

Syllabus

IN THE MATTER OF

ROCK CRUSHER MANUFACTURERS ASSOCIATION ET AL.

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

Docket 5026. Complaint, Aug. 14, 1943—Decision, Jan. 8, 1944

Where a number of manufacturers and some 300 distributors of rock crushers and other heavy road-building and construction machinery, together with their respective trade associations, and their officers, governors and directors, acting in cooperation with each other—

Entered into, maintained and carried out a common course of action, understanding, agreement, combination and conspiracy among themselves to hinder and suppress competition in interstate sale and distribution of rock crushing machinery to the United States government and agencies thereof, to State governments and agencies, and to governmental sub-divisions of the states, including counties and cities, and other buyers and users; and to create in themselves a monopolistic control therein; and in furtherance of such understandings, etc.—

- (a) Agreed to, and did, issue and adhere to price lists increasing price quotations on such machinery and establish and maintain a 20 percent discount to their dealers from the prices quoted therein; and agreed on terms and discounts to be extended to customers, including the federal government;
- (b) Agreed upon, and used, during 1935 and subsequently, a scheme of allocating among themselves in rotation the contracts and orders awarded by the government in its purchase of such machinery, according to the designated member in each instance the privilege of submitting a lower bid to the government than the bids of others;
- (c) Agreed not to, and did not, accept used rock crushing machinery in trade from customers for new machinery, or rent such machinery to them; and agreed to, and did, limit to 90 days guarantees on rock crushers which theretofore had been guaranteed by some members for as long as two years; and
- (d) Agreed to, and did, act through one member and its agents, including a certain individual of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with them another seller who had frequently submitted lower prices than they on Government bids; and

Where said member manufacturers, and the member officers, etc., of said distributors' association—

- (e) Inaugurated and promoted a program which was designed to establish in the members of said distributors' association a monopolistic control over price quotations on rock crushing machinery made to government or private buyers, which — at the instance of said member distributors — included a collective agreement on the part of members of said manufacturers' association to file with said distributors a statement of sales policy in the form of a written pledge providing that such manufacturer members "will not bid direct on local government business in competition with distributors except at list price, and that they will not allow any price concessions to distributors for their use on public bids"; and providing that said manufacturers' list prices include a profit differential for distributors maintaining said list prices substantially 20 percent above the prices actually quoted and charged them by said member manufacturers; and thereafter and in accord-

ance therewith and at the further instance of said distributors filed with them desired statements of policy and adhered thereto;

With the result that such understandings and agreements increased the prices to buyers of rock crushing machinery and deprived them of the benefit of competition between manufacturers and distributors in sales of such machinery, net prices of which to users are less when sales are made by the manufacturers direct than when made through distributors or at distributors' prices; and

Where the members of said manufacturers' Association and of said distributors, when, on occasion they made sales direct to the government and its agencies—

(f) Included statements in sealed bids and price quotations to the effect that the prices, terms and conditions of sale set forth therein were competitively arrived at and did not result in whole or in part from any collusive act, practice, or method:

Held, That said common course of action, understanding, etc., and the acts and things done thereunder and pursuant thereto as above set forth were to the prejudice of actual and potential competitors and to that of the public, had a dangerous tendency to and did hinder, suppress and prevent competition, in the sale in commerce of such machinery; had capacity and tendency to and did restrain unreasonably such commerce therein; tended dangerously to create in said manufacturers and distributors a monopolistic control over prices and sale and distribution of said machinery, and constituted unfair methods of competition in commerce and unfair acts and practices therein.

Mr. Everette MacIntyre for the Commission.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for Rock Crusher Manufacturers Ass'n, Arthur W. Daniels, Diamond Iron Works, Inc., Gruendler Crusher & Pulverizer Co., Iowa Manufacturing Co., Pioneer Engineering Works, Inc., Universal Crusher Co., Universal Engineering Corp., and, together with—

McNab, Holmes & Long, of Chicago, Ill., for Western-Austin Co.

Vesey, Wheeler, Poole & Prince, of Washington, D. C., for Associated Equipment Distributors, its officers, board of governors, directors and members, generally, and also—

Birkhead, Beckmann, Stanard & Vance, of San Antonio, Tex., for George A. Cooper and J. E. Ingram Equipment Co.; and

Mr. Oscar Furuset, of Portland, Oreg., for Clyde Equipment Co.

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 corporations, partnerships, associations and individuals named in the caption hereof and hereinafter referred to as respondents have violated the provisions of Section 5 of 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, Rock Crusher Manufacturers Association, sometimes hereinafter referred to as respondent Association, is an unincorporated trade association with its principal office and place of business located at 625 C Avenue N. W., Cedar Rapids, Iowa.

Respondent, Arthur W. Daniels, is an individual, named herein as such, and as Secretary of respondent Association, with his office at 625 C Avenue, Cedar Rapids, Iowa. The membership of said respondent Asso-

ciation includes several manufacturers of rock crushers and other heavy road building and other construction machinery. Such manufacturers are located in various States of the United States and are engaged in the manufacture of rock crushing machinery, and in the sale and distribution of the same in interstate commerce. A number of such members are named as respondents herein as follows:

Respondent, Diamond Iron Works, Inc., is a Minnesota corporation, located at 18th Avenue N. and 2d Street, Minneapolis, Minn.

Respondent, Gruendler Crusher & Pulverizer Company, is a Missouri corporation, located at 2915 North Market Street, St. Louis, Mo.

Respondent, Iowa Manufacturing Company, is an Iowa corporation, located at 916-16th Street, N. E., Cedar Rapids, Iowa.

Respondent, Pioneer Engineering Works, Inc., is a Delaware corporation, located at 1515 Central Avenue, Minneapolis, Minn.

Respondent, Universal Crusher Company, is a Delaware corporation, located at 625 C Avenue, N. W., Cedar Rapids, Iowa.

Respondent, Universal Engineering Corporation, is an Iowa corporation, located at 625 C Avenue, N. W., Cedar Rapids, Iowa.

Respondent, Western-Austin Company, is an Illinois corporation, sometimes trading as Austin-Western Road Machinery Co., located at 601 Farnsworth Avenue, Aurora, Ill.

PAR. 2. Respondent, Associated Equipment Distributors, sometimes hereinafter referred to as respondent Distributors, is a trade association, incorporated under the laws of Ohio, with executive offices located in the National Press Building, Washington, D. C. Its membership consists of approximately 300 individuals, partnerships and corporations engaged in selling and distributing rock crushers and other heavy road building and construction machinery in interstate commerce. They are located in various States of the United States.

The names and addresses of the officers, members of the boards of governors and directors of the said respondent Distributors, who are named as respondents herein, individually and as such officers, members of the boards of governors and directors, are as follows:

Respondent, James C. Alban, is a member of the board of directors of respondent Distributors, and an official of respondent, Alban Tractor Company, Inc., with address at 725 East 25th Street, Baltimore, Md.

Respondent, W. W. Bucher, is a member of the board of directors of respondent Distributors, and an official of respondent, R. E. Brooks Company, with address at 50 Church Street, New York City, N. Y.

Respondent, George A. Cooper, is a member of the board of directors of respondent Distributors, and an official of respondent, J. E. Ingram Equipment Co., with address at 1146 West Laurel Street, San Antonio, Tex.

Respondent, Wm. A. Danner, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Parker, Danner Co., with address at 817 Albany Street, Boston, Mass.

Respondent, Chas. O. Finn, is a member of the board of directors of respondent Distributors, and an official of respondent, The Finn Equipment Co., with address at 2525 Duck Creek Road, Cincinnati, Ohio.

Respondent, J. S. Gilman, is a member of the board of governors of respondent Distributors, and an official of respondent, Wm. H. Ziegler Co., Inc., with address at 2331 University Ave., S. E., Minneapolis, Minn.

Respondent, A. E. Hahnan, is a member of the board of directors of respondent Distributors, and an official of respondent, Tractor, & Ma-

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chinery Co., Inc., with address at 351 Whitehall Street, S. W., Atlanta, Ga.

Respondent, T. W. Harron, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Harron, Rickard & McCone Co., with address at 2070 Bryant Street, San Francisco, Calif.

Respondent, M. R. Hunter, is a member of the board of governors of respondent Distributors, and an official of Hunter Tractor & Machy. Co., with address at 327 South 16th Street, Milwaukee, Wis.

Respondent, G. F. Lowe, is a member of the board of governors of respondent Distributors, and an official of respondent, Lowe Machinery Company, with address at 612 North Michigan Avenue, Chicago, Ill.

Respondent, Frank McBath, is a member of the board of directors of respondent Distributors, and an official of respondent, Columbia Equipment Company, with address at 1240 S. E. 12th Avenue, Portland, Oreg.

Respondent, Fred Mattheis, is a member of the board of governors of respondent Distributors, and an official of respondent, Hedge & Mattheis Co., with address at 285 Dorchester Avenue, Boston, Mass.

Respondent, W. G. Morgan, is a member of the board of governors of respondent Distributors, and an official of respondent, The Geo. F. Smith Co., Inc., with address at 3343 Franklin Avenue, St. Louis, Mo.

Respondent, R. R. Nixon, is an officer and a member of the board of governors of respondent Distributors, and an official of respondent, Nixon-Hasselle Co., with address at Carter at Thirteenth Streets, Chattanooga, Tenn.

Respondent, R. S. Patten, is a member of the board of directors of respondent Distributors, and an official of Patten Tractor & Equipment Co., with address at 1056 North Kolmar Avenue, Chicago, Ill.

Respondent, Ed. P. Phillips, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, Phillips Machinery Company, with address at 900 East Cary Street, Richmond, Va.

Respondent, R. S. Rosholt, is a member of the board of directors of respondent Distributors, and an official of respondent, Thorman W. Rosholt Co., with address at 3138 Snelling Avenue, Minneapolis, Minn.

Respondent, A. F. Sersanous, is a member of the board of governors of respondent Distributors, and an official of respondent, Loggers & Contractors Machinery Co., with address at 240 S. E. Clay Street, Portland, Oreg.

Respondent, G. W. Van Keppel, is an officer and a member of the board of directors of respondent Distributors, and an official of respondent, The G. W. Van Keppel Company, with address at 2440 Pennway, Kansas City, Mo.

Respondent, C. F. Winchester, is Secretary of respondent Distributors, with address at National Press Building, Washington, D. C.

The membership of said respondent, Associated Equipment Distributors, constitutes a class so numerous and changing as to make it impracticable to specifically name them all as parties respondent herein. The following corporations, among others, are members of said respondent Distributors, are fairly representative of the whole membership, and are named as respondents herein in their individual capacities, as members of the said respondent Distributors, and as representatives of all members of said respondent Distributors as a class, including those not herein

specifically named but who are thus made respondents herein by representation:

1. Alban Tractor Company, Inc., with office and principal place of business located at 725 East 25th Street, Baltimore, Md.
2. Borchert-Ingersoll, Inc., with office and principal place of business located at 2375 University Ave., St. Paul, Minn.
3. R. E. Brooks Company, with office and principal place of business located at 50 Church Street, New York City, N. Y.
4. Clyde Equipment Co., with office and principal place of business located at 1631 N. W. Thurman Street, Portland, Oreg.
5. Columbia Equipment Co., with office and principal place of business located at 1240 S. E. 12th Avenue, Portland, Oreg.
6. The Film Equipment Co., with office and principal place of business located at 2525 Duck Creek Road, Cincinnati, Ohio.
7. Fuchs Machinery & Supply Co., with office and principal place of business located at Fifteenth and Jackson Streets, Omaha, Nebr.
8. Harron, Rickard & McCone Co., with office and principal place of business located at 2070 Bryant Street, San Francisco, Calif.
9. Hedge & Mattheis Co., with office and principal place of business located at 285 Dorchester Avenue, Boston, Mass.
10. Hunter Tractor & Machy. Co., with office and principal place of business located at 327 South 16th Street, Milwaukee, Wis.
11. J. E. Ingram Equipment Co., with office and principal place of business located at 1146 West Laurel Street, San Antonio, Tex.
12. Loggers & Contractors Machinery Co., with office and principal place of business located at 240 S. E. Clay Street, Portland, Oreg.
13. Lowe Machinery Company, with office and principal place of business located at 612 North Michigan Avenue, Chicago, Ill.
14. Nixon-Hasselle Co., with office and principal place of business located at Carter at Thirteenth Streets, Chattanooga, Tenn.
15. Parker, Danner Co., with office and principal place of business located at 817 Albany Street, Boston, Mass.
16. Patten Tractor & Equipment Co., with office and principal place of business located at 1056 North Kolmar Avenue, Chicago, Ill.
17. Phillips Machinery Company, with office and principal place of business located at 900 East Cary Street, Richmond, Va.
18. The Victor L. Phillips Co., with office and principal place of business located at 1600 Baltimore Street, Kansas City, Mo.
19. Thorman W. Rosholt Co., with office and principal place of business located at 3138 Snelling Avenue, Minneapolis, Minn.
20. Smith Booth Usher Company, with office and principal place of business located at 2001 Santa Fe Avenue, P. O. Box 1378 Arcade Annex, Los Angeles, Calif.
21. The Geo. F. Smith Co., Inc., with office and principal place of business located at 3343 Franklin Avenue, St. Louis, Mo.
22. Tractor & Machinery Co., Inc., with office and principal place of business located at 351 Whitehall Street, S. W., Atlanta, Ga.
23. The G. W. Van Keppel Company, with office and principal place of business located at 2440 Pennway, Kansas City, Mo.
24. Wm. H. Ziegler Co., Inc., with office and principal place of business located at 2331 University Ave., S. E., Minneapolis, Minn.

PAR. 3. Respondent members of said respondent Association and respondent members of said respondent Distributors, acting in cooperation with each other and through and in cooperation with said respondent Association, its officers and directors and each of them, and through and in cooperation with said respondent Distributors, and its officers, governors and directors, and each of them, during the year 1935 entered into and have since continued, maintained and carried out a common course of action, understanding, agreement, combination and conspiracy among themselves and with and through said respondent Association, its officers and directors, and said respondent Distributors, its officers, governors and directors, to hinder and suppress competition in the interstate sale and distribution of rock crushing machinery to the United States Government, the agencies thereof, various State governments, the agencies thereof, and various governmental subdivisions of the various States, including counties, cities and other buyers and users of rock crushing machinery, and to create a monopolistic control in the interstate sale and distribution of said machinery in said respondents. Pursuant to said common course of action, understanding, agreement, combination and conspiracy, and in furtherance thereof, the respondents have followed a common course of action, have acted in concert and in cooperation with each other in doing the following acts and things:

(a) Respondent members of the said Rock Crusher Manufacturers Association

1. Agreed to issue, and pursuant to such agreement did issue, and use price lists increasing price quotations on rock crushing machinery.

2. Agreed to adhere, and did adhere, to said price lists as issued.

3. Agreed to establish, and did establish, the maintenance of a 20% discount from the prices quoted in said price lists to their dealers.

4. Agreed on terms and discounts to be extended to customers, including terms and discounts to be accorded to the Federal Government.

5. Agreed upon and used, during 1935 and subsequently, a scheme of allocating and dividing among themselves the contracts and orders awarded by the Federal Government in its purchase of rock crushing machinery. As a part of said respondents' scheme of allocation and division they arranged to designate by agreement each of their number in rotation as entitled to the award of a particular Federal Government order for rock crushing machinery and by agreement arranged to accord to such designated respondent the privilege of submitting in such instance a lower bid to the Federal Government than the bids of others.

6. Agreed not to accept, and did not accept, pursuant to said agreement, used rock crushing machinery in trade from customers for new machinery.

7. Agreed not to rent, and did not rent, pursuant to said agreement, rock crushing machinery to customers.

8. Agreed to limit, and did limit pursuant to said agreement, guarantees on rock crushers to 90 days, although some respondents previously had been guaranteeing rock crushing machinery for a period as long as two years.

9. Agreed to act through respondent Iowa Manufacturing Company and its agents, including one Alfred Peter Shirley, of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with said respondents another seller of rock crushing

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machinery who had frequently submitted lower prices than said respondent members on bids to the Federal Government.

10. During 1939, and subsequent thereto, said respondents cooperated with respondent officers, governors, directors and members of respondent Associated Equipment Distributors in inaugurating and promoting a program designed to establish in the hands of respondent members of respondent Associated Equipment Distributors a monopoly control over price quotations made Federal, State, county or city governments, or private buyers on rock crushing machinery.

(b) Respondent Distributors, its officers, governors, directors and members in 1939 inaugurated and thereafter put into effect a scheme, plan and program, which, upon the initiative of said Distributors, included a collective agreement on the part of members of respondent Association to file with respondent Distributors a statement of sales policy in the form of a "written pledge" providing that said members of respondent Association "will not bid direct on local government business in competition with distributors except at list price, and that they will not allow any price concession to distributors for their use on public bids." The common collective agreement of both respondent Distributors and respondent members of respondent Association was and is to the effect that the said list price of said members shall include a profit differential for said distributors which maintains said list price substantially 20% above prices actually quoted and charged said distributors by said members of respondent Association.

(c) As a part of the aforesaid scheme, plan, program and agreement one C. G. Borchert, representing respondent Associated Equipment Distributors, addressed a meeting of respondent Rock Crusher Manufacturers Association in Chicago, Ill., on or about August 18, 1939, urging full concurrence with and adherence to said scheme, plan, program and agreement referred to in (b) above. Thereupon, said respondent members of respondent Rock Crusher Manufacturers Association resolved and agreed that "each manufacturer of portable rock crushing machinery comply with suggestions of the Associated Equipment Distributors..." Thereafter respondent members of respondent Rock Crusher Manufacturers Association did further express their agreement and concurrence in and adherence to the aforesaid scheme, plan, program and agreement as outlined in (b) above, by filing with respondent Associated Equipment Distributors statements of policy as desired by such respondent, and further met the demands of such respondent through adherence to said written statements of sales policies.

PAR. 4. The acts, things, practices and methods alleged in paragraph 3 hereof have operated to increase amounts paid for rock crushers and other heavy machinery used for the defense, war and regular needs by the United States Government, State, county and city governments and other buyers. Said acts, things, practices and methods have also deprived buyers of the benefit of having the various respondent manufacturers and the various respondent distributors bid against and compete with each other. As a result buyers have been deceived because they have relied upon respondents' false representations that their bids were competitive and free from collusion.

PAR. 5. The results of said common course of action, understanding, agreement, combination and conspiracy, and the acts and things done thereunder and pursuant thereto by said respondents, as hereinbefore

set forth, have been and now are to the prejudice of actual and potential competitors of respondents and to the prejudice of the public; have been to perpetrate a fraud upon the United States Government and other buyers; have a dangerous tendency to and have actually hindered, suppressed, eliminated, frustrated and prevented competition in the sale of rock crushing machinery in interstate commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopolistic control over prices in the sale and distribution of said products, and constitute unfair methods of competition and unfair, deceptive and fraudulent acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the Federal Trade Commission Act, the Federal Trade Commission on August 14, 1943, 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 and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act. After the issuance of said complaint, the several respondents filed their answers admitting certain allegations of the complaint, and thereafter stipulations were entered into whereby it was stipulated and agreed that statements of facts signed and executed by counsel for respondents and W. T. Kelley, Chief Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as facts in this proceeding in support of the charges in the complaint or in opposition thereto, and that the Commission may proceed upon such statements of facts and any and all admissions made by respondents in their answers to the complaint to make its report stating its findings as to the facts, its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers, and stipulations, said stipulations having been approved, accepted, and filed; and the Commission, having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. (a) Respondent, Rock Crusher Manufacturers Association (sometimes hereinafter referred to as respondent Association), is an unincorporated trade association having its principal office at 625 C Avenue, N. W., Cedar Rapids, Iowa. Its membership includes a number of manufacturers of rock crushers and other heavy road-building and other construction machinery.

(b) Respondent, Arthur W. Daniels, an individual, is secretary of respondent Association and has his offices at 625 C Avenue, N. W., Cedar Rapids, Iowa.

(c) Respondent, Diamond Iron Works, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at Eighteenth Avenue North and Second Street, Minneapolis, Minn. It has been at various times since 1935 a member of respondent Association, and is now a member.

(d) Respondent, Gruendler Crusher & Pulverizer Company, is a corporation, organized and existing under the laws of the State of Missouri, with its office and principal place of business at 2915 North Market Street, St. Louis, Mo. It has been at various times since 1935 a member of respondent Association, and is now a member.

(e) Respondent, Iowa Manufacturing Company, is a corporation, organized and existing under the laws of the State of Iowa, with its office and principal place of business at 916 Sixteenth Street, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(f) Respondent, Pioneer Engineering Works, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 1515 Central Avenue, Minneapolis, Minn. It became a member of respondent Association in 1935, and is now a member.

(g) Respondent, Universal Crusher Company, is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 625 C Avenue, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(h) Respondent, Universal Engineering Corporation, is a corporation, organized and existing under the laws of the State of Iowa, with its office and principal place of business at 625 C Avenue, N. W., Cedar Rapids, Iowa. It has been at various times since 1935 a member of respondent Association, and is now a member.

(i) Respondent, Western-Austin Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 601 Farnsworth Avenue, Aurora, Ill. This company sometimes trades as Austin-Western Road Machinery Company. It has been at various times since 1935 a member of respondent Association, and is now a member.

(j) Respondent, Associated Equipment Distributors (sometimes hereinafter referred to as respondent Distributors), is a trade association, organized and existing as a membership corporation under the laws of the State of Ohio, with its principal offices located in the National Press Building, Washington, D. C. Its membership consists of more than 300 individuals, partnerships, and corporations engaged in the sale and distribution of rock crusher, heavy road-building, and construction machinery.

(k) Respondent, James C. Alban, an individual, is an official of respondent, Alban Tractor Company, Inc., of 721-727 East Twenty-fifth Street, Baltimore, Md., and is a member of the board of directors of respondent Distributors.

(l) Respondent, W. W. Bucher, an individual, is an official of respondent, R. E. Brooks Company of 50 Church Street, New York, N. Y., and is an official of respondent Distributors and was during 1942 a member of its board of directors.

(m) Respondent, George A. Cooper, an individual, is an official of respondent, J. E. Ingram Equipment Company of 1146 West Laurel Street, San Antonio, Tex., and is a member of the board of directors of respondent Distributors.

(n) Respondent, William A. Danner, an individual, is an official of respondent, Parker, Danner Company of 25 Factory Street, Hyde Park, Mass., and was during 1942 an officer and is now a member of the board of directors of respondent Distributors.

(o) Respondent, Charles O. Finn, an individual, is an official of respondent, The Finn Equipment Company of 2525 Duck Creek Road, Cincinnati, Ohio, and is a member of the board of directors of respondent Distributors.

(p) Respondent, J. S. Gilman, an individual, is an official of respondent, William H. Ziegler Company, Inc., of 2331 University Avenue, S. E., Minneapolis, Minn., and was during 1942 a member of the board of governors of respondent Distributors.

(q) Respondent, A. E. Hahnan, an individual, is an official of respondent, Tractor & Machinery Company, Inc., of 351-355 Whitehall Street, S. W., Atlanta, Ga., and is a member of the board of directors of respondent Distributors.

(r) Respondent, T. W. Harron, an individual, is an official of respondent, Harron, Rickard & McCone Company of 2070 Bryant Street, San Francisco, Calif., and was during 1942 a member of the board of directors of respondent Distributors.

(s) Respondent, M. R. Hunter, an individual, is an official of respondent, Hunter Tractor & Machinery Company of 327 South Sixteenth Street, Milwaukee, Wis., and was during 1942 a member of the board of governors of respondent Distributors.

(t) Respondent, G. F. Lowe, an individual, is an official of respondent, Lowe Machinery Company of 612 North Michigan Avenue, Chicago, Ill., and was during 1942 a member of the board of governors of respondent Distributors.

(u) Respondent, Frank McBath, an individual, is an official of respondent, Columbia Equipment Company of 1240 S. E. Twelfth Avenue, Portland, Oreg., and is a member of the board of directors of respondent Distributors.

(v) Respondent, Fred Mattheis, an individual, is an official of respondent, Hedge & Mattheis Company of 285 Dorchester Avenue, Boston, Mass., and was during 1942 a member of the board of governors of respondent Distributors.

(w) Respondent, W. G. Morgan, an individual, was until January 1, 1943, an official of respondent, the George F. Smith Company, Inc., of Franklin and Channing Avenues, St. Louis, Mo., and was during 1942 chairman of the board of governors of respondent Distributors. He is now an honorary member of respondent Distributors in his individual capacity.

(x) Respondent, R. R. Nixon, an individual, is an official of respondent, Nixon-Hasselle Company of Carter and Thirteenth Streets, Chattanooga, Tenn., and was during 1942 an officer and a member of the board of governors of respondent Distributors.

(y) Respondent, R. S. Patten, an individual, is an official of respondent, Patten Tractor & Equipment Company of 1056 North Kolmar Avenue,

Chicago, Ill., and is a member of the board of directors of respondent Distributors.

(z) Respondent, Ed. P. Phillips, an individual, is a partner in respondent, Phillips Machinery Company of 900 East Cary Street, Richmond, Va., and is an officer of respondent Distributors.

(a-2) Respondent, R. S. Rosholt, an individual, is an official of respondent, Thorman W. Rosholt Company of 3138 Snelling Avenue, Minneapolis, Minn., and is a member of the board of directors of respondent Distributors.

(b-2) Respondent, A. F. Sersanous, an individual, is an official of respondent, Loggers & Contractors Machinery Company of 240 S. E. Clay Street, Portland, Oreg., and was during 1942 a member of the board of governors of respondent Distributors.

(c-2) Respondent, G. W. Van Keppel, an individual, is sole proprietor of respondent, The G. W. Van Keppel Company of 2440 Pennway, Kansas City, Mo., and is an officer and a member of the board of directors of respondent Distributors.

(d-2) Respondent, C. F. Winchester, an individual, is secretary of respondent Distributors and has his offices in the National Press Building, Washington, D. C.

(e-2) Respondent, Alban Tractor Company, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 721-727 East Twenty-fifth Street, Baltimore, Md. In 1938 it became a member, and is now a member, of respondent Distributors.

(f-2) Respondent, Borchert-Ingersoll, Inc., is a corporation, organized and existing under the laws of the State of Delaware, with its office and principal place of business at 2375 University Avenue, St. Paul, Minn. In 1920 it became a member, and is now a member, of respondent Distributors.

(g-2) Respondent, R. E. Brooks Company, is a corporation, organized and existing under the laws of the State of New Jersey, with its office and principal place of business at 50 Church Street, New York, N. Y. In 1937 it became a member, and is now a member, of respondent Distributors.

(h-2) Respondent, Clyde Equipment Company, is a corporation, organized and existing under the laws of the State of Maine, with its office and principal place of business at 1631 N. W. Thurman Street, Portland, Oreg. In 1926 it became a member, and is now a member, of respondent Distributors.

(i-2) Respondent, Columbia Equipment Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business at 1240 S. E. Twelfth Avenue, Portland, Oreg. In 1937 it became a member, and is now a member, of respondent Distributors.

(j-2) Respondent, The Finn Equipment Company, is a corporation, organized and existing under the laws of the State of Ohio, with its office and principal place of business at 2525 Duck Creek Road, Cincinnati, Ohio. In 1939 it became a member, and is now a member, of respondent Distributors.

(k-2) Respondent, Fuchs Machinery & Supply Company, is a partnership, with its office and principal place of business at Fifteenth and Jackson Streets, Omaha, Nebr. In 1938 it became a member, and is now a member, of respondent Distributors.

(l-2) Respondent, Harron, Rickard & McCone Company, is a corporation, organized and existing under the laws of the State of Nevada, with its office and principal place of business at 2070 Bryant Street, San Francisco, Calif. In 1927 it became a member, and is now a member, of respondent Distributors.

(m-2) Respondent, Hedge & Mattheis Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business at 285 Dorchester Avenue, Boston, Mass. In 1923 it became a member, and is now a member, of respondent Distributors.

(n-2) Respondent, Hunter Tractor & Machinery Company, is a corporation, organized and existing under the laws of the State of Wisconsin, with its office and principal place of business at 327 South Sixteenth Street, Milwaukee, Wis. In 1933 it became a member, and is now a member, of respondent Distributors.

(o-2) Respondent, J. E. Ingram Equipment Company, is a corporation, organized and existing under the laws of the State of Texas, with its office and principal place of business at 1146 West Laurel Street, San Antonio, Tex. In 1940 it became a member, and is now a member, of respondent Distributors. None of the subsequent findings herein apply to this respondent.

(p-2) Respondent, Loggers & Contractors Machinery Company, is a corporation, organized and existing under the laws of the State of Oregon, with its office and principal place of business at 240 S. E. Clay Street, Portland, Oreg. In 1934 it became a member, and is now a member, of respondent Distributors.

(q-2) Respondent, Lowe Machinery Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 612 North Michigan Avenue, Chicago, Ill. In 1926 it became a member, and is now a member, of respondent Distributors.

(r-2) Respondent, Nixon-Hasselle Company, is a corporation, organized and existing under the laws of the State of Tennessee, with its office and principal place of business at Carter and Thirteenth Streets, Chattanooga, Tenn. In 1926 it became a member, and is now a member, of respondent Distributors.

(s-2) Respondent, Parker, Danner Company, is a corporation, organized and existing under the laws of the State of Massachusetts, with its office and principal place of business at 25 Factory Street, Hyde Park, Mass. In 1936 it became a member, and is now a member, of respondent Distributors.

(t-2) Respondent, Patten Tractor & Equipment Company, is a corporation, organized and existing under the laws of the State of Illinois, with its office and principal place of business at 1056 North Kolmar Avenue, Chicago, Ill. In 1940 it became a member, and is now a member of respondent Distributors.

(u-2) Respondent, Phillips Machinery Company, is a partnership, consisting of respondent, Ed. P. Phillips and others, with its office and principal place of business at 900 East Cary Street, Richmond, Va. In 1933 it became a member, and is now a member, of respondent Distributors.

(v-2) Respondent, The Victor L. Phillips Company, is a corporation, organized and existing under the laws of the State of Missouri, with its

office and principal place of business at Sixteenth and Baltimore Streets, Kansas City, Mo. In 1927 it became a member, and is now a member, of respondent Distributors.

(w-2) Respondent, Thorman W. Rosholt Company, is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business at 3138 Snelling Avenue, Minneapolis, Minn. In 1938 it became a member, and is now a member, of respondent Distributors.

(x-2) Respondent, Smith Booth Usher Company, is a corporation, organized and existing under the laws of the State of California, with its office and principal place of business at 2001 Santa Fe Avenue, Los Angeles, Calif. In 1924 it became a member, and is now a member, of respondent Distributors.

(y-2) Respondent, The George F. Smith Company, Inc., is a corporation, organized and existing under the laws of the State of Missouri, with its office and principal place of business at Franklin and Channing Avenues, St. Louis, Mo. In 1920 it became a member, and is now a member, of respondent Distributors.

(z-2) Respondent, Tractor & Machinery Company, Inc., is a corporation, organized and existing under the laws of the State of Georgia, with its office and principal place of business at 351-355 Whitehall Street, S. W., Atlanta, Ga. In 1933 it became a member, and is now a member, of respondent Distributors.

(a-3) Respondent, The G. W. Van Keppel Company, is a sole proprietorship of respondent, G. W. Van Keppel, with its office and principal place of business at 2440 Pennway, Kansas City, Mo. In 1936 it became a member, and is now a member, of respondent Distributors.

(b-3) Respondent, William H. Ziegler Company, Inc., is a corporation, organized and existing under the laws of the State of Minnesota, with its office and principal place of business at 2331 University Avenue, S. E., Minneapolis, Minn. In 1920 it became a member, and is now a member, of respondent Distributors.

(c-3) Those concerns affiliated with respondent Distributors and now designated as "allied members" thereof are not subject to an order in this proceeding and no general references herein to respondents or members of respondents include them in any way. All regular and associate members of respondent Distributors were made respondents herein, and those not specifically named in the complaint were made respondents by representation and are as follows: A-W Company, Inc. of Minnesota; Aberthaw Company; Alabama Machinery & Supply Company; Alamo Iron Works; Allied Construction Equipment Company; American Machinery & Supply Company; Anderson Equipment Company (Pittsburgh, Pa.); Anderson Equipment Company (Omaha, Nebr.); W. H. Anderson Company, Inc.; R. A. Armstrong and Brother Company; Arnold Machinery Company, Inc.; Arrow Contractors Equipment Company; Atlas Equipment Corporation; O. B. Avery Company; Edward R. Bacon Company; Bark River Bridge and Culvert Company; J. W. Bartholow Machinery Company; Balzer Machinery Company; Quinn R. Barton Company; Beckwith Machinery Company; James W. Bell Company; Bell-Lott Road Machinery Company; Bemiss Equipment Corporation; Bicknell Manufacturing Company; Blalock Machinery & Equipment Company; The Bode-Finn Company; Boeck Equipment Company; The Clarence L. Boyd Company, Inc.; Brandeis Machinery & Supply Company; Brebner-

Sinz Machinery Company; Brinker Supply Company, Inc.; Brooks Equipment and Manufacturing Company; Brown-Bevis Equipment Company; Herman M. Brown Company; Browning-Ferris Machinery Company; Bublitz Machinery Company; Burford-Toothaker Tractor Company; Burgman Tractor-Equipment Company; Cyril J. Burke; F. H. Burlew Company; J. W. Burress; Carolina Tractor & Equipment Company; Casey Tractor and Equipment Company; W. C. Caye & Company, Division of Wilson-Weesner-Wilkinson Company; Charleston Tractor and Equipment Corporation; The Chesapeake Supply & Equipment Company; Chicago Construction Equipment Company; Choctaw Culvert & Machinery Company; Clark-Wilcox Company; Coast Equipment Company; Cochran Equipment Company, Inc.; The Colon-Jopson Company; Commercial Concrete Equipment Company; Complete Machinery & Equipment Company, Inc.; Conley-Lott-Nichols Machinery Company; Connelly Machinery Company; William H. Conradi, Inc.; Construction Equipment Company; Construction Equipment Corporation; Construction Machinery Corporation; Construction Machinery & Supply Company; Contractors Equipment Corporation; Contractors Equipment & Supply Company; Contractors Machinery Company (Kansas City, Mo.); Contractors Machinery Company (Detroit, Mich.); Contractors Sales Company, Inc.; Contractors Service, Inc.; A. H. Cox & Company; Cramer Machinery Company; F. C. Crane Company; E. F. Craven Company; G. N. Crawford Equipment Company; George W. Crothers, Ltd.; Cunningham-Ortmayer Company; Curry Equipment Corporation; Dakota Equipment Company, Inc.; Dakota Tractor & Equipment Company; Dale & Rankin, Inc.; Dalrymple Equipment Company; Norris K. Davis, Inc.; Dempster Brothers, Inc.; Dow and Company, Inc.; Dravo-Doyle Company; Drott Tractor Company, Inc.; Dukehart-Hughes Tractor & Equipment Company; Dyar Sales & Machinery Company; The Earle Equipment Company; Eastern Tractor & Equipment Company; Eddy & Cuthbert; Edward Ehrbar, Inc.; Eighmy Equipment Company; D. C. Elphinstone, Inc.; Empire Equipment Company; English Brothers Machinery Company; The Equipment Company; Equipment Corporation of America; Equipos Mecanicos, S. A.; R. B. Everett & Company; John Fabick Tractor Company; Feenaughty Machinery Company; Walter W. Field & Son, Inc.; Fletcher Equipment and Supplies; Frantz Equipment Company; Freeborn Equipment Company, Inc.; H. B. Fuller Equipment Company; Funkhouser Equipment Company; Furnival-Rimmer Company; Ed. Gantt Machinery Company; Garlinghouse Brothers; F. W. Gartner Company; General Construction Equipment Corporation; General Supply & Equipment Company, Inc.; Gibbs-Cook Tractor & Equipment Company; Gibson-Stewart Company; Gierke-Robinson Company; Giles & Ransome; The Gleasner Corporation; The Good Roads Machinery Company of New York, Inc.; Gopher Equipment & Supply Company; J. W. Grass Equipment Company; Great Lakes Supply Corporation, Equipment Division; Griffin Equipment & Supply Corporation; Gulf Tractor & Equipment Company; A. C. Haag & Company; William H. Hale & Company; Hall-Perry Machinery Company; R. L. Harris, Inc.; R. L. Harrison Company, Inc.; Harrod Equipment Company; Hawkins Equipment Company; Hennessey-Forrestal Machinery Company; Highway Equipment Company (Cincinnati, Ohio); Highway Equipment Company (San Francisco, Calif.); Highway Equipment Company, Inc.; Highway Equipment & Supply Company; Highway

Machinery & Supply Company, Inc.; Hillsman Equipment Company; Hobson-McFarland Tractor Company; Hodge and Hammond, Inc.; Hofius-Ferris Equipment Company; The Holmes-Talcott Company; William K. Holt Machinery Company; Howard-Cooper Corporation; Hubbard & Floyd, Inc.; Huebner Sales Company; Industrial Equipment Company; Jeff Hunt Company; Indiana Equipment Company, Inc.; Newlin-Moskacher Company; Industrial Tractor & Equipment Company; Interstate Machinery & Supply Company; The Jaeger-Lembo Machine Corporation; Jenisoh Machinery Company; Johnson & Dealman, Inc.; William C. Johnson & Sons Machinery Company; Karcher-Wolter-Foley Company; H. P. Kelly Equipment Company; Kennedy-Cochran Company; George C. Kenney Machinery Company; Kern-Limerick, Inc.; Joseph Kest Rental Equipment Company; Keystone Builders Supply Company, Inc.; The Klinger-Dills Company; Lakeshore Machinery & Supply Company; R. C. Larkin Company; Laurentide Equipment Company, Ltd.; Leland Equipment Company; Le Roi-Rix Machinery Company; H. W. Lewis Equipment Company; Liberty Trucks & Parts Company; L. K. Lippert Equipment Company; Little Rock Road Machinery Company; Lorenz Equipment Company; John C. Louis Company, Inc.; Lyons Machinery Company; MacAllister Tractor Company; Machinery and Supplies Company; Mahoney-Clarke, Inc.; Maine Truck-Tractor Company; E. F. Marsh Company; E. A. Martin Machinery Company; Martin-Roasa Tractor & Equipment Company; Martin Tractor Company; Charles J. McCarty Company, Inc.; McClung-Logan Equipment Company, Inc.; McClure-Harris Company; Jess McNeel Machinery Company; Neil B. McGinnis Company; McIntyre Implement Company; Metalweld, Inc.; The Henry H. Meyer Company, Inc.; Midland Implement Company, Inc.; Mine and Contractors Supply Company, Inc.; Minneapolis Equipment Company; Mississippi Culvert & Machinery Company, Inc.; Mississippi Road Supply Company; Mississippi Tractor & Equipment Company; Mississippi Valley Equipment Company; Missouri-Illinois Tractor & Equipment Company, Inc.; Mitchell Distributing Company, Inc.; R. G. Moeller Company; Joe Money Machinery Company; H. W. Moore Equipment Company; Municipal Sales Company; Murray Machinery Company; Nagle-Hart Tractor & Equipment Company; Nebraska Tractor & Equipment Company; The Nicoll-Talcott Corporation; The K. B. Noble Company; North Carolina Equipment Company; Northwestern Sheet & Iron Works; Oehlert Tractor & Equipment Company, Inc.; Osborne Equipment Company; H. B. Owsley & Son, Inc.; Overton & Ross; P-D Service, Inc.; The Pacific Hoist & Derrick Company; John W. Patterson Company; The Paving Supply and Equipment Company; Pecaut Industrial Supply Company; H. O. Penn Machinery Company; P. I. Perkins Company; Perrin, Seaman & Company, Inc.; Peterson Tractor & Equipment Company; W. E. Phillips Equipment; J. D. Pittman Tractor Company; Portland Tractor Company, Inc.; Pneumatic & Electric Equipment Company, Inc.; Power Equipment Company or Dean Gillespie & Company; C. F. Rabbeitt, Inc.; Howard W. Read Corporation; Eugene P. Reading; Rainier Equipment Company; Ray-Brooks Machinery Company, Inc.; Richmond Machinery & Equipment Company, Inc.; Road Builders Equipment Company; Roanoke Tractor & Equipment Corporation; Roberts Tractor & Equipment Company; Rupp Equipment Company; Ryan Equipment Corporation; The George T. Ryan Company; The Sawtooth Company;

Sears & Bowers; Service and Supply Division of the Lake Shore Engineering Company; Service Supply Corporation; Shaw-Newlin Company; Shaw Equipment Company; Shovel Supply Company; Smith-Courtney Company; L. B. Smith, Inc.; Smith Tractor and Equipment Company; Southern Ohio Equipment Company; Southern States Equipment Company; Southwest Machinery Company; T. Southworth Tractor & Machinery Company, Inc.; Spears-Wells Machinery Company; Standard Equipment Company; Stanley & Cadigan Company; The O. S. Stapley Company; Star Machinery Company; Steffek Equipment Company; Stockberger Equipment Company; The Stone Manufacturing Company; William F. Surgi Equipment Company; Frank Swabb Equipment Company; Syracuse Supply Company; E. W. Systrom Company; Joseph M. Taylor Corporation; The Taylor Tractor Company; Taylor-Hale Machinery Company; Telford Equipment Company; Townsco Equipment Company; Tractors, Incorporated; Trevor Corporation; Tri-State Culvert & Machinery Company; Tri-State Equipment Company, Inc.; United Hoisting Company, Inc.; Fred M. Viles & Company; Virginia Tractor Company, Inc.; J. T. Walsh; The W. T. Walsh Equipment Company; Waterloo Construction Company; Webster & Hedgecock Tractor & Equipment Company; Western Construction Equipment Company; Western Contractors Supply Company; Western Machinery Company; Western Material Company; Western Tractor & Equipment Company; The West Virginia Company; West Virginia Mine Supply Company; West Virginia Tractor & Equipment Company, Inc.; Roy C. Wayne Supply Company; The Wheeler Equipment Company; The W. W. Williams Company; Wilson Machinery & Supply Company; Wilson-Weesner-Wilkinson Company, Inc.; Noel V. Wood, Inc.; Woodward, Wight & Company, Ltd.; Wortham Machinery Company; Yancey Brothers, Inc.; Yancey Tractor Company; Wylie-Stewart Machinery Company, Inc.; and Ziegler Machinery, Inc.

PAR. 2. The members of respondent Association and of respondent Distributors, in the course and conduct of their respective businesses, are engaged in the sale and distribution of rock crushing machinery, and pursuant to sales made transport such machinery, or cause it to be transported, among and between various States of the United States, and maintain, and have maintained, a course of trade in rock crushing machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. The respondent members of the Rock Crusher Manufacturers Association and the respondent members of the Associated Equipment Distributors, acting in cooperation with each other and through and in cooperation with respondent Association, its officers and directors, and each of them, and through and in cooperation with respondent Distributors and its officers, governors, and directors, and each of them, during the year 1935 entered into and have since continued, maintained, and carried out a common course of action, understanding, agreement, combination, and conspiracy among themselves and with and through said respondent Association, its officers and directors, and said respondent Distributors, its officers, governors, and directors, to hinder and suppress competition in the interstate sale and distribution of rock crushing machinery to the United States' Government, the agencies thereof; various State governments, the agencies thereof; and various governmental subdivisions of the various States, including counties, cities, and other buyers and users of

rock crushing machinery, and to create in said respondents a monopolistic control in the interstate sale and distribution of said machinery. In furtherance of said common course of action, understanding, agreement, combination, and conspiracy the respondents have done the following acts and things in the manner and to the extent hereinafter set forth.

PAR. 4. The aforesaid members of the Rock Crusher Manufacturers Association have:

1. Agreed to issue and, pursuant to such agreement, did issue and use price lists increasing price quotations on rock crushing machinery.

2. Agreed to adhere, and did adhere, to said price lists as issued.

3. Agreed to establish, and did establish and maintain, a 20 percent discount to their dealers from the prices quoted in the said price lists.

4. Agreed on terms and discounts to be extended to customers, including terms and discounts to be accorded to the Federal Government.

5. Agreed upon and used during 1935 and subsequently a scheme of allocating and dividing among themselves the contracts and orders awarded by the Federal Government in its purchase of rock crushing machinery. As a part of said respondents' scheme of allocation and division, they arranged to designate by agreement each of their number in rotation as entitled to the award of a particular Federal Government order for rock crushing machinery, and by agreement arranged to accord to such designated respondent the privilege of submitting in such instance a lower bid to the Federal Government than the bids of others.

6. Agreed not to accept, and pursuant to said agreement did not accept, used rock crushing machinery in trade from customers for new machinery.

7. Agreed not to rent, and pursuant to said agreement did not rent, rock crushing machinery to customers.

8. Agreed to limit, and pursuant to said agreement did limit, guarantees on rock crushers to 90 days, although some members of the Rock Crusher Manufacturers Association previously had been guaranteeing rock crushing machinery for a period as long as two years.

9. Agreed to act through respondent Iowa Manufacturing Company and its agents, including one Alfred Peter Shirley of Washington, D. C., in seeking to have written into the United States Government specifications for rock crushing machinery certain provisions designed to eliminate from competition with said respondents another seller of rock crushing machinery who had frequently submitted lower prices than said respondent members on bids to the Federal Government.

PAR. 5. During 1939 and subsequent thereto the members of the Rock Crusher Manufacturers Association and the officers, governors, directors, and members of the Associated Equipment Distributors inaugurated and promoted a program designed to establish in the members of the Associated Equipment Distributors a monopolistic control over price quotations on rock crushing machinery made to Federal, State, county, or city governments or private buyers of such machinery. Respondent Distributors, its officers, governors, directors, and members in 1939 inaugurated and thereafter put into effect a scheme, plan, and program which, upon the initiative of respondent Distributors included a collective agreement on the part of members of respondent Association to file with respondent Distributors a statement of sales policy in the form of a written pledge providing that the members of respondent Association "will not bid direct on local government business in competition with distributors except at

list price, and that they will not allow any price concessions to distributors for their use on public bids." This agreement of respondent Distributors and the members of respondent Association was and is to the effect that the list prices of said members shall include a profit differential for distributors which maintains said list prices substantially 20 percent above the prices actually quoted and charged distributors by the members of respondent Association.

As a part of the aforesaid scheme, plan, program, and agreement, one C. G. Borchert, representing respondent Distributors, on or about August 18, 1939, addressed a meeting of the Rock Crusher Manufacturers Association in Chicago, Ill., urging full concurrence with and adherence to the aforesaid scheme, plan, program, and agreement. Thereupon, the members of the Rock Crusher Manufacturers Association resolved and agreed that "Each manufacturer of portable rock crushing machinery comply with suggestions of the Associated Equipment Distributors * * *." Thereafter, the members of the Rock Crusher Manufacturers Association further expressed their agreement and concurrence in and adherence to the aforesaid scheme, plan, program, and agreement by filing with respondent Distributors statements of policy as desired by such respondent and, further, met the demands of respondent Distributors through adherence to said written statements of sales policy.

PAR. 6. When sales of rock crushing machinery are made by the manufacturers thereof directly to users, the net prices to such users are less than when the sales are made through or for the account of distributors, or at prices equal to list prices or the prices quoted by distributors. The understandings and agreements heretofore described have resulted in increased prices to buyers of rock crushing machinery and have deprived buyers of the benefits of having the various respondent manufacturers and distributors bid against and compete with each other in seeking to make sales of such machinery.

PAR. 7. When, on occasion, the members of respondent Association make sales of rock crushing machinery direct to the Federal Government and the agencies thereof, and when in the regular course of their business the members of respondent Distributors engaged in the sale of rock crushing machinery to the Federal Government make such sales, they submit sealed bids and price quotations and include therein statements to the effect that the prices, terms, and conditions of sale set forth in such bids and quotations were competitively arrived at and did not result in whole or in part from any collusive act, practice, or method.

CONCLUSION

The results of the common course of action, understanding, agreement, combination, and conspiracy, and the acts and things done thereunder and pursuant thereto by respondents, as hereinbefore set forth, have been, and now are, to the prejudice of actual and potential competitors of respondents and to the prejudice of the public; have a dangerous tendency to and have actually hindered, suppressed, eliminated, frustrated, and prevented competition in the sale of rock crushing machinery in interstate commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopolistic control over prices in

the sale and distribution of rock crushing machinery, and constitute unfair methods of competition and unfair acts and practices within the intent and meaning of Section 5 of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST¹

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto of the several respondents named in the caption hereof, and certain stipulations of additional facts, and respondents having expressly waived all intervening procedure and hearings as to the facts and consented that the Commission may, without any further intervening procedure, make and enter its findings as to the facts, its conclusion based thereon, and its order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondents have violated the provisions of the Federal Trade Commission Act, and having entered its Cease and Desist Order herein on January 8, 1944, which respondents have requested be modified; now, therefore,

It is ordered, That respondent, Rock Crusher Manufacturers Association, an unincorporated trade association, Arthur W. Daniels, individually, and as secretary of the Rock Crusher Manufacturers Association, the corporate respondents, Diamond Iron Works, Inc., Gruendler Crusher & Pulverizer Company, Iowa Manufacturing Company, Pioneer Engineering Works, Inc., Universal Crusher Company, Universal Engineering Corporation, and Western-Austin Company, their respective officers, representatives, agents, and employees, in connection with the offering for sale, sale, and distribution of rock crushing machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

1. Determining upon or using any plan or scheme for the allocation of orders or sales among themselves or in any manner arranging for the distribution of orders or sales among themselves.

2. Establishing or maintaining a policy or practice of refusing to accept used rock crushing machinery or parts thereof in trade from buyers of new rock crushing machinery or parts.

3. Establishing or maintaining a policy or practice of refusing to rent rock crushing machinery to users or prospective users of such machinery.

4. Attempting through any means to have included in Federal Government specifications for rock crushing machinery provisions for the purpose or with the effect of eliminating any other seller of rock crushing machinery from competition with any respondent.

It is further ordered, That respondent, Associated Equipment Distributors, a corporation, its officers, board of governors, directors, and members, including respondents, James C. Alban, W. W. Bucher, George A. Cooper, William A. Danner, Charles O. Finn, J. S. Gilman, A. E. Hahnan, T. W. Harron, M. R. Hunter, G. F. Lowe, Frank McBath, Fred Mattheis, W. G.

¹ Order published as of Feb. 16, 1944.

Morgan, R. R. Nixon, R. S. Patten, Ed. P. Phillips, R. S. Rosholt, A. F. Sersanous, G. W. Van Keppel, C. F. Winchester, individually, and as such officers, governors, and directors, and respondents, Alban Tractor Company, Inc., Borchert-Ingersoll, Inc., R. E. Brooks Company, Clyde Equipment Company, Columbia Equipment Company, The Finn Equipment Company, Fuchs Machinery & Supply Company, Harron, Rickard & McCone Company, Hedge & Mattheis Company, Hunter Tractor & Machinery Company, Loggers & Contractors Machinery Company, Lowe Machinery Company, Nixon-Hasselle Company, Parker, Danner Company, Patten Tractor & Equipment Company, Phillips Machinery Company, The Victor L. Phillips Company, Thorman W. Rosholt Company, Smith Booth Usher Company, The George F. Smith Company, Inc., Tractor & Machinery Company, Inc., The G. W. Van Keppel Company, and William H. Ziegler Company, Inc., individually, and as such members, their respective officers, agents, representatives, and employees, do forthwith cease and desist from agreeing or cooperating with the respondents subject to the above provisions numbered 1 to 4, inclusive, of this order in doing any of the things prohibited therein.

It is further ordered, That each respondent hereinbefore made subject to any provision of this order do forthwith cease and desist, in connection with the offering for sale, sale, and distribution of rock crushing machinery in commerce, as "commerce" is defined in the Federal Trade Commission Act, from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents, or between any one or more of said respondents and others not parties hereto, to do or perform any of the following acts or practices:

(a) Establishing, fixing, or maintaining prices, terms, or conditions of sale or adhering to or promising to adhere to prices, terms, or conditions of sale so fixed.

(b) Determining the amount of any bid or price quotation to be submitted to purchasing officials of any Government agency, or to any other buyer.

(c) Holding or participating in any meeting, discussion, or exchange of information between or among themselves, or under the auspices of respondent Rock Crusher Manufacturers Association, respondent Associated Equipment Distributors, or any other medium or agency concerning proposed or future prices, terms, or conditions of sale to be included in bids to buyers of rock crushing machinery.

(d) Assisting or cooperating with each other in any way in submitting noncompetitive bids to any buyer.

(e) Establishing, maintaining, or carrying out any practice or policy for the purpose or with the effect of restraining, persuading, or otherwise causing any seller of rock crushing machinery to refrain from submitting to any buyer price quotations, terms, and conditions of sale independently arrived at or determined.

(f) Employing or utilizing respondent Rock Crusher Manufacturers Association, respondent Associated Equipment Distributors, or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the things prohibited by this order.

It is further ordered, That nothing contained in this order shall be construed as prohibiting any seller of rock crushing machinery from entering into agreements with any of its (his) customers to sell to any such cus-

tomers rock crushing machinery at any price or on any terms and conditions of sale independently determined and offered by either such seller or buyer and independently accepted by either such seller or buyer in any bona fide transaction when such agreements are not for the purpose nor have the effect of restraining trade;

* * * that nothing contained in this order shall be construed as prohibiting the establishment or maintenance of any lawful bona fide relationship between any principal and its (his) agent;

* * * that nothing contained in this order shall be construed as prohibiting any respondent seller of rock crushing machinery from including in any of its (his) sales contracts with any of its (his) customers, a provision for the marketing of its (his) rock crushing machinery exclusively through such customer within any particular territory specified in such sales contracts;

* * * that nothing contained in this order shall be construed as prohibiting any of the respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are permitted under the provisions of the Miller-Tydings Act.

It is further ordered, That the case growing out of the complaint herein be, and the same hereby is, closed as to respondent, J. E. Ingram Equipment Company, without prejudice to the right of the Commission, should future facts so warrant, to reopen the same and resume trial thereof in accordance with its regular procedure.

It is further ordered, That 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.

IN THE MATTER OF

GUS H. COHN, TRADING AS
KOL-TONE MANUFACTURING COMPANY

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

Docket 4515. Complaint, June 5, 1941—Decision, Jan. 13, 1944

Where an individual engaged in the preparation and interstate sale to coal dealers at wholesale of his "Kol-Tone" chemical spray for use on bituminous coal; in advertisements in newspapers of general interstate circulation—

Represented that the application of his said product to coal served to increase substantially the efficiency of the coal so treated, that such coal produced more heat as a result, and that use thereof resulted in substantial savings in fuel costs;

Facts being that tests by competent experts of his said product—composed of some 87 percent sodium chloride or common salt, and small quantities of impure iron oxide, copper sulphate and zinc sulphate, mixed with a designated amount of water—established that the product was incapable of accomplishing the results claimed therefor;

With tendency and capacity to mislead and deceive a substantial number of dealers and members of the purchasing public with respect to the effectiveness and value of his said product, and thereby cause them to purchase same, or coal treated therewith;

Held, That such acts and practices were all to the prejudice of the public, and constituted unfair and deceptive acts and practices in commerce.

As respects the validity of seller's claims that application of a certain chemical spray to bituminous coal resulted in the coal which was so treated producing more heat, and in substantial savings in fuel costs; results of tests of the product by competent experts, and testimony of experts in the heating field, which established that the product was incapable of accomplishing the results claimed therefor, as above indicated, were in harmony with the conclusions reached by the United States Bureau of Mines after extensive study and testing of a number of similar chemical preparations, to the effect that the use of such preparations does not affect to any measurable extent the efficiency or heat-producing value of coal, and while some evidence controverting such conclusions was introduced by the seller, the Commission was of the opinion that it was insufficient to overcome the evidence that such claims were erroneous and misleading.

Before *Mr. James A. Purcell* and *Mr. Randolph Preston*, trial examiners.
Mr. B. G. Wilson for the Commission.

Mr. Jerome F. Duggan, of St. Louis, Mo., for respondent.

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 Gus H. Cohn, an individual, trading and doing business under the name Kol-Tone Manufacturing Company, hereinafter referred to as respondent, has violated the provisions of the said act, and it appearing to the Commission that a proceeding by it in