

IN THE MATTER OF
CORN PRODUCTS REFINING CO. AND CORN PRODUCTS
SALES CO., INC.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSECTIONS (a) AND (e) OF SEC. 2, AND OF SEC. 3 OF AN ACT OF CON-
GRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3633. Complaint, Mar. 25, 1939¹—Decision, Mar. 16, 1942

Where a corporation which (1) constituted a large and important processor and refiner of corn and manufacturer of products and byproducts of such processing and refining; (2) owned and operated corn grinding and refining plants in Illinois, Missouri, and New Jersey, with facilities for the production of many products and byproducts of corn, including all known corn starch products for both household and industrial use, and including starch, glucose or corn sirup, corn sugar, corn oil, glucose feed, corn oil cake, corn oil meal and other products, and selling, in addition, many branded products including its Kingsford and Duryea starches, Karo sirup, Mazola oil, Argo corn starch, Argo gloss starch, Kre-mel desserts, Linit, and Cerelose; (3) owned and operated can, carton and printing plants for the production of containers for many of the packaged products; and (4) distributed the products so manufactured to purchasers in New York and Illinois, and through its wholly owned subsidiary, to purchasers elsewhere; In competition with seven other concerns; manufacturers and distributors, together with its said subsidiary;

In selling their glucose or corn sirup, used principally in the manufacture of candy and the mixing of table sirup, to purchasers, of whom many were candy manufacturers, competitively engaged in the sale of candy to various customers, including wholesalers, chain stores and retailers—

- (a) Discriminated in price unlawfully through concurrently selling glucose of like grade and quality to different purchasers at differing delivered prices which were calculated upon the basis of the price in Chicago plus the railroad tariff rate from Chicago to the destination of the purchaser, irrespective of whether shipments were made from their Chicago plant or, as was their usual practice, from their Kansas City plant; and thereby, depending upon purchaser's location, included in or excluded from, particular delivered price, artificial, or actual freight, as case might be;
- (b) Discriminated in price unlawfully through concurrently selling glucose of like grade and quality to different purchasers at differing prices which were created through their practice of adding to the railroad tank car price additional sums, depending upon the type of container in which the glucose was delivered, ranging from \$1.08 over tank car prices for 5-gallon kegs to 2 cents on tank trucks in which delivery was made by customer's equipment and 10 cents where delivered by their own equipment; and
- (c) Discriminated in price through concurrently selling glucose of like grade and quality to different purchasers at differing prices through allowing some purchasers, under their order "booking" system, a period of days after a price increase had been announced within which to purchase glucose

¹ Amended.

at the price in effect before the announcement of the increase, in some cases making deliveries to those favored more than 30 days after date of the increase while requiring other customers to take delivery within the 30-day period or suffer cancellation of the undelivered portion of the order, and in others permitting favored customers who had no trackage or storage facilities for the acceptance of railroad tank car deliveries and purchased in tank wagon quantities, to purchase tank car lots at the price in effect before an advance, delivering such purchasers' order in tank wagon quantities over extended periods of time; and through modifications of said booking practices;

With the result that the higher prices paid by competitors of aforesaid favored customers for glucose—a major raw material particularly in low-priced candies sold at narrow margins of profit—resulted in higher material costs to them, so that, especially in the case of manufacturers of candies priced at but a few cents a pound and bearing no differing name or brand, in sales of which to large quantity purchasers a small fraction of a cent is determinative, the ability of those paying the higher prices to compete with those paying the lower prices was diminished;

In selling their gluten feed and meal byproduct (used principally for livestock feed) of which they produced 40 to 50 percent of all that used in the United States, selling and shipping more than 250,000 tons annually to 3,000 different purchasers in various States, in competition with other producers and also with other types of feed produced by distillers, cotton seed mills, wheat flour mills and soy bean crushers—

(d) Discriminated in price in favor of at least six dealers through allowing them discounts of 50 cents a ton or more from regular market prices, while selling said products without any such allowances or other compensation to their competitors;

In selling their corn starch (employed, in addition to its household uses, in various forms in the paper, laundry and cloth making industries), one of their principal products which they sold and distributed on a large scale throughout the United States—

(e) Discriminated in price through selling and delivering many millions of pounds to two concerns at prices which reflected a substantial discount or allowance from their regular prices while selling to competitors of said concerns at current market or list prices without any such discounts:

With the result that such unlawful discounts or allowances were sufficient to increase substantially said dealers' and said concerns' margins of profits over and above those otherwise obtainable and if reflected in resale prices, to enable favored dealers and concerns to attract business from their competitors, or to force latter to resell at substantially reduced profits, or refrain from reselling:

Held, That such discrimination in price resulted in substantial injury to competitors, obstructed and tended to suppress competition and to create a monopoly in said corporations in the processing and refining of corn and the sale of products and byproducts thereof, resulted in substantial injury to competition among purchasers through affording material and unjustified price advantages to preferred buyers, and violated subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act; and

Where said corporations, in sale of their powdered dextrose "Cerelease" to the baking, soft drink and canning industries and to candy manufacturers—

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(f) Entered into an understanding with a certain candy manufacturer—which, for a period of years, had advertised its products as much as all other candy manufacturers in the United States combined and had as wide a distribution of its candy as any manufacturer in the United States—to induce it to use such dry dextrose in its candies and to advertise them as containing the same, pursuant to which, in consideration of the addition of the “dextrose message” to said candy company’s advertising, they appropriated large sums of money for expenditure by their advertising agency for advertising in newspapers, magazines and on the radio depicting the candy products of said company as being “Rich in dextrose” or “Enriched with dextrose”; while failing and declining to enter into any similar arrangements with other purchasers of dry dextrose, competitors of said candy company, which used the dextrose thus purchased from them in amounts which varied from a small percentage to as much as 90 percent of the weight of the candy, and which constituted a substantial and frequently a major portion of its candy products:

Held, That said acts of such corporations, in furnishing or contributing to the furnishing of advertising services and facilities to one of their customers in the resale of dextrose purchased from them and not to competing customers upon proportionally equal terms or upon any terms whatever, violated the provisions of subsection (e) of section 2 of the Clayton Act as amended; and

Where said corporations, in sale of their various starches and starch products—

(g) Entered into contracts with two large purchasers, who had theretofore been engaged in the grinding and refining of corn and manufacture of starch and starch products, under the terms of which 15-year contracts, subject to a 10-year extension, the buyers obligated themselves, directly or in effect, to purchase their entire requirements of various starches and starch products—such as thin boiling pearl, chlorinated and other special starches, ordinary thick boiling pearl, powdered corn starches, edible pearl and powdered corn starches—at prices which were below the cost at which they could have been made by such concerns; and required that said purchasers refrain from using or dealing in starches or starch products of any competitor;

With the result that such purchasers wholly ceased manufacture of starches and starch products from corn during period concerned, within which period one or more competitors of corporations here involved were ready, willing and able to supply some of said purchasers’ requirements, and with further result of substantially lessening competition between said corporations and their competitors and tending to create a monopoly in the former, in the sale and distribution of starches of the type manufactured by them for aforesaid purchaser:

Held, That said contracts providing that aforesaid concerns should purchase their requirements of starch and starch products from said corporations to the exclusion of latter’s competitors, and the acts and practices pursuant thereto, constituted a violation of section 3 of the Clayton Act as amended.

Before *Mr. Charles F. Diggs*, *Mr. John P. Bramhall* and *Mr. John L. Hornor*, trial examiners.

Mr. A. W. DeBirny, *Mr. Curtis C. Shears*, *Mr. D. E. Hoopingarner*, *Mr. Frank Hier*, and *Mr. P. R. Layton* for the Commission.

Mr. Frank H. Hall and *Lord, Day & Lord*, of New York City, for respondents.

AMENDED COMPLAINT

The Federal Trade Commission, having reason to believe that the parties respondent named in the caption hereof, and hereinafter more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19 1936 (U. S. C., title 15, sec. 13), hereby issues its complaint, stating its charges with respect thereto as follows:

COUNT I

PARAGRAPH 1. Respondent, Corn Products Refining Co., is a corporation organized and existing under the laws of New Jersey with its principal office and place of business at 17 Battery Place in the city and State of New York. Respondent, Corn Products Sales Co., Inc., is a corporation organized under the laws of the State of New Jersey and has its principal office and place of business at 17 Battery Place, city and State of New York. Respondent, Corn Products Sales Co., Inc., is a wholly owned sales subsidiary of respondent Corn Products Refining Co., through which products manufactured by Corn Products Refining Co. are sold and distributed. Corn Products Refining Co. owns the entire capital stock of Corn Products Sales Co., Inc. and controls and directs Corn Products Sales Co., Inc.

PAR. 2. Respondent, Corn Products Refining Co., has an authorized capital stock of \$100,000,000. Corn Products Refining Co. owns and operates plants at Pekin and Argo, Ill.; North Kansas City, Mo.; and Edgewater, N. J. The Argo, Pekin, and North Kansas City plants have a corn grinding capacity in excess of 155,000 bushels per day, with complete facilities for the finished fabrication of all known corn starch products, both for household and industrial use, and including well equipped carton and can plants and printing establishments for use in producing the many packaged products of the company. The Edgewater plant has a reserve corn grinding capacity of 30,000 bushels daily. Respondents grind of corn approximates that of all of its competitors combined.

PAR. 3. For many years respondents have been and are now engaged in the business of manufacturing, selling and distributing in interstate commerce products derived from corn. The principal products derived from corn are (1) starch, both for food and other purposes; (2) glucose or corn sirup; and (3) corn sugar. Starch is first manufactured from the corn, and glucose and grape sugar are made by treating the starch with certain acids, the resulting solid product being sugar and the resulting sirup being glucose.

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Glucose is largely used in the manufacture of candy, jellies, jams, preserves, and the like as well as in the mixing of sirups.

The principal byproducts of corn resulting in the corn products business are gluten feed, corn oil, corn-oil cake and corn-oil meal.

The Corn Products Refining Co., in addition to bulk products, produces the following branded products:

Kingsford and Duryea Starches, Karo Syrup, Mazola Oil, Argo Corn Starch, Argo Gloss Starch, Kre-mel Dessert, Linit and Cerelose.

PAR. 4. For many years in the course and conduct of their business, the respondents have been and are now manufacturing the aforesaid commodities at the aforesaid plants and have sold and shipped and do now sell and ship such commodities in commerce between and among the various States of the United States from the States in which their factories are located across State lines to purchasers thereof located in States other than the States in which respondents' said plants are located in competition with other persons, firms and corporations engaged in similar lines of commerce.

PAR. 5. Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, the respondents have been and are now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, which commodities are sold for use, consumption or resale within the several States of the United States and the District of Columbia in that the respondents have been and are now selling such commodities to some purchasers at a higher price than the price at which commodities of like grade and quality are sold by respondents to other purchasers generally competitively engaged with the first mentioned purchasers.

PAR. 6. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition in the sale and distribution of corn products between the said respondents and their competitors; tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy, or prevent competition in the sale and distribution of corn products between the said respondents and their competitors.

PAR. 7. The effect of said discriminations in price made by said respondents, as set forth in paragraph 5 herein, may be substantially to lessen competition between the buyers of said corn products from respondents receiving said lower discriminatory prices and other buyers from respondents competitively engaged with such favored buyers who do not receive such favorable prices; tend to create a mon-

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opoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy, or prevent competition in the lines of commerce in which those who purchase from respondents are engaged between the said beneficiaries of said discriminatory prices and said buyers who do not and have not received such beneficial prices.

PAR. 8. The aforesaid acts of respondents constitute a violation of the provisions of subsection (a) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936, (U. S. C. title 15, sec. 13).

COUNT II

The Federal Trade Commission having reason to believe the party respondents named in the caption hereof, and heretofore more particularly designated and described, since June 19, 1936, have violated and are now violating the provisions of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C., title 15, sec. 13), hereby issues this its complaint against respondents and states its charges with respect thereto, as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 and 4, inclusive, of said count I were set out in full herein, and said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. Respondents have entered into advertising arrangements with certain of their purchasers, to wit, Curtiss Candy Co. of Chicago, Ill., and the Bachman Chocolate Manufacturing Co. of Mount Joy, Pa. of dextrose, as a result of which large sums of money have been spent by them since June 19, 1936, in cooperatively advertising with such purchasers the dextrose so purchased and the respondents have not accorded such services or facilities to other of their purchasers competitively engaged with the aforementioned purchasers on proportionally equal terms.

PAR. 3. Since June 19, 1936, in the course and conduct of their business described in paragraphs 1 to 4, inclusive, of count I hereof, respondents have discriminated and are discriminating in favor of certain purchasers against other purchasers of corn products bought for resale by contracting to furnish or furnishing, or by contributing to the furnishing of, services and facilities connected with the offering for sale, of such commodity so purchased upon terms not accorded all purchasers on proportionally equal terms.

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PAR. 4. The aforesaid acts of respondents constitute a violation of section 2 (e) of the above mentioned act of Congress.

COUNT III

The Federal Trade Commission having reason to believe that the party respondents named in the caption hereof, and heretofore more particularly designated and described, have violated and are now violating the provisions of section 3 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (the Clayton Act), hereby issues this its complaint against respondents and states its charges with respect thereto as follows, to wit:

PARAGRAPH 1. For its charges under this paragraph of this count, said Commission relies upon the matters and things set out in paragraphs 1 to 4, inclusive, of count I of this complaint to the same extent and as though the allegations of said paragraphs 1 to 4, inclusive, of said count I were set out in full herein, and said paragraphs 1 to 4, inclusive, of said count I are incorporated herein by reference and made a part of the allegations of this count.

PAR. 2. That the respondents, for several years last past, in the course of interstate commerce, have sold to and made contracts for sale of large quantities of corn starch with the Keever Starch Co. of Columbus, Ohio, and the Huron Milling Co. of Harbor Beach, Mich., for use, consumption and resale within the United States and the District of Columbia, and have fixed and are now fixing the price charged therefor on the condition, agreement and understanding that the purchasers thereof shall not use the goods, wares, merchandise, supplies or other commodities of a competitor or competitors of respondents, and that the effect of such sales and contracts of sale or conditions and agreements and understandings may be to substantially lessen competition between respondents and their competitors; and to tend to create a monopoly in respondents in the sale and distribution of corn starch in commerce between and among the various States of the United States and in the District of Columbia.

PAR. 3. The aforesaid acts of respondents constitute a violation of the provisions of section 3 of the hereinabove mentioned act of Congress.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

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

Act), as amended by an act of Congress approved June 19, 1936 (Robinson-Patman Act), the Federal Trade Commission on October 21, 1938, issued and thereafter served its complaint in this proceeding upon respondents Corn Products Refining Co., a corporation, and Corn Products Sales Co., Inc., a corporation, charging them with violation of the provisions of subsection (a) of section 2 of the said Clayton Act, as amended. After the issuance of said complaint and the filing of respondents' answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it.

On March 25, 1939, the Commission issued and thereafter served upon said respondents an amended complaint charging violation of subsections (a) and (e) of section 2 and of section 3 of the aforesaid Clayton Act, as amended. After the filing of respondents' answer to the amended complaint, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before examiners of the Commission theretofore duly designated by it, and the testimony and other evidence taken pursuant to both complaints were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission on the amended complaint, the answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments by counsel; and the Commission, having duly considered the same and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Corn Products Refining Co., is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at 17 Battery Place, New York, N. Y. Respondent, Corn Products Sales Co., Inc., is a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at 17 Battery Place, New York, N. Y. Corn Products Sales Co., Inc., is a wholly owned subsidiary of Corn Products Refining Co. and is engaged in the sale and distribution of products manufactured by Corn Products Refining Co. The policies and operations of Corn Products Sales Co., Inc., are controlled and directed by Corn Products Refining Co.

PAR. 2. Respondent Corn Products Refining Co. is a large and important processor and refiner of corn and manufacturer of products and byproducts of such processing and refining. It has an authorized capital stock of \$100,000,000 and owns and operates corn grinding and refining plants at Pekin and Argo, Ill.; North Kansas City, Mo.; and Edgewater, N. J. The Argo, Pekin, and North Kansas City plants have a corn grinding capacity in excess of 155,000 bushels per day, with facilities for the production of many products and byproducts of corn, including all known corn starch products for both household and industrial use. It owns and operates can, carton, and printing plants for the production of containers for many of its packaged products. It distributes the products so manufactured to purchasers located in the States of New York and Illinois, and its subsidiary, Corn Products Sales Co., Inc., sells and distributes the products of its parent company in the other States of the United States and in the District of Columbia.

In the course and conduct of the aforesaid business respondents for many years have been, and are now, engaged in the sale and distribution of their various products which, when sold, are transported in commerce from their plants through and into the various States of the United States and in the District of Columbia, and respondents have maintained, and now maintain, a course of trade in such various products in commerce in and among the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their aforesaid business, respondents produce, sell, and distribute starch, glucose or corn syrup, corn sugar, corn oil, gluten feed, corn oil cake, corn oil meal, and other products. In addition to the products sold in bulk, respondents have many branded products distributed to the public, including Kingsford and Duryea starches, Karo syrup, Mazola oil, Argo corn starch, Argo gloss starch, Kre-mel desserts, Linit, and Cerelese.

Of the many products and byproducts of corn produced and sold by respondents, the ones of primary interest for the purposes of this proceeding are bulk glucose or corn syrup, corn starch and starch products derived therefrom, dextrose, and corn gluten feed and meal. Bulk glucose is a standard syrup used principally in the manufacture of candy and the mixing of table syrups. Corn starch, in addition to its well-known household uses, is extensively used in various forms in the paper, laundry, and cloth-making industries. Dextrose is a dry white sugar which is not as sweet as sugar produced from sugar cane or beets and is used principally in the candy, canning, and soft drink industries. Gluten meal is a byproduct of corn refining consisting of corn hulls, husks, gluten, and other residues

remaining after the starch and germ have been removed from corn, and when sweetened with molasses is known as gluten meal. Both gluten feed and meal are principally used for the feeding of livestock.

Respondents' competitors in the manufacture, sale, and distribution of corn products and byproducts, including the location of the plant of each, are: A. E. Staley Manufacturing Co., Decatur, Ill.; Clinton Company, Clinton, Iowa; Penick & Ford, Limited, Inc., Cedar Rapids, Iowa; American Maize-Products Co., Roby, Ind.; Union Starch & Refining Co., Granite City, Ill.; Anheuser-Busch, Inc., St. Louis, Mo.; and The Hubinger Co., Keokuk, Iowa. Each of these concerns has national distribution of its products.

PAR. 4. (a) Respondents began the distribution of glucose or corn syrup from their Argo plant, which is within the railroad switching district of Chicago, Ill., in 1910 and from their Kansas City plant in 1922. This product is sold by respondents largely to candy manufacturers in railroad tank car lots of approximately 95,000 pounds each, in tank wagon or truck lots of approximately 12,000 pounds each, and in drums, barrels, half barrels, 10-gallon kegs, and 5-gallon kegs. Respondents have concurrently sold glucose of like grade and quality to different purchasers at differing prices. Since June 19, 1936, and for many years prior thereto, respondents have sold bulk glucose to purchasers throughout the United States at delivered prices which were, and are, calculated upon the basis of the price in Chicago plus the railroad tariff rate from Chicago to the destination of the purchaser. Additional price differences among purchasers of glucose have been, and are, created by respondents through their practice of adding to the railroad tank car price additional sums, the amounts of such additions depending upon the type of container in which the glucose is delivered. Respondents have created other price differentials among purchasers through preferential application to some purchasers of their practice of allowing customers a period of days after a price increase has been announced within which such customers may purchase an amount of glucose at the price in effect before the announcement of the increase. This is known as the order "booking" system.

(b) Respondents have been, and are now, selling and shipping glucose or corn syrup, unmixed, of like grade and quality from their plants in Chicago, Ill., and Kansas City, Mo., to purchasers throughout the United States, some of which purchasers are located in the following cities: Chicago, Ill.; Kansas City, St. Joseph, and Springfield, Mo.; Fort Smith, Ark.; Hutchinson, Kans.; Lincoln, Nebr.; Sioux City, Iowa; Waco, Sherman, and San Antonio, Tex.; Denver, Colo.; and Salt Lake City, Utah. Sales to purchasers, including those in the

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cities named, are fulfilled by shipments of glucose from respondents' plant at Chicago, Ill., or from their plant at Kansas City, Mo., depending in each instance upon the judgment of and subject to the entire control of respondents. With the exception of a few sales, shipments to fulfill which were made from respondents' plant at Chicago, Ill., sales to purchasers located in all of the cities named above except Chicago (which cities are used for the purpose of illustrating respondents' selling and delivery practices) were fulfilled by shipments from respondents' plant at Kansas City, Mo.; a substantial number of the sales to purchasers in Chicago were fulfilled by deliveries from respondents' filling station in Chicago to which glucose had been shipped by respondents from their plants in Kansas City and Chicago; and a few such sales were fulfilled by shipments directly to customers in Chicago from respondents' plant in Kansas City. Many purchasers who bought glucose from respondents also purchased glucose from competitors of respondents. To illustrate the differing prices at which glucose was sold by respondents on particular dates, the following tabulation shows the prices per hundred pounds to purchasers in the cities named above for 43° Baumé glucose in tank car lots on the dates stated:

Location of purchaser	Aug. 1, 1936	Aug. 1, 1937	Aug. 1, 1938	Aug. 1, 1939
Chicago, Ill.	\$2.94	\$3.04	\$2.29	\$2.09
Kansas City, Mo.	3.32	3.40	2.69	2.49
St. Joseph, Mo.	3.32	3.40	2.69	2.49
Springfield, Mo.	3.32	3.40	2.69	2.49
Fort Smith, Ark.	3.58	3.64	2.94	2.74
Hutchinson, Kans.	3.53	3.60	2.90	2.70
Lincoln, Nebr.	3.37	3.45	2.74	2.54
Sioux City, Iowa.	3.32	3.40	2.69	2.49
Waco, Tex.	3.77	3.82	3.14	2.94
Sherman, Tex.	3.68	3.74	3.06	2.86
San Antonio, Tex.	3.74	3.84	3.17	2.97
Denver, Colo.	3.79	3.64	2.85	2.75
Salt Lake City, Utah.	3.79	3.74	3.06	2.86

At all times between the dates set forth substantially the same differences in and relationships between and among said prices illustrated above existed as to purchasers so located, and these prices were charged and paid by such purchasers regardless of whether the glucose or corn syrup unmixed was shipped to such purchasers in the city named from respondents' plant at Chicago, Ill., or respondents' plant at Kansas City, Mo.

(c) The illustrative prices set forth above were determined by respondents by following their general practice of adding to the prices shown for Chicago on the dates set forth, respectively, the then effective railroad tariff rate from Chicago to destination without reference to whether the sale would be fulfilled by shipment from Kansas City or from Chicago. Such rates in cents per hundred

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pounds, together with similar rates from Kansas City to the same destinations, were as follows:

[Cents per hundred pounds]

	Aug. 1, 1936		Aug. 1, 1937		Aug. 1, 1938		Aug. 1, 1939	
	Chicago	Kansas City	Chicago	Kansas City	Chicago	Kansas City	Chicago	Kansas City
Chicago, Ill.....	0	38	0	36	0	40	0	40
Kansas City, Mo.....	38	0	36	0	40	0	40	0
St. Joseph, Mo.....	38	8	36	8	40	9	40	9
Springfield, Mo.....	38	35	36	33	40	36	40	36
Fort Smith, Ark.....	64	42	60	40	65	45	65	45
Hutchinson, Kans.....	59	35	56	33	61	36	61	36
Lincoln, Nebr.....	43	12	41	12	45	13	45	13
Sioux City, Iowa.....	38	23	36	22	40	24	40	24
Waco, Tex.....	83	62	78	58	85	63	85	63
Sherman, Tex.....	74	52	70	49	77	54	77	54
San Antonio, Tex.....	85	67	80	63	88	69	88	69
Denver, Colo.....	85	68	60	51	66	56	66	56
Salt Lake City, Utah.....	85	82	70	61	77	67	77	67

(d) Insofar as sales which are fulfilled by shipments from respondents' Chicago plant are concerned, although the differential in price to purchasers at various locations may not be precisely justified by the cost to respondents of delivery, because of milling in transit rates and other freight rate adjustments, it does not appear that there is substantial unjustified discrimination under the pricing plan set forth above. It is plain, however, that a purchaser located in Kansas City who received delivery from respondent's Kansas City plant on the dates set out above paid respondents prices higher than the prices to a customer in Chicago by approximately the following percentages: August 1, 1936, 13 percent; August 1, 1937, 12 percent; August 1, 1938, 17 percent; August 1, 1939, 19 percent. The percentages vary with variations in the Chicago price as well as with rate changes. These higher prices were in no way warranted by additional delivery costs. Any purchaser who is located closer freightwise to Kansas City than to Chicago, Ill., and who received delivery from Kansas City, was forced to pay a price which included delivery costs not incurred or paid by respondents. For example, the price to a purchaser in Waco, Tex., for such delivery included "phantom" freight delivery costs which made the price to him approximately 10 percent higher than to a Chicago purchaser. It is also plain that a purchaser in Chicago who received delivery from Kansas City purchased at a price which not only did not include any artificial freight, but which did not take into account the freight actually incurred and paid by respondents. Similarly, any purchaser located closer freightwise to Chicago than to Kansas City, and who received delivery from respondents' Kansas City plant, received

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a price which not only did not include any artificial freight but which did not include all the freight actually paid by respondents.

(e) Respondents did not attempt to show that the price differences illustrated in the first table in this paragraph made only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such corn syrup was to such purchasers sold or delivered.

PAR. 5. (a) In addition to the price differences as among customers of respondents which are created by the pricing system illustrated in the preceding paragraph, respondents have sold, and are now selling, glucose or corn syrup unmixed to different purchasers, wherever located, in containers of different sizes at prices per hundredweight in addition to the tank car price as follows:

Type of container:	Additional price per hundredweight over tank car prices
Barrels-----	\$0.33.
Half barrels-----	\$0.58.
10-gallon kegs-----	\$0.98.
5-gallon kegs-----	\$1.08.
Returnable steel drums-----	\$0.13 where there is no return freight paid on empty drums.
Do-----	\$0.18 where the return freight on the empty drum is between 50 and 75 cents per hundredweight.
Do-----	\$0.23 where the return freight on the empty drum is between 76 and 90 cents per hundredweight.
Do-----	\$0.28 where the return freight on the empty drum is between 91 cents and \$1 per hundredweight.
Do-----	\$0.33 where the return freight on the empty drum is more than \$1 per hundredweight.
Tank trucks-----	\$0.10 where delivered by respondents' equipment.
Do-----	\$0.02 where delivered by customer's equipment.

(b) Respondent made no effort to show that the price differences among their customers created by the aforesaid container differentials were price differences which made only due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which such commodities were to such purchasers sold or delivered.

PAR. 6. (a) Price differences as among customers, in addition to those illustrated in paragraphs 4 and 5, have been created by respondents through the operation of the "booking" system hereinbefore

mentioned. In case of a decline in their price for glucose it is the general policy of respondents to correspondingly reduce their prices to all customers as to undelivered orders or portions of orders which were taken at higher prices. In case of an advance in their price for glucose respondents attempt to notify the trade generally of such increase and by means of telephone calls, personal calls by their salesmen, or letter they inform all their customers of such increase. The general policy further provides that customers, within a period of days (formerly 10 and now 5) after an increase in price, may "book" or order from respondents, at the price in effect before the increase, an amount of glucose not to exceed the customer's requirements for 30 days, and delivery of amounts so ordered must be accepted by the customer within 30 days from the date of the price increase under penalty of cancellation if not accepted. All such orders or bookings must be approved at the principal office of respondents, and they are there considered before acceptance, modification, or refusal. "Bookings" are not firm contracts of purchase but mere options. Actual sales pursuant to "bookings" occur when delivery of the glucose is ordered and it is then that the amount delivered is invoiced. The granting of preferential treatment to favored customers under the guise of the booking system has resulted in substantial discriminations in price among candy manufacturers purchasing glucose from respondents.

(b) In some instances respondents, after the expiration of the time during which such booking is permitted to other customers, have allowed favored customers to purchase at the price in effect before an increase; in other instances respondents have made deliveries of glucose to favored customers more than 30 days after the date of the increase at the price in effect before an increase was made, while requiring other customers to take delivery within the 30-day period or suffer cancellation of the undelivered portion of the order; in still other instances respondents have permitted favored customers who purchase in tank wagon quantities, and who have no trackage or storage facilities for the acceptance of railroad tank car deliveries, to purchase tank car lots at the price in effect before an advance and have delivered such purchases in tank wagon quantities over extended periods of time, thus giving such favored customers the benefit of prices lower than those in effect to other tank wagon purchasers following the increase in price. There have also been price differences created among respondents' customers by various combinations or modifications of the booking practices described.

(c) To illustrate some of the booking practices of respondents, they booked for E. J. Brach and Sons 27 tank cars of glucose on March 25.

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1937, at \$3.04 per hundredweight preceding a price advance to \$3.49 early in April, and a second price advance about the middle of May to \$3.59. Deliveries under this order were commenced on May 19, 1937, and completed on July 3, 1937, during all of which time respondents sold to other customers at base prices of \$3.49 and \$3.59 per hundredweight. On March 25, 1937, respondents booked 7 tank cars of glucose for the Crystal Pure Candy Co., at a time when the base price was \$3.04 per hundredweight and delivered this glucose during April, May, and June when sales were made to other purchasers at base prices of \$3.49 and \$3.59. The Crystal Pure Candy Co. has no facilities to accept delivery by tank car or in tank car quantities, and deliveries by respondents against the 7-tank-car booking were in fact made by tank wagon from respondents' general storage tanks at their Chicago filling station. Such deliveries were made from day to day as required by the purchaser, who was thus afforded the benefit of the \$3.04 price at a time when other tank wagon customers were buying upon a base price of \$3.54 and \$3.59.

PAR. 7. (a) Many of those who purchase glucose or corn sirup of like grade and quality from the respondents pursuant to the aforesaid pricing plan, container differentials, and booking practices are candy manufacturers located in various States of the United States and are competitively engaged among themselves and with others in the sale of candy to various customers, including wholesalers, chain stores, and retailers located in the various States of the United States. The glucose so purchased is used as an ingredient to some extent in the manufacture of most kinds of candy and is one of the major raw materials used in the production of many varieties of candy, constituting from about 5 to approximately 90 percent of the finished weight thereof. Generally, glucose is used in greatest proportion in candies which are sold by such manufacturers at prices of a few cents a pound and at narrow margins of profit. The higher prices paid for glucose purchased from respondents by candy manufacturers located in cities other than Chicago, Ill., result to a greater or lesser degree in higher material costs to them than to manufacturers in Chicago who purchase from respondents, the degree in each instance depending upon the difference in price and the proportion of glucose in the particular candy manufactured. Some of such candy manufacturers who were located in cities other than Chicago before the construction and operation of respondents' plant in Kansas City, and some candy manufacturers formerly located in such cities, have since 1922 relocated in Chicago. Those manufacturers who have purchased, and purchase, glucose from respondents in quantities smaller than a tank

car and are charged prices established pursuant to the aforesaid container differentials have higher material costs for glucose than do those candy manufacturers who purchase from respondents in tank car quantities. Those manufacturers who purchase glucose from respondents and do not receive a preferential treatment under the booking practices of respondents also have higher material costs for glucose than do those manufacturers who purchase from respondents and receive such preferential treatment.

(b) As to candies priced at but a few cents a pound and bearing no differentiating name or brand, candy manufacturers may attract customers by selling such candies at only a small fraction of a cent per pound lower than a competitor's price. This is especially true in selling such candies to chain stores and other purchasers of large quantities of candy to whom a small difference is determinative in the placing of their business. Under such circumstances candy manufacturers paying higher prices for glucose than competitors may attempt to recover such increased costs by increasing the price of such candy, or may make only selected sales on a nonprice or other basis. The result in either case is to reduce profit. This result may occur either directly through the absorption by the manufacturer of higher syrup costs in the sale of candies at competitive prices or indirectly through a reduced volume of sales, or the result may be to diminish the ability of those paying the higher prices to compete with those paying the lower prices. These results may be avoided or augmented by differences in the costs to such candy manufacturers of other factors, such as labor, taxes, rents, insurance, other ingredients, proximity to markets, and delivery of the finished candies, no matter how such differences are brought about.

PAR. 8. (a) As a byproduct of their corn refining, respondents produce and sell gluten feed and meal to the amount of more than 250,000 tons annually, which is approximately 40 to 50 percent of all such products used in the United States. Respondents sell and ship such products to approximately 3,000 different purchasers located in various States of the United States. Gluten feed and meal compete with similar products produced and sold by the aforesaid corn refining competitors of respondents, and also compete with other types of feed produced by distillers, cottonseed mills, wheat flour mills, and soybean crushers. Respondents sell such feed and meal produced at their Pekin and Argo plants on the basis of a gross price for delivery in Chicago plus freight from Chicago to any other destination. The gluten feed and meal produced by respondents at their Kansas City plant are sold at a bulk price for delivery in Kansas City plus freight

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from Kansas City to any other destination. While selling to the majority of their customers at prices arrived at in the manner set out above, respondents have, over a period of years, discriminated in favor of at least 6 purchasers of such products by means of discounts, commissions, rebates, refunds, or allowances. The purchasers so favored were, and are: Allied Mills, Inc., Chicago, Ill.; Cooperative G. L. F. Mills, Inc., Buffalo, N. Y.; E. W. Bailey & Co., Montpelier, Vt.; Jesse C. Stewart & Co., Pittsburgh, Pa.; Marshfield Milling Co., Marshfield, Wis.; and Farley Feed Co., Janesville, Wis.

(b) Pursuant to various contracts and agreements respondents have, since June 19, 1936, sold Buffalo corn gluten feed and Diamond corn gluten meal to Cooperative G. L. F. Mills, Inc., in the following amounts at respondents' regular prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936-----	29, 917½	2, 070
1937-----	40, 474½	770
1938-----	36, 078	1, 221
1939-----	58, 652	2, 796

By the contracts and agreements under which these sales were made respondents agreed to pay to Cooperative G. L. F. Mills, Inc., an allowance of 50 cents per ton from their regular market prices on sales and shipments of such feed and meal in quantities of from 1,500 to 2,499 tons per month, and an allowance of 65 cents per ton on feed and meal on monthly shipments in excess of 2,500 tons. Respondents have paid to Cooperative G. L. F. Mills, Inc., substantial sums of money pursuant to such agreements. Cooperative G. L. F. Mills, Inc., has resold the corn gluten feed and meal purchased from respondents, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to authorized agents, buyers, and retail stores owned or controlled by it in the States of New York, New Jersey, and Pennsylvania. Respondents have, since June 19, 1936, sold corn gluten feed and meal products of like grade and quality in substantial quantities at their full market price without discount, allowance, commission, rebate, or other compensation to dealers in such products and feed mixers located in and doing business in New York, New Jersey, and Pennsylvania. Such dealers and feed mixers were, and are, in direct competition with Cooperative G. L. F. Mills, Inc., in the resale of respondents' products unmixed or as substantial and essential ingredients in prepared, mixed, or branded feed products.

(c) Pursuant to certain contracts or agreements, respondents have since June 19, 1936, sold to Allied Mills, Inc., Buffalo corn gluten feed

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and Diamond corn gluten meal in the following amounts at respondents' regular market prices for such products:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	6, 623	1, 702
1937.....	11, 446	2, 252
1938.....	8, 903	6, 684½
1939.....	9, 013	5, 143½

Under said contracts and agreements respondents agreed to pay to Allied Mills, Inc., an allowance of 50 cents per ton from their regular market prices for such products on sales and shipments of feed and meal of not less than 1,200 tons per month, and as a result thereof respondents have paid to Allied Mills, Inc., substantial sums of money. Allied Mills, Inc., has resold the said products purchased from respondents, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to feed dealers in 31 States of the United States. Respondents have, since June 19, 1936, sold similar products of like grade and quality in substantial quantities at their regular market prices without discount, allowance, commission, rebate, or other compensation to dealers in these products and feed mixers located in and doing business in a substantial number of the 31 States above referred to, and said dealers and feed mixers were, and are, in direct competition with Allied Mills, Inc., in the resale of these products unmixed or as substantial and essential ingredients in prepared, mixed, or branded feed products.

(d) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to E. W. Bailey & Co., of Montpelier, Vt., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regularly established market prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	290	-----
1937.....	1, 548½	110½
1938.....	2, 175	146
1939.....	1, 968	141

As a result of said understanding and agreement respondents have paid E. W. Bailey & Co. an allowance on said purchases at the rate of 50 cents per ton. E. W. Bailey & Co. has resold such products, both unmixed and as ingredients in prepared, mixed, or branded feeds of its own, to feed dealers in the States of Vermont, New Hampshire, Massachusetts, and New York. Respondents have, since June 19, 1936, sold their aforesaid products of like grade and quality in substantial quantities at their regular market prices with-

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out any discount, allowance, commission, rebate, or other compensation to dealers in such products and feed mixers located and doing business in the States of Vermont, New Hampshire, Massachusetts, and New York, and said dealers and feed mixers are in direct competition with E. W. Bailey & Co. in the resale of said products unmixed or as a substantial and essential ingredient in prepared, mixed, or branded feed products.

(e) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Jesse C. Stewart & Co. of Pittsburgh, Pa., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	240	90
1937.....	840	170
1938.....	990	160
1939.....	915	175

As a result of said agreement and understanding, respondents have paid to Jesse C. Stewart & Co. an allowance of 50 cents per ton on such products resold unmixed. Jesse C. Stewart & Co. has resold said products purchased from respondents, unmixed, to feed dealers in the State of Pennsylvania and in the area immediately surrounding Pittsburgh, Pa. Respondents have, since June 19, 1936, sold their said products of like grade and quality in substantial quantities at their regular market prices therefor without discount, allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in Pennsylvania and in the area immediately surrounding Pittsburgh, Pa., and who are in direct competition with Jesse C. Stewart & Co. in the resale of such products.

(f) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Marshfield Milling Co. of Marshfield, Wis., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices therefor:

Date.	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	155	165
1937.....	341	141
1938.....	157	120
1939.....	180	50

As a result of said agreement and understanding respondents have paid to the Marshfield Milling Co. allowances at the rate of 50 cents per ton on said products resold unmixed, and said purchaser has resold these products, unmixed, to feed dealers in the State of Wisconsin. Respondents have, since June 19, 1936, sold their aforesaid

products in substantial quantities at their regular market prices therefor without discount allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in the State of Wisconsin and who are in direct competition with Marshfield Milling Co. in the resale of said products.

(g) Pursuant to an understanding and agreement respondents have, since June 19, 1936, sold to Farley Feed Co., Janesville, Wis., Buffalo corn gluten feed and Diamond corn gluten meal in the following amounts at their regular market prices therefor:

Date:	Feed (in tons)	Meal (in tons)
June 19-Dec. 31, 1936.....	10	10
1937.....	93	73
1938.....	50	70
1939.....	69½	68½

As a result of said agreement and understanding respondents have paid to the Farley Feed Co. allowances at the rate of 50 cents per ton on said products resold unmixed, and said company has resold these products, unmixed, to feed dealers in the State of Wisconsin. Respondents have, since June 19, 1936, sold their aforesaid products in substantial quantities at their regular market prices therefor without discount, allowance, commission, rebate, or other compensation to dealers in such products located in and doing business in the State of Wisconsin who are in direct competition with Farley Feed Co. in the resale of said products.

(h) The allowances granted and paid by respondents to the aforesaid Cooperative G. L. F. Mills, Inc., Allied Mills, Inc., E. W. Bailey & Co., Jesse C. Stewart & Co., Marshfield Milling Co., and Farley Feed Co. are sufficient, if and when reflected in whole or in substantial part in resale prices, to attract business to Cooperative G. L. F. Mills, Inc., Allied Mills, Inc., E. W. Bailey & Co., Jesse C. Stewart & Co., Marshfield Milling Co., and Farley Feed Co. away from their respective competitors, or to force said competitors to resell such feed and meal products purchased from respondents at a substantially reduced profit, or to refrain from reselling. The allowances thus paid by respondents to the favored customers are sufficient to substantially increase the respective margins of profit of such customers over and above the margins of profit otherwise obtainable in the resale of such feed and meal products. Respondents did not produce any evidence to show that the lower prices granted to the above-named favored purchasers of feed and meal products made no more than due allowance for differences, if any, in the cost of manufacture, sale, or delivery of their said feed and meal products resulting from

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the differing methods or quantities, if any, in which such products were to said purchasers sold or delivered.

PAR. 9. (a) One of the principal products resulting from respondents' grinding and refining of corn is corn starch. Such corn starch is sold and distributed by respondents on a large scale throughout the United States. It is sold in many different forms varying in moisture content, viscosity, and in other ways. The form known as thick boiling pearl starch of 12 percent moisture is usually considered the basic form and is customarily used as a base to which the prices of other forms of starch are related.

(b) Since June 19, 1936, and up to the present time respondents have sold and delivered substantial quantities, amounting to many millions of pounds, of starches and starch products to Keever Starch Co., Columbus, Ohio, hereafter referred to as Keever, and to Stein, Hall and Co., of New York, N. Y., and/or Stein, Hall Manufacturing Co., of Chicago, Ill., hereafter referred to as Stein-Hall, for use, consumption, and resale within the United States and in the District of Columbia. Respondents have also sold substantial quantities of starches and starch products of like grade and quantity to individuals, firms, partnerships, and other corporations located in the several States of the United States and competitively engaged with Keever and Stein-Hall in the use, consumption, and resale of such products.

(c) The sales made by respondents to Keever and Stein-Hall were at prices which reflected a substantial discount, rebate, commission, or other allowance from respondents' regular market or list prices at the time of such sales. Respondents, during the same period of time, made sales to competitors of Keever and Stein-Hall at their market or list prices current at the time of such sales without any discount, rebate, commission, or other allowance. The discount, rebate, commission, or allowance granted to Keever and to Stein-Hall was, and is, sufficient to substantially increase their respective margins of profit over and above the margins of profit otherwise obtainable in the use, consumption, and resales of starches and starch products; and is sufficient, if and when reflected in whole or in substantial part in resale prices, to attract business to Keever and to Stein-Hall away from their competitors, or to force such competitors to resell said starches and starch products at substantially reduced profit, or to refrain from reselling. The said discount, rebate, commission, or other allowance granted to Keever and to Stein-Hall may be sufficient to attract the business of such purchasers away from competitors

of respondents, or to force said competitors to sell such starches and starch products at substantially reduced profit, or to refrain from selling. Respondents did not produce any evidence to show that the discount, rebate, commission, or other allowance granted by them to Keever and to Stein-Hall, respectively, made no more than due allowance for differences, if any, in the cost of manufacture, sale or delivery of their starches and starch products resulting from differing methods or quantities, if any, in which such products were to such purchasers sold or delivered.

PAR. 10. (a) Since about 1933 respondents have produced, sold, and distributed dextrose in dry, powdered form under the trade name "Cerelese" to the baking, soft drink, and canning industries, and for a shorter period of time to candy manufacturers. Glucose, or corn syrup unmixed, contains a substantial quantity of dextrose, but the product here under consideration is dry, powdered dextrose.

(b) In 1935 or 1936 respondents entered into negotiations with the Curtiss Candy Co. of Chicago, Ill., for the purpose of inducing that company to use dry dextrose in its candies and to advertise them as containing dextrose. The Curtiss Candy Co. has as wide distribution of its candies as any candy manufacturer in the United States and is an aggressive company which has, over a period of years, advertised its products approximately as much as all other candy manufacturers in the United States combined. Its advertising has appeared in newspapers, magazines, on billboards, stationery, envelopes, candy wrappers, cartons, and boxes, and on radio broadcasts. Prior to September 1936 the Curtiss Candy Co. had purchased small quantities of dry dextrose from manufacturers other than respondents but prior to that date was not using such dextrose in its candies to any appreciable extent.

(c) After a year or more of experimentation and negotiation with respondents, the Curtiss Candy Co. undertook to use dry dextrose in the manufacture of most of its candy products and to advertise the presence of dextrose in its candies and explain the nature of dextrose. It has, since September 1936, added to its advertising representations statements to the general effect that its candies are enriched by dextrose or rich in dextrose, that dextrose is a quick source of energy, and that it is energizing and aids in relieving fatigue, all for the purpose of inducing the purchase of its candies by members of the consuming public in order to get the benefit of the dextrose contained therein. By means of various advertising media the Curtiss

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Candy Co. has advertised certain of its candy products in a manner of which the following is typical:

Is Rich in Pure
DEXTROSE
The Sugar
Your Body Uses
Directly for Energy

RICH IN DEXTROSE
Step Out With Vigor!

For pep and energy that take you to the end of the trail without tiring, carry these energy-food candies wherever you go * * *. That's because all four of these famous Curtiss candy bars are enriched with dextrose—the sugar your body uses directly for energy.

* * * * *

The satisfying goodness of Baby Ruth is as natural as the pure foods combined to make this big delicious candy bar. Milk, butter, eggs, fine chocolate, plump crisp peanuts—and dextrose, the sugar your body uses directly for energy—these are among the choice ingredients which give Baby Ruth its fine flavor, fresh fragrance and its real food value.

* * * * *

Yes, in every bar of fresh, fragrant Baby Ruth candy is an abundance of food energy. Deliciously blended in Baby Ruth are such natural foods as milk, butter, eggs, fine chocolate, top grade peanuts—and pure dextrose, the sugar your body uses directly for energy. Is it any wonder that millions agree "Baby Ruth is fine candy and fine food?"

And by radio announcements such as:

Wise parents insist upon their children eating Baby Ruth candy. It's pure, delicious, and energizing because it's rich in dextrose.

* * * * *

Lots of mothers have written us asking for more information about dextrose, the energy sugar * * * and how it makes Baby Ruth candy so good for everyone. Well, it's simple to explain. Dextrose is a pure white sugar * * * which doctors call "body" or "muscle" sugar. It is the substance which makes your heart beat, your lungs breathe, your muscles move. Delicious Baby Ruth candy is so rich in dextrose that it is more than just a fine pure candy * * * Baby Ruth is a real energizing food.

(d) Pursuant to the negotiations with the Curtiss Candy Co. but without any written contract with regard thereto, respondents, in consideration of the addition of the "dextrose message" to the Curtiss Candy Co.'s advertising, appropriated various sums of money which were paid to and expended by their advertising agency in the purchase of advertising in newspapers, magazines, and on the radio depicting Curtiss candy products as being "rich in dextrose" or "enriched with dextrose." Respondents were not obligated to expend any specific amount in advertising Curtiss candies, and the money actually expended was not paid to the Curtiss Candy Co. but was paid to and

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expended by respondents' advertising agency in the aforesaid manner. Respondents have expended in advertising the Curtiss Candy Co. products in the aforesaid manner approximately \$100,000 in 1936, \$250,000 in 1937, \$200,000 in 1938, and \$200,000 in 1939.

(e) Officials of the Curtiss Candy Co. and of respondents testified that there was no agreement that Curtiss would purchase its requirements of dry dextrose from respondents. However, in testifying with regard to the arrangements made with the Curtiss Candy Co. the vice president in charge of sales for Corn Products Refining Co., who is also president of Corn Products Sales Co., referred to his belief that Curtiss would use 12,000,000 pounds of dextrose the first year, and when asked why he thought this would be the case, replied:

A. Because we knew what his volume was and we thought we could put a certain percentage of dextrose in that volume. And we were fooled.

Q. Well, it was to get that percentage of volume, that 12 million pounds from Curtiss that you entered into the advertising arrangements?

A. No, it wasn't. We entered into the advertising arrangements because we thought it was a first class advertising campaign for dextrose. The 12 million was just velvet, that's all.

Q. Why do you say you were fooled?

A. Well, because 12 million pounds is a nice amount of business to shoot at. But our main object was to—was to publicize dextrose * * *

(f) As a matter of fact, after the agreement with respondents the Curtiss Candy Co. purchased the following amounts of dry dextrose from respondents and made no purchases from any other source:

Date:	Pounds	Date:	Pounds
1936.....	1, 347, 357	1938.....	3, 386, 431
1937.....	2, 046, 015	1939.....	7, 090, 863

Curtiss also began purchasing glucose from respondents in 1938 but its purchasing agent testified that such purchases of glucose were not made pursuant to any understanding as to advertising. Glucose purchases by Curtiss during the 4 years mentioned were:

Date:	Glucose from all sources	Glucose from respondents	Date:	Glucose from all sources	Glucose from respondents
1936..	22, 997, 379	0	1938..	27, 808, 709	3, 549, 260
1937..	22, 746, 549	0	1939..	24, 712, 254	14, 609, 138

(g) Respondents, during the time sales of dry dextrose were being made to the Curtiss Candy Co., also sold and delivered substantial quantities of dry dextrose to other candy manufacturers located in

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various States of the United States who were, and are, competitors of the Curtiss Candy Co. However, respondents did not enter into any arrangement with any of such purchasers similar to the arrangement with the Curtiss Candy Co., or into any arrangement to supply services or facilities of any kind. As to substantially all, if not all, of these competing candy manufacturers no offer of any such arrangement on proportionally equal terms, or upon any terms whatever, was made. In fact, respondents since June 19, 1936, have instructed their salesmen to advise customers to whom they sell products to be used in the manufacture of confectionery that they do not contribute to the advertising done by customers. Respondents have not, during the time the aforesaid arrangements have been in effect with the Curtiss Candy Co., appropriated, turned over, or paid to their advertising agency, or to any one else, any money with which advertising services were, or could be, purchased for the advertising of products of any purchaser of dry dextrose except the Curtiss Candy Co., and they have not furnished any advertising services or facilities, either similar or of any kind or character whatever, to their customers who purchase dry dextrose from them and who compete with the Curtiss Candy Co. in the sale of candy containing dextrose.

(h) The Curtiss Candy Co. used dextrose purchased from respondents in most of the candies it made and sold. The amount used varied in different products from a small percentage to as much as 90 percent of the weight of the candy. Such dextrose was mixed with other products, as indicated in subparagraph (e) of paragraph 10 hereof, to produce the candy sold by Curtiss, and it constituted a substantial, and frequently a major, portion of the products advertised and sold by the Curtiss Candy Co.

PAR. 11. (a) The Huron Milling Co. of Harbor Beach, Michigan, and the Keever Starch Co. of Columbus, Ohio, are large purchasers of pearl starch and other starches and were each engaged in the grinding and refining of corn and manufacture of starch and starch products until 1927 in the case of the Huron Milling Co. and until 1932 in the case of the Keever Starch Co..

(b) On April 21, 1927, respondents entered into a contract with the Huron Milling Co. by which that company agreed to purchase from respondents its entire requirements of thin boiling pearl, chlorinated and other special starches, including Hercules gum, up to a maximum of 30,000,000 pounds annually, and to purchase from respondents its entire requirements of ordinary thick boiling pearl and powdered corn starches and edible pearl and powdered corn starches up to a maximum of 20,000,000 pounds annually. This contract was for a period of 15 years from the date of execution

thereof, with provision for an extension of 10 years at the option of the buyer. On July 12, 1932, respondents entered into a contract with the Keever Starch Co. whereby they agreed to sell and that company agreed to purchase from respondents its entire requirements of corn starch products up to a maximum of 20,000,000 pounds per annum. Said contract was for a term of 15 years from the date of execution thereof, with provision for an extension of 10 years at the option of the buyer.

(c) The prices at which said starches and starch products were contracted to be sold by respondents, and at which they have been sold to said purchasers in the course of interstate commerce, did, and do, approximate, or were, and are, below the cost at which said starches and starch products were then, and since could have been, manufactured by Huron Milling Co. and Keever Starch Co. Said starches and starch products were sold by respondents for use, consumption, and resale within the United States, territories thereof, and the District of Columbia.

(d) Said contracts are, in fact, for the entire requirements of the Huron Milling Co. and Keever Starch Co., respectively, and require for their performance that said purchasers refrain from using or dealing in starches and starch products manufactured by any competitor or competitors of respondents, and the parties to said contracts so understood the meaning of said contracts and the effect of the performance thereof. These contracts have been, and are being, faithfully performed by said purchasers, and in so doing they have refrained, and are refraining, from using or dealing in starches or starch products manufactured by any competitor or competitors of respondents. Although the purchasers reserve the right in said contracts to manufacture and sell starches and starch products produced from corn by the use of their own facilities, the prices charged them by respondents are so satisfactory to said purchasers that since the execution of said contracts said purchasers have wholly ceased the manufacture of starches and starch products from corn. At times and from time to time one or more competitors of respondents were, and have been, ready, willing, and able to supply some of said purchasers' requirements of such products.

(e) The effect of the execution and performance of said contracts, as aforesaid, may have been to substantially lessen competition between the respondents and their competitors and may have tended to create a monopoly in the respondents in the sale and distribution of starches of the type manufactured by respondents for such purchasers.

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CONCLUSION

The discriminations in price by respondents as hereinabove set forth have resulted, and do result, in substantial injury to their competitors, hinder, obstruct, and tend to suppress competition with respondents, and tend to create a monopoly in them in the processing and refining of corn and the sale of products and byproducts of such processing and refining, and have resulted, and do result, in substantial injury to competition among purchasers of such products and byproducts by affording material and unjustified price advantages to preferred purchasers and not to others, and violate subsection (a) of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by the act of June 19, 1936 (Robinson-Patman Act). The acts of respondents as hereinabove set forth in furnishing or contributing to the furnishing of advertising services and facilities to one of their customers in the resale of dextrose purchased from them and not to competing customers purchasing said dextrose upon proportionally equal terms, or upon any terms whatever, violate subsection (e) of section 2 of said Clayton Act as amended. The contracts with Huron Milling Co. and Keever Starch Co. providing that said companies shall purchase their requirements of starch and starch products from respondents to the exclusion of respondents' competitors, and the acts and practices pursuant to said contracts, constitute violation by respondents of section 3 of the aforesaid Clayton Act as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondents, the amended complaint of the Commission and respondents' answer thereto, testimony and other evidence, briefs in support of the complaint and in opposition thereto, and oral arguments by counsel, and the Commission having made its findings as to the facts and its conclusion that respondents have violated subsections (a) and (e) of section 2 and section 3 of "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by act of June 19, 1936 (Robinson-Patman Act):

It is ordered, That respondents Corn Products Refining Co., a corporation, and Corn Products Sales Co., Inc., a corporation, and their officers, directors, representatives, agents, and employees, in

connection with the offering for sale, sale, and distribution of products resulting from the grinding and refining of corn in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Directly or indirectly discriminating in price between different purchasers of glucose or corn syrup unmixed of like grade and quality in the manner and degree set forth in paragraphs 4 and 5 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

2. Discriminating in price between purchasers of glucose or corn syrup unmixed by the methods set out in paragraph 6 of the findings as to the facts herein, or otherwise discriminating in price between purchasers by means of the booking or entry of orders for glucose or corn syrup unmixed, where the price differences between purchasers resulting therefrom substantially approximate or exceed those set forth in paragraph 4 or 5 of the findings as to the facts herein, provided this shall not prohibit actual sales of glucose or corn syrup unmixed for future delivery which do not involve such discriminations in price at the time of actual sale.

3. Directly or indirectly discriminating in price between different purchasers of starch or starch products of like grade and quality in the manner and degree set forth in paragraph 9 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

4. Directly or indirectly discriminating in price between different purchasers of corn gluten feed and corn gluten meal of like grade and quality in the manner and degree set forth in paragraph 8 of the findings as to the facts herein, or in any manner or degree substantially similar thereto, or from continuing or resuming any such discriminations in price.

5. Furnishing advertising services to the Curtiss Candy Co. as set forth in paragraph 10 of the findings as to the facts herein, or directly or indirectly furnishing services or facilities to the Curtiss Candy Co. or to any purchaser of dextrose or other of respondents' products in connection with the processing, handling, sale, or offering for sale thereof, when such services or facilities are not accorded to all competing purchasers of any such product on proportionally equal terms.

6. Contracting to sell to, or selling to, the Huron Milling Co., the Kever Starch Co., or any other customer buying in quantities approximating those of the purchasers named, corn starch or other

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starch products, or fixing a price therefor or discount or rebate therefrom, on the condition, agreement, or understanding that any such purchaser shall not use or deal in corn starch or other starch products of a competitor or competitors of respondents, or from performing, enforcing, or continuing in operation or effect any such condition, agreement, or understanding.

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

Syllabus

IN THE MATTER OF

CLINTON COMPANY AND CLINTON SALES COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2 (a) OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914, AS AMENDED BY ACT OF JUNE 19, 1936

Docket 3800. Complaint, June 1, 1939—Decision, Mar. 17, 1942

Where a corporation, with principal place of business in Iowa, where it had a corn grinding plant with capacity in excess of 32,000 bushels a day and complete facilities for the production of all known corn products, both for household and industrial use; including starch for food and other purposes, glucose or corn syrup, and corn sugar, and, as by-products, gluten feed, corn oil, corn oil cake and corn oil meal; and its wholly owned subsidiary, with principal office at Chicago; together long engaged in manufacture, sale and distribution of said corn products, and, in addition, various branded products—

In selling their glucose or corn syrup, used in most kinds of candy, and constituting from 50 to 90 percent of the finished weights of many varieties, largely to manufacturers of candies and mixers of table syrups—

- (a) Discriminated in price unlawfully through sales of glucose of like grade and quality, fulfilled by shipments from their Iowa plant to purchasers in various cities, at differing delivered prices, through a pricing system based upon their Chicago tank car price, to which was added as differentials the amounts of the railroad tariff from Chicago to destinations;
- (b) Discriminated in price unlawfully between different purchasers through adding to their base railroad tank car price, certain "container differentials" which varied from ten cents, where delivery was by tank trucks owned by such corporations, to \$1.08 for 5-gallon cans; and
- (c) Discriminated in price between different purchasers through preferential operation or application of their booking system—under which, following announcement of new price increase, purchasers were granted a period of five days within which to purchase at the old and lower price, provided shipment was made within 30 days—through making shipments at times to various purchasers, after expiration of 30-day period, at the older and lower price, while concurrently charging other and competing purchasers who ordered after expiration of the 5-day period, the new and higher prices, and through accepting, upon one occasion, an order for glucose at the old and lower price, while concurrently selling the same product to competing purchasers at the new and higher price;

With the result that—

(1) Candy manufacturers located in cities other than Chicago had higher raw material and total costs than did Chicago manufacturers; and manufacturers of low-priced candies selling at a narrow margin of profit—in which the cost of glucose is a major portion of the total manufacturing costs, and in the case of which chain stores and other large quantity purchasers are attracted by a difference as little as one-eighth of a cent per pound—could only sell their product at competitive prices by absorbing the higher glucose costs or by selling on a non-price basis, with