.

PAR. 19. Respondent, Watkins Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business in Watkins Glen, N. Y.

PAR. 20. Respondent, Worcester Salt Co., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business at 40 Worth Street, New York, N. Y.

PAR. 21. Respondent, American Salt Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the New York Life Building, Kansas City, Mo.

PAR. 22. Respondent, Stevenson Corporation, a corporation organized, existing and doing business under the laws of the State of New York, and Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R.

Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, Howard Marvin, and D. M. Metzger are partners doing business under the firm name of Stevenson, Jordan and Harrison, with their principal place of business at 19 West Forty-fourth Street, New York, N. Y. The said respondents are engaged in business management and business engineering.

PAR. 23. Respondents described in paragraphs 2 to 20, inclusive, hereinafter referred to as member respondents, are members of the respondent association named in paragraph 1, and respondent American Salt Corporation, hereinbefore described in paragraph 21, in the course and conduct of their business, manufacture, sell, and distribute a large percentage of all the salt produced in the United States. The said member respondents and respondent American Salt Corporation sell their products to wholesalers, dealers and consumers located at various points throughout the United States and when sales are made, and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of the shipments. Said member respondents and respondent American Salt Corporation maintain a current of trade in commerce in said products between and among the several States of the United States and in the District of Columbia.

Prior to the adoption of the practices hereinafter described, said member respondents and respondent American Salt Corporation were in active and substantial competition with each other and with other members of the industry in making and seeking to make sales of their products in trade in commerce between and among the several States of the United States and in the District of Columbia; but for the practices hereinafter described such active and substantial competition would have continued until the present and said member respondents would now be in active and substantial competition with each other and with other members of the industry. Beginning about October 1935, all the respondents entered into understandings, agreements, combinations and conspiracies. Said understandings, agreements, combinations and conspiracies were entered into, and thereafter carried out, for the purpose and with the effect of restricting, restraining, monopolizing, suppressing, and eliminating competition in the sale of salt in trade in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 24. Pursuant to said understandings, agreements, combinations, and conspiracies and in furtherance thereof, said member respondents, with the active cooperation of the other respondents named herein, have done and performed, and still do and perform, the following acts and things:

Complaint

34 F. T. C.

(1) Said member respondents and respondent American Salt Corporation agreed to fix and maintain, and have fixed and maintained, uniform prices, terms, and conditions in the sale of salt.

(2) Said member respondents and respondent American Salt Corporation have agreed to establish and have established, a system of zones throughout the United States to aid in the establishment and fixing of prices of salt.

(3) Said member respondents and respondent American Salt Corporation have agreed to cooperate, and have cooperated, in the maintenance of the various prices determined for particular zones.

(4) Said member respondents and respondent American Salt Corporation have agreed to curtail, and have curtailed, the production of salt, and for the purpose of securing enforcement of the agreement to curtail production member respondents and respondent American Salt Corporation have filed, and do file with said respondent association, invoices and other reports.

(5) Said member respondents and respondent American Salt Corporation have agreed to exchange, and have exchanged, through the medium of said respondent association, price lists in order to establish the prices at which salt is to be sold.

(6) Said member respondents and respondent American Salt Corporation have agreed to exchange, and have exchanged, information to be used in connection with the fixing of prices, discounts, terms, and conditions of sale of salt.

(7) Said respondent association collects from and distributes among member respondents and other participants in said agreements statistical information used and useful in carrying out said agreements, and they distribute from time to time among said member respondents and non-members participating in said agreements, lists showing the current prices, terms and conditions of sale, dealers and distributors to be allowed special discounts and other information used and useful in carrying out said agreements.

(8) Respondent Stevenson Corporation and the individual respondents doing business under the firm name Stevenson, Jordan and Harrison, heretofore specifically named in paragraph 22 hereof, in the course and conduct of their business, as aforesaid, have actively participated in by directing, recommending, and supervising the foregoing acts and things done by said respondents in furtherance of said understandings, agreements, combinations, and conspiracies.

(9) Said member respondents and respondent American Salt Corporation have used, and are now using, other methods and means designed to suppress and prevent competition and restrict and restrain the sale of salt in said commerce.

PAR. 25. Each of the said respondents at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove alleged in furtherance of said understandings, agreements, combinations, and conspiracies.

PAR. 26. Said understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant thereto, and in furtherance thereof, as hereinabove alleged, have had, and do have, the effect of unduly restricting and restraining the sale of said salt in trade in commerce between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition between and among the respondents in said commerce, and of eliminating competition between and among said respondents.

The acts and practices of the respondents as herein alleged are all to the prejudice of the public; have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of salt in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents the power to control and enhance prices; have created in the respondents a monopoly in the sale of salt in such commerce; have unreasonably restrained such commerce in salt, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers, the Commission by orders entered herein granted the motions of said respondents Salt Producers Association, a corporation, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co.,

Findings

34 F. T. C.

Watkins Salt Co., and Worcester Salt Co., to withdraw their answers and to substitute therefor answers admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts; granted the motion of respondent American Salt Corporation to withdraw its motion to dismiss the complaint and its answer and to substitute therefor and accept as its answer a statement of facts including an admission of all the material allegations of fact set forth in said complaint and waiving all intervening procedure and hearings as to said facts; and granted the motion of respondents Stevenson Corporation, a corporation, and its officers, Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, Howard Marvin, and D. M. Metzger, a partnership doing business under the firm name of Stevenson, Jordan & Harrison, to make a part of the record and receive in lieu of taking testimony or further hearings in this proceeding a statement of admitted facts submitted by them; which substitute answers and admissions of facts were duly filed in the office of the Commission. Thereafter this proceeding regularly came on for final hearing before the Commission on the said complaint, substitute answers and answers and statements of admitted facts; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Salt Producers Association, hereinafter referred to as respondent association, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, having its principal office at 2137 Book Building, Detroit, Mich. It was organized and for the past several years has acted as a trade association for the promotion and protection of the interests of its members who are engaged in the manufacture and sale of salt.

Respondents whose names appear in the following tabulation are members of the Salt Producers Association, and each is organized and exists by virtue of the laws of the State and has its principal office or place of business at the address shown:

Avery Salt Co., State of West Virginia, American Bank Building, New Orleans, La.;

Barton Salt Co., State of Kansas, Hutchinson, Kans.;

- The Carey Salt Co., State of Kansas, Hutchinson, Kans.;
- Cayuga Rock Salt Co., State of Delaware, Myers, N. Y.;
- Colonial Salt Co., State of Ohio, 2065 Manchester Road, Akron, Ohio;
- Detroit Rock Salt Co., State of Michigan, 12841 Saunders Street, Detroit, Mich.;
- Diamond Crystal Salt Co., State of Delaware, St. Clair, Mich.;
- International Salt Co., State of New Jersey, Scranton, Pa.;
- Jefferson Island Salt Co., State of Kentucky, 401 South Main Street, Louisville, Ky.;
- Hardy Salt Co., State of Missouri, 800 South Vandeventer Street, St. Louis, Mo.;
- Morton Salt Co., State of Illinois, 208 West Washington Street, Chicago, Ill.;
- Myles Salt Co., Ltd., State of Louisiana, 1048 Constance Street, New Orleans, La.;
- Mulkey Salt Co., State of Michigan, 154 Bagley Avenue, Detroit, Mich.;
- Ohio Salt Co., State of Ohio, Wadsworth, Ohio;
- Ruggles & Rademaker Salt Co., State of Michigan, 208 West Washington Street, Chicago, Ill.;
- Saginaw Salt Products Co., State of Michigan, Saginaw, Mich.;
- Union Salt Co., State of Ohio, Sixty-fifth Street and New York Central R. R., Cleveland, Ohio;
- Watkins Salt Co., State of Delaware, Watkins Glen, N. Y.;
- Worcester Salt Co., State of New York, 40 Worth Street, New York, N. Y.

Respondent, American Salt Corporation, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business in the New York Life Building, Kansas City, Mo.

Respondent, Stevenson, Jordan & Harrison, Inc. (the corporate name of which was Stevenson Corporation until about August 6, 1940, and which was referred to in the complaint under its said former name) is a corporation organized, existing, and doing business under the laws of the State of New York, having its principal place of business at 19 West Forty-fourth Street, New York, N. Y. The individual respondents Charles R. Stevenson, T. M. Harrison, C. H. Ferris, N. M. Perris, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, Howard Marvin, and D. M. Metzger (referred to in the complaint as members of a partnership trading under the name Stevenson, Jordan & Harrison) are, with the exception of Charles R. Stevenson and

Findings

34 F. T. C.

D. M. Metzger, employees of respondent Stevenson, Jordan & Harrison, Inc., the said Charles R. Stevenson and D. M. Metzger being, respectively, president and treasurer of said corporation. Respondent E. G. Ackerman (referred to in the complaint as a member of said partnership) was an employee of Stevenson, Jordan & Harrison, Inc., until about December 31, 1940, at which time he terminated his connection with said corporation.

PAR. 2. The respondents, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co., Watkins Salt Co., Worcester Salt Co., and American Salt Corporation, hereinafter referred to as respondent producers, in the course and conduct of their business manufacture, sell, and distribute a large percentage of all the salt produced in the United States. Said producers sell their products to wholesalers, dealers, and consumers located at various points throughout the United States and when sales are made, and as a part thereof, regularly have shipped, and do ship, said products to the purchasers thereof at their respective points of location in the several States of the United States other than in the States of origin of the shipments. Said respondent producers maintain a current of trade in commerce in said products between and among the several States of the United States and in the District of Columbia.

PAR. 3. Prior to the adoption of the practices hereinafter described said respondent producers were in active and substantial competition with each other and with other members of the industry in making, and seeking to make, sales of their products in trade in commerce between and among the several States of the United States and in the District of Columbia. But for the practices hereinafter described such active and substantial competition would have continued until the present and said respondent producers would now be in active and substantial competition with each other and with other members of the industry. Beginning about October 1935 all the respondents except T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin entered into, and thereafter carried out, certain understandings, agreements, combinations, and conspiracies for the purpose and with the effect of restricting, restraining, monopolizing,

suppressing, and eliminating competition in the sale of salt in trade in commerce between and among the several States of the United States and in the District of Columbia.

PAR. 4. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, said respondent producers, with the active cooperation of respondents, Salt Producers Association, Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson, and D. M. Metzger, have done and performed the following acts and things:

1. Said respondent producers agreed to fix and maintain, and have fixed and maintained, uniform prices and terms and conditions in the sale of salt.

2. Said respondent producers have agreed to establish, and have established, a system of zones throughout the United States to aid in the establishment and fixing of delivered prices of salt within each of such zones.

3. Said respondent producers have agreed to cooperate, and have cooperated, in the maintenance of the various delivered prices determined for particular zones.

4. Said respondent producers have agreed to exchange, and have exchanged, through the medium of said respondent association, price lists in order to establish the delivered prices at which salt is to be sold within the various zones.

5. Said respondent producers have agreed to exchange, and have exchanged, information to be used in connection with the fixing of delivered prices within the various zones, discounts, and terms, and conditions in the sale of salt.

6. Said respondent producers have agreed to curtail, and have curtailed, the production of salt, and for the purpose of securing enforcement of the agreement to curtail production respondent dealers have filed, and do file, with said respondent association invoices and other reports.

7. Said respondent association collects from and distributes among the respondent producers and other participants in said agreements statistical information used and useful in carrying out said agreements, and distributes from time to time among said respondent producers and other members of the industry participating in said agreements lists showing the current delivered prices, terms, and conditions of sale, names of dealers and distributors to be allowed special discounts, and other information used and useful in carrying out said agreements.

8. Respondent, Stevenson, Jordan & Harrison, Inc., was employed by said respondent producers from about November 1935 to about August

1939. As an employee of respondent producers Stevenson, Jordan & Harrison, Inc., and Charles R. Stevenson and D. M. Metzger, as president and treasurer thereof, respectively, in the course and conduct of their business as aforesaid, have actively participated in directing, recommending, and supervising the foregoing acts and things done by said respondent producers in furtherance of said understandings, agreements, combinations, and conspiracies. In that connection they were employed by each of the respondent producers in November 1935, to make a survey of all the business of the production, sale, and distribution of salt which had been conducted by said respondent producers during the previous period of four years and ten months. Stevenson, Jordan & Harrison, Inc., through said survey developed figures for various kinds of salt covering production, sales (both by volume and dollar realization), plant capacities, marketing expenses, and financial returns. There were established in the United States certain marketing territories or delivered price zones and the survey developed for each of the years covered by it, among other things, the volume of salt sold in each of said territories or zones and the average yield f. o. b. plant from said sales. Figures obtained from the respondent producers were combined in the survey to make composite figures. Each of said respondent producers was furnished these composite figures, together with its own individual figures, for each of the years covered by the survey, but no respondent participating in the survey was given any figures of any other respondent.

The survey further covered a study of the plant capacity to manufacture salt of each of the respondents participating in the survey, which likewise was combined into a composite figure, a study of marketing expenses combined into a composite figure, and a compilation of the financial returns likewise combined into a composite figure. Each respondent participating in the survey was given his plant capacity as compared with the total capacity of all of the respondents, his marketing expenses as compared with the composite marketing expense figure, and his financial return as compared with the composite financial return figure. No respondent was given the figures of any other respondent participating in the survey with respect to the plant capacity, the marketing expenses, or the financial return of any other respondent.

Said survey was completed in April 1936 and was presented to the individual respondent producers at a meeting in Chicago, Ill., in that month. At said meeting the facts developed by said survey were discussed by representatives of Stevenson, Jordan & Harrison, Inc., and it was pointed out that the composite figures developed by said survey indicated two things: First, that there was a large excess of

capacity to produce salt over the demand therefor, and that the composite net earnings of the respondents participating in the survey were small in relation to the investment in plants and properties; and, second, that the composite figure of sales expenses was inordinate in relation to the sales price received for the product. The representatives of Stevenson, Jordan & Harrison, Inc., further expressed the view that the conditions disclosed by these composite figures were caused by unremitting efforts of each individual respondent participating in the survey to obtain for himself an increased portion of the total volume of business obtainable without due regard to the net return on sales of the product and without due consideration to the sales expense involved.

For a period of some 30 days after said meeting in Chicago, representatives of Stevenson, Jordan & Harrison, Inc., visited the offices of the respondents who had participated in said survey and discussed with officials of said respondents the details of said survey as applied to the individual business of said respondents. On said visits representatives of Stevenson, Jordan & Harrison, Inc., advised the individual managements of the respondents participating in said survey that if each said individual management should continue in the endeavor to secure a volume of business entirely disproportionate to that obtained in the past and as indicated by the survey, the consequences of such action would inevitably be an inadequate return to the individual respondent upon investment and excessive and uneconomic cost of marketing the product, and that it was the opinion of Stevenson, Jordan & Harrison, Inc., that these were the fundamental economic truths developed by the survey.

After this work was completed another meeting of representatives of the respondent producers was held with representatives of Stevenson, Jordan & Harrison, Inc., and at this meeting said respondent producers employed Stevenson, Jordan & Harrison, Inc., to collect monthly from each participating respondent its business figures for each marketing territory or zone covering production, sales (both by volume and dollar realization), and marketing expenses, and to disseminate to each participating respondent composite figures of production, sales (both by volume and dollar realization), and marketing expenses, and likewise to set out against such composite figures for each participating respondent its own individual figures. As the figures were to deal with several classes or grades of salt differing substantially in value, all figures covering sales were to be reduced to common denominator terms. It was also understood that Stevenson, Jordan & Harrison, Inc., would collect annually financial statements from those of the participating

Findings

34 F. T. C.

respondents who were willing to furnish the same and from these figures would prepare a composite financial statement which would be distributed to those of the respondents who gave their individual financial statements. It was understood further that Stevenson, Jordan & Harrison, Inc., would from time to time send its representatives to the offices of the participating respondents to audit the figures submitted to it by said participating respondents so that there could be an assurance of the accuracy of all figures collected and disseminated by Stevenson, Jordan & Harrison, Inc. No participating respondent was to be given, nor was any such respondent actually given, the individual figures of any other participating respondent with respect to production, sales (both by volume and dollar realization), marketing expenses, or financial figures.

The respondent Salt Producers Association held meetings of its members monthly, and after the employment of Stevenson, Jordan & Harrison, Inc., by said respondent producers one or more representatives of Stevenson, Jordan & Harrison, Inc., attended these meetings. At these meetings such representative or representatives explained the current statistics prepared and submitted charts indicating for various delivered price zones current volume and net dollar realization, and at times indicated their opinions of the trend of demand for salt and the volume of consumption to be expected in the various marketing territories or delivered price zones, and sent a separate chart each month to each participating respondent showing its current volume and the relation thereof to the total expected demand in comparison with its actual prior volume and the actual past total volume.

From time to time Stevenson, Jordan & Harrison, Inc., sent representatives to the offices of the participating respondents to audit the statistical data submitted to Stevenson, Jordan & Harrison, Inc., and to impress upon the management of each individual participating respondent the necessity of considering the consequences to each individual business of any substantial variance from its ratio of actual past production as shown by the survey. The managements of the participating respondents were told by these representatives of Stevenson, Jordan & Harrison, Inc., that they could increase their normal volume relationship with respect to current business only by taking some of another producer's volume; that in the sale of a homogenous product such as salt any attempt to secure such increased volume could only be made by lowering price; that if lower prices were offered by one participating respondent they would inevitably be met by other participating respondents, so that the

final result would not be to obtain any substantial increased volume of business but merely to lower the entire price structure and thus further to reduce the return upon investment. When current statistical data disclosed that one of the participating respondents was producing at a rate substantially greater than its past production as disclosed by the survey, a representative of Stevenson, Jordan & Harrison, Inc., urged such respondent's management to consider the injurious consequences to the company if it continued to produce at this higher ratio and did not relate its production to the volume relationship between its past production and the total production as disclosed by the survey figures.

The surveys and program as above described were made and carried out in every particular. Respondent members thereby cooperatively reported and submitted the intimate details of their respective businesses for the analysis of experts and interpreters jointly employed and obtained from them a harmonized estimate of current and future market conditions. Respondent members thereby, and through the use of the other methods set forth in paragraphs 3 and 4 of these findings, have acted in concert and in cooperation to preserve a static condition of their respective businesses with regard to production, sales, and delivered prices and in the maintenance of price zones within which they made effective the same delivered prices from their respective and widely separated producing plants. The normal conflict of contending competitive forces engendered by an honest desire for gain was thereby restrained and suppressed. By the substitution of such concerted action for such conflict respondents destroyed that competition in price, and otherwise, to which the public has long looked for protection.

9. The respondent, American Salt Corporation, is not, and has not been at any time mentioned herein, a member of respondent Salt Producers Association, but has cooperated and acted in concert with the members of respondent association in carrying out the agreements, combination, and conspiracies herein found.

PAR. 5. Each of the respondents herein except T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin, at the times herein mentioned acted in concert with one or more of the other respondents in doing and performing the acts and things hereinabove found in furtherance of said understandings, agreements, combination, and conspiracies.

PAR. 6. The aforesaid understandings, agreements, combinations, and conspiracies, and the things done thereunder and pursuant there-

Order

34 F. T. C.

to, and in furtherance thereof, as hereinabove found, have had, and do have, the effect of unduly restricting and restraining the sale of said salt in trade in commerce between and among the several States of the United States and in the District of Columbia; of substantially enhancing prices to the consuming public and maintaining prices at artificial levels and otherwise depriving the public of the benefits that would flow from normal competition between and among the respondents in said commerce, and of eliminating competition between and among said respondents.

CONCLUSION

The acts and practices of the respondents as herein found are all to the prejudice of the public, have a dangerous tendency to, and have, actually hindered and prevented price competition between and among respondents in the sale of salt in commerce, as "commerce" is defined in the Federal Trade Commission Act, have placed in respondents the power to control and enhance prices, have created in the respondents a monopoly in the sale of salt in such commerce, have unreasonably restrained such commerce in salt, and constitute unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission and the answers of the corporate respondents Salt Producers Association, Avery Salt Co., Barton Salt Co., The Carey Salt Co., Cayuga Rock Salt Co., Colonial Salt Co., Detroit Rock Salt Co., Diamond Crystal Salt Co., Inc., International Salt Co., Jefferson Island Salt Co., Inc., Hardy Salt Co., Morton Salt Co., Myles Salt Co., Ltd., Mulkey Salt Co., Ohio Salt Co., Ruggles & Rademaker Salt Co., Saginaw Salt Products Co., Union Salt Co., Watkins Salt Co., and Worcester Salt Co., admitting all the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to said facts; the answer of American Salt Corporation, a corporation, admitting all the material allegations of fact set forth in said complaint, certain additional facts, and waiving all intervening procedure and further hearing as to said facts; and the answer and statement of admitted facts filed by respondents Stevenson, Jordan & Harrison, Inc. (referred to in the complaint under its former name, Stevenson Corporation), a corporation, and its officers Charles R. Stevenson and D. M. Metzger, president and treasurer, respectively, and its employees, T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Acker-

man, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin (referred to in the complaint as members of a partnership trading under the name Stevenson, Jordan and Harrison), and the order of the Commission granting the motion of respondents Stevenson, Jordan & Harrison, Inc., and its said officers and employees that the Commission receive said statement of admitted facts in lieu of taking testimony or further hearing and that the statement of admitted facts be made a part of the record in this proceeding; and the Commission having made its findings as to the facts and its conclusion that the aforesaid respondents, except T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetzer, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin, have violated the provisions of section 5 of the Federal Trade Commission Act.

It is ordered, That the respondents, Salt Producers Association, a corporation, Avery Salt Co., a corporation, Barton Salt Co., a corporation, The Carey Salt Co., a corporation, Cayuga Rock Salt Co., a corporation, Colonial Salt Co., a corporation, Detroit Rock Salt Co., a corporation, Diamond Crystal Salt Co., Inc., a corporation, International Salt Company, a corporation, Jefferson Island Salt Co., Inc., a corporation, Hardy Salt Co., a corporation, Morton Salt Co., a corporation, Myles Salt Co., Ltd., a corporation, Mulkey Salt Co., a corporation, Ohio Salt Co., a corporation, Ruggles & Rademaker Salt Co., a corporation, Saginaw Salt Products Co., a corporation, Union Salt Co., a corporation, Watkins Salt Co., a corporation, Worcester Salt Co., a corporation, American Salt Corporation, a corporation, their officers, servants, agents, and employees, and Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson and D. M. Metzger, respectively president and treasurer of said Stevenson, Jordan & Harrison, Inc., and their agents, servants, and employees, or any two or more of said respondents, with or without the cooperation of others not parties hereto, in connection with the offering for sale, sale, and distribution of salt in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, or carrying out, or directing, instigating, or cooperating in, any common course of action, mutual agreement, combination, or conspiracy, to fix or maintain the prices of salt or curtail, restrict, or regulate the production or sale thereof, and from doing any of the following acts or things pursuant thereto:

1. Establishing or maintaining uniform prices for salt, or uniform terms and conditions in the sale thereof, or in any manner agreeing

upon, fixing, or maintaining any prices, including terms and conditions of sale, at which salt is to be sold.

2. Adhering, or promising to adhere, to filed or published prices or terms and conditions of sale for salt pending the filing of changes therein with respondent Salt Producers Association, or with any other agency, or with each other.

3. Establishing or maintaining delivered price zones, or making quotations and sales of salt upon a delivered price basis under a zone system whereby the cost of salt delivered to buyers within each respective zone is made identical at all destinations within such zone.

4. Exchanging, directly or through the Salt Producers Association, or any other agency, or clearing house, price lists, invoices, and other records of sale showing the quantity, current prices and terms and conditions of sale allowed by respondent corporations to dealers and distributors; provided, however, that nothing herein shall prevent the respondent association from collecting and disseminating to the respective respondent manufacturers figures showing the total volume of sales of salt without disclosing the sales volume of individual producers.

5. Exchanging, directly or through the medium of the Salt Producers Association, or any other agency, the names of distributors or dealers who receive special discounts.

6. Curtailing, restricting, or regulating the quantity of salt to be produced and sold by any respondent corporation by any method or means during any given period of time.

7. Doing, or causing to be done, any of the things forbidden by this order through the medium of respondents, Stevenson, Jordan & Harrison, Inc., Charles R. Stevenson, or D. M. Metzger, or any other corporation, firm, or individual.

It is further ordered, That respondents, Stevenson, Jordan & Harrison, Inc., and Charles R. Stevenson and D. M. Metzger as officers thereof, and their agents, servants, and employees, do forthwith cease and desist from doing or performing any of the things forbidden by this order, or aiding, assisting, or cooperating in the performance thereof.

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

It is further ordered, That nothing in this order is to be construed as prohibiting the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not pro-

hibited by the provisions of an act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That for the reasons appearing in the findings as to the facts the complaint herein be, and hereby is, dismissed as to the following respondents: T. M. Harrison, C. H. Ferris, N. M. Perris, E. G. Ackerman, A. H. Dyer, R. E. Case, F. L. Sweetser, W. R. Guthrie, A. P. Nonweiler, S. M. Hudson, R. R. Bliss, L. B. Platt, and Howard Marvin.

IN THE MATTER OF
GENERAL MOTORS CORPORATION, AND GENERAL
MOTORS SALES CORPORATION

COMPLAINT, FINDINGS, AND MODIFIED ORDER IN REGARD TO THE ALLEGED
VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND
OF SEC. 3 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 3152. Complaint, June 15, 1937—Decision, Nov. 12, 1941

Where a corporate automobile manufacturer, products of which, including parts and accessories made through several subsidiaries, constituted a substantial portion of all those made and sold in the United States, and which operated through five motorcar divisions, named to correspond with the cars made by it; and a sales corporation to and through which it competitively sold such automobile parts, etc., and which (1) supervised its dealers through a large field organization, (2) entered into agreements or "franchises" with them, under which dealer undertook not to sell or use second-hand parts or any not made or authorized by manufacturer, seller had right to check dealer's stock of parts, and dealer, if it thought such stock insufficient, was obligated to order immediately such parts as it might recommend; and (3) construed dealer's obligation to stock only "genuine parts" as covering, in addition to items for repair and replacement, its various accessories also—

In carrying on not as incident to their sale of automobiles, but as substantial portion of their entire business, to the promotion of which they directed numerous activities, sale of "parts" and accessories, which included a great variety of items theretofore sold in competition with the independent jobber and identical therewith, such as ball bearings, battery cables, brake linings, and numerous others; embraced many made by independent manufacturers for aforesaid manufacturer, differing from said manufacturers' similar items, sold through such jobbers, only in their sale, by said sales corporation, under its own identification, as "genuine"; and included many others which were made by many reputable manufacturers and were of like quality and design; or which, not necessary to the car's mechanical operation, had no bearing upon its performance and good-will—

- (a) Adopted a program of acts and practices which were designed to and did intimidate and coerce its dealers and compelled them to purchase parts and accessories solely from said selling corporation, and prohibited purchases from outside sources except in cases of emergency when the "genuine" part or accessory was not available in the warehouse of manufacturer in question; and as a part of said various acts and practices—
- (1) Made its indeterminate dealer franchises a means of coercion and intimidation through its practice of renewing or canceling such franchises at the annual meetings called by the zone managers for their respective districts, at which time each dealer, following personal interviews with representatives of the parts and accessories and other departments, and final interview with the zone manager, as condition to renewal, was required to secure the approval of each and agree with said manager on his prospective requirements;