

Syllabus

IN THE MATTER OF
AMERICAN ASSOCIATION OF LAW BOOK PUBLISHERS,
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 4526. Complaint, June 30, 1941—Decision, Apr. 27, 1944¹

As respects contention of a respondent publisher that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question, and directed to bringing about and maintaining uniform practices in such matters as institutional and cash discounts, uniform prices, government bids, price policy in the matter of tradeins and overstock, and reciprocity in the bringing out of new works dealing with the same subject: Where it appeared, among other things, that while said publisher, an early member of the association through which the agreements were undertaken and carried out, had not been such a member for some 8 or 10 years preceding its dissolution, it had, nevertheless, cooperated with others, who were members, in the aforesaid various concerted and cooperative undertakings, excepting only the matter of cash discounts on its own publications, and had for years a controlling interest in another publisher which was and continued to be a member of the association and took an active interest in the affairs thereof and in the agreements and understandings above indicated, such contention was not tenable.

As respects the contention of a respondent publisher of law books that it was not a party to any of the agreements found to have been entered into with others joined in proceeding in question and directed to bringing about uniformity in such matters as institutional and cash discounts, price maintenance, government bids, price policies in the matter of tradeins and overstocks, since it did not sell any of its publications to or through the other members, nor sell any of their publications: Where it appeared that said publisher had been a member of the association, through which various concerted and cooperative undertakings were initiated or carried out, for many years since its organization, had taken an active interest in all of its activities, attended all meetings except the first, and that its president was active in various responsible capacities for said association and took an active and responsible part, among other things, in establishing the plan of uniform government discounts and bids, *held* such contention could not be sustained, and that said publisher, through its participation in the affairs of the association and that of its president in said affairs and in the agreements entered into among the members, participated therein and in the acts and practices concerned.

Where an association of law book publishers, formed at a time when price cutting was prevalent in the industry; and its members, which were engaged in the compilation, publication, sale and distribution of text books, treatises, legal reference books, official reports of court decisions, codes, etc., and included the largest publisher of law books in the United States, with a controlling interest in five other members, and two other publishers, which, also owned controlling interests in three other members, and, with a few exceptions, sold both their own publications and those of other members;

Acting together, through exchange of views at meetings and otherwise, committees, and agreements, and in part under a code of fair competition, which, adopted by them under the NRA, and continued thereafter, was, however, never accepted—

- (a) Agreed that any house cutting prices should not be sold books, discontinued discounts to libraries, and agreed upon and adhered to, uniform cash discounts, and terms thereof;
- (b) Agreed to and did establish and adhere to uniform discounts and identical bids to the Government;
- (c) Took uniform action with reference to disposition of overstock books at reduced prices; made regulations as to the method of handling second-hand books published by the respective companies, and agreed to and did, in said matter follow plans designed, in most instances, to take second-hand books off the market, and particularly to prevent them, or new editions, getting into the hands of dealers in second-hand law books;
- (d) Entered into and carried out agreements and understandings providing that each concern would observe and adhere to the selling price and conditions of sale fixed by the publisher of the particular publication concerned, and took measures, through notices to the trade and, in some instances, meetings with the salesmen of the other members, to bring about the accomplishment of said undertaking; and
- (e) Attempted to and did promote adherence to said various agreements and undertakings through employing the association offices for said purpose, interchange of correspondence, personal and group contact, and systematic checking and policing of bids, sales transactions and activities of each and all through the association and otherwise;

Capacity, tendency and effect of which agreements, etc. and things done thereunder were to substantially reduce, lessen, hinder and restrain competition in the sale and distribution of law books and related legal publications between and among them and others, in commerce; maintain arbitrary discounts and terms and conditions of sale for their publications, substantially enhance the cost thereof to the purchasing public, make it more difficult for lawyers and other members of said public to acquire, obtain, and own law books and related legal publications; increase the cost of establishing and maintaining law libraries, and cost to the Government and other public agencies of establishing and maintaining such libraries; provide those having dominant positions in the industry with an effective means of control over those less favorably situated; and unduly and unlawfully restrict and restrain interstate trade and commerce in such publications:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and had a tendency to and did hinder, lessen, restrict, restrain, and eliminate competition in the sale and distribution of law books and related legal publications in commerce, and constituted unfair acts and practices and unfair methods of competition therein.

Before *Mr. Randolph Preston*, trial examiner.

Mr. Lynn C. Paulson, *Mr. James H. Boyle* and *Mr. Karl E. Steinhauer* for the Commission.

Lundgren & Lincoln, of New York City, for *James R. Spillane*, *The American Law Book Co.*, *Burdette Smith Co.*, *Edward Thompson Co.*, *Vernon Law Book Co.*, *Washington Law Book Co.* and *West Publishing Co.*

Paxton & Seasongood, of Cincinnati, Ohio, for *Clifford W. Mueller*.

Mr. Neile F. Towner, of Albany, N. Y., for *Richard Reiner*.

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for *R. Walter White*.

Davies, Richberg, Beebe, Busick & Richardson, of Washington, D. C., for Baker, Voorhis and Co., Bancroft-Whitney Co., Bender-Moss Co., The Michie Co. and Thomas Law Book Co., and along with —

Paxton & Seasongood, of Cincinnati, Ohio, for The W. H. Anderson Co.;
Mr. Neile F. Towner, of Albany, N. Y., for Matthew Bender and Co., Inc. and Fallon Law Book Co.;

Walton, Bannister & Stitt, of New York City, for Clark Boardman Co., Ltd.;

Mr. Julius Birge, of Indianapolis, Ind., for Bobbs-Merrill Co.;

Mr. Henry Ward Beer, of New York City, for John Byrne and Co.;

Garono, Jaekle & Kelly, of Buffalo, N. Y., for Dennis and Co., Inc.;

Dorsey, Stubbs & Dorsey, of Atlanta, Ga., for The Harrison Co.;

Goodwin, Nixon, Hargrave, Middleton & Devans, of Rochester, N. Y., for The Lawyers Co-Operative Publishing Co.; and

Mr. Clifton P. Williamson, of New York City, for Williamson Law Book Co.

Saul, Ewing, Remick & Harrison, of Philadelphia Pa., for George T. Bisel.

Haussermann, Davison & Shattuck, of Boston, Mass., for Little, Brown and Co.

Sullivan & Cromwell, of New York City, for The Frank Shepard Co.

Colie & Waltzinger, of Newark, N. J., for Soney and Sage Co.

Isham, Lincoln & Beale, of Chicago, Ill., for Callaghan & 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 persons, partnerships and corporations named in the caption hereof, and hereinafter described and referred to as respondents, have violated the provisions 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, American Association of Law Book Publishers, hereinafter referred to as respondent association, is an unincorporated, voluntary, non-profit trade association organized to promote the mutual interests of its members. It was organized in 1923. The Association serves its members as an instrumentality or vehicle for joint and cooperative action among them. Its present membership consists of 26 of the respondents named herein, and from time to time has included other persons, partnerships and corporations engaged in the publication of law books and related legal products, some of whom are also named as respondents. Officers of respondent Association are: James R. Spillane, president; Clifford W. Mueller, vice president; Richard Reiner, treasurer; R. Walter White, secretary. Its headquarters now are, and throughout the greater part of its existence, have been in the offices of its secretary, R. Walter White, who is associated with respondent, The Lawyers Cooperative Publishing Company, Rochester, N. Y.

PAR. 2. Respondent, The American Law Book Company, is a New Jersey corporation, having its office and principal place of business at 272 Flatbush Avenue Extension, Brooklyn, N. Y.

Complaint

38 F. T. C.

Respondent, The W. H. Anderson Company, is an Ohio corporation, having its office and principal place of business at 524 Main Street, Cincinnati, Ohio.

Respondent, Baker, Voorhis & Company, is a New York corporation, having its office and principal place of business at 119 Fulton Street, New York City.

Respondent, Bancroft-Whitney Company, is a California corporation, having its office and principal place of business at 200-214 McAllister Street, San Francisco, Calif.

Respondent, Matthew Bender & Company, Inc., is a New York corporation, having its office and principal place of business at 109 State Street, Albany, N. Y.

Respondent, Bender-Moss Company, is a California corporation, having its office and principal place of business at 91 McAllister Street, San Francisco, Calif.

Respondent, George T. Bisel, is an individual, trading as George T. Bisel Company, having its office and principal place of business at 724 Sansom Street, Philadelphia, Pa.

Respondent, Clark Boardman Company, Ltd., is a New York corporation, having its office and principal place of business at 11 Park Place, New York City.

Respondent, The Bobbs-Merrill Company, is an Indiana corporation, having its office and principal place of business at 724 North Meridian Avenue, Indianapolis, Ind.

Respondent, John Byrne and Company, is a District of Columbia corporation, having its office and principal place of business at 1324 Eye Street, N. W., Washington, D. C.

Respondent, Dennis & Company, Inc., is a New York corporation, having its office and principal place of business at 269 Main Street, Buffalo, N. Y.

Respondent, The Harrison Company, is a Georgia corporation, having its office and principal place of business at 151 Spring Street, N. W., Atlanta, Ga.

Respondent, The Lawyers Co-operative Publishing Company, is a New York corporation, having its office and principal place of business at Rochester, N. Y.

Respondent, Little, Brown and Company, is a Massachusetts corporation, having its office and principal place of business at 34 Beacon Street, Boston, Mass.

Respondent, The Michie Company, is a Virginia corporation, having its office and principal place of business at Charlottesville, Va.

Respondent, National Law Book Company, is a Maryland corporation, having its office and principal place of business at 1110-13th Street, N. W., Washington, D. C.

Respondent, Public Utilities Reports, Inc., is a Delaware corporation, having its office and principal place of business at 1329 E Street, N. W., Washington, D. C.

Respondent, The Frank Shepard Company, is a New York corporation, having its office and principal place of business at 76-88 LaFayette Street, New York City.

Respondent, Burdette Smith Company, is an Illinois corporation, having its office and principal place of business at 111 West Washington Street, Chicago, Ill.

Respondent, Soney & Sage Company, is a New Jersey corporation, having its office and principal place of business at 71 Clinton Street, Newark, N. J.

Respondent, Thomas Law Book Company, is a Missouri corporation, having its office and principal place of business at 209 North Third Street, St. Louis, Mo.

Respondent, Edward Thompson Company, is a New York corporation, having its office and principal place of business at 141 Willoughby Street, Brooklyn, N. Y.

Respondent, Vernon Law Book Company, is a Missouri corporation, having its office and principal place of business at 915 Grand Avenue, Kansas City, Mo.

Respondent, Washington Law Book Company, is a Delaware corporation, having its office and principal place of business at 810-13th Street, N. W., Washington, D. C.

Respondent, West Publishing Company, is a Minnesota corporation, having its office and principal place of business at 50 West Kellogg Boulevard, St. Paul, Minn.

Respondent, Williamson Law Book Company, is a New York corporation, having its office and principal place of business at 51 State Street, Rochester, N. Y.

Respondent, Callaghan & Company, is an Illinois corporation, having its principal office and place of business at 401 East Ohio Street, Chicago, Ill.

Respondent, Fallon Law Book Company, is a New York corporation, having its office and principal place of business at 292 Broadway, New York, N. Y.

For convenience, the above-named respondents are hereafter referred to as respondents.

PAR. 3. Respondents are all of the persons, partnerships and corporations located in the United States, except some eight or ten, engaged in the business of compiling, publishing, selling and distributing law text books, treatises, legal reference works, official reports of court decisions in State and federal courts, codes, digests and annotations of codes and other legal publications and some of the leading distributors of such works. Among the publications published and distributed by the respondents are such works as the following: Williston on Contracts, Wigmore on Evidence, Corpus Juris, Corpus Juris Secundum, Ruling Case Law, American Jurisprudence, Sheppard's Citations, The American Digest System, the National Reporter System, and text and case books used by the leading law schools of the country.

With a few exceptions, each respondent sells its own publications and sells and distributes publications of other respondents. Exceptions to this general rule are that respondent, American Law Book Company, sells its publications Corpus Juris Secundum and its publication Corpus Juris exclusively itself; respondent, Lawyers Co-operative Publishing Company, and respondent, The West Publishing Company, sell their publications exclusively through their own sales forces. These three respondents, however, do sell and distribute books of other respondents.

PAR. 4. Each respondent, with the exception of respondent association, in the regular course and conduct of its or his business, sells and ships or causes to be sold and shipped law books and related legal publications to purchasers in States other than the States in which it or he

Complaint

38 F. T. C.

is located, and at all times herein mentioned has carried on a constant current of Trade, in said law books and related legal publications, in commerce among and between the various States of the United States and in the District of Columbia.

Respondent association and its officers promote the mutual interests, of the respondents and aid them in the doing and carrying out of their individual and joint purposes and plans. As hereinbefore stated, respondent association serves as a vehicle or instrumentality for joint and cooperative activity by its members.

PAR. 5. For more than ten years last past and continuing to the present time, respondents have maintained a combination among and between themselves to suppress, hinder, lessen and restrain competition in the sale and distribution of law books and related legal publications in the course of their aforesaid commerce among the States. Pursuant to and in furtherance of the aforesaid combination, respondents have:

(a) Entered into and carried out agreements and understandings providing that in the sale and distribution of law books and related legal publications, each respondent, when selling or offering for sale any law book or related legal publication published by it or by any of the other respondents, will observe and adhere to the selling price fixed and established by the publisher of such books or publications and refrain from deviating in any manner therefrom; and have otherwise concertedly adhered to and maintained each other's announced prices;

(b) Entered into and carried out agreements making discounts to be offered, made and used by them on sales to the Federal Government and other public agencies uniform between and among them, and have entered into and carried out agreements and understandings to establish and fix other terms and conditions of sale on sales to the Federal Government and other public agencies and on sales to other classes of trade;

(c) Entered into and carried out agreements fixing and establishing discounts and schedules of discounts to be made, offered, and used by them in selling or offering to sell each other's publications to one another;

(d) Entered into and carried out understandings and agreements establishing and fixing the terms and conditions and rates of allowances to be made, used and applied on books and other publications received in trade in the course and conduct of their respective businesses; and have concertedly fixed and maintained prices, terms and conditions of sale governing the resale of books and publications taken in by them in trade.

(e) Entered into and carried out agreements and understandings that no one of them should accept certain books or sets of books in trade;

(f) Jointly and cooperatively attempted to and have promoted adherence to the agreements and understandings specified in the foregoing subsections of this paragraph by employing the association offices to that end, by the interchange of correspondence between them, by personal contact with one another individually and in groups, and by systematically observing, checking and policing the bids, sales, transactions and activities of each and all of them, through the association and otherwise.

(g) Entered into and carried out agreements and understandings that each of them would refuse to sell its or his publications to any one of them who failed to adhere to and observe the agreements and understandings set forth in subsections (a), (b), (c), (d), (e) and (f) hereof.

(h) Adopted and used in cooperation other methods and means to effectuate and further their common purpose and design to suppress,

hinder and lessen competition between them and between them and their competitors in the sale and distribution of law books and other related legal publications.

PAR. 6. The said combination, and the doing and performing of the acts and things, and the use of the methods as set forth in the preceding paragraphs hereof, tend to have, have had, and now have the effect of substantially reducing, lessening, hindering and restraining competition in the sale and distribution of law books and related legal publications between and among respondents and between and among respondents and other firms, partnerships, corporations, and individuals in the same or similar lines of business in interstate commerce in, among, and between the various States of the United States and the District of Columbia; of maintaining in existence arbitrary discounts and terms and conditions of sale for respondents' products; of substantially enhancing the cost of such publications and products to the purchasing public, and of making it more difficult for lawyers, judges, and other members of the purchasing public to acquire, obtain and own law books and related legal publications; of increasing the cost of establishing and maintaining law libraries; of curtailing the wide dissemination of legal information; of increasing the cost to the Federal Government and to other public agencies of establishing and maintaining law libraries; of making intelligent practice of the legal profession more difficult; of providing those having dominant positions in the industry with an effective means of control over those less favorably situated; and of unduly and unlawfully restricting and restraining interstate trade and commerce in law books and related legal publications between, among, and in the several States of the United States and the District of Columbia.

PAR. 7. The aforesaid acts and practices and methods of respondents, as herein alleged, are all to the prejudice of the public; they have a substantial and dangerous tendency to hinder, lessen, restrict, and restrain, and actually have unduly, directly and substantially, hindered, restricted, and restrained, competition in interstate commerce in law books and related legal publications. The said acts and practices constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on June 30, 1941, issued and subsequently served its complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair acts and practices and unfair methods of competition in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, a stipulation as to the facts and a supplemental stipulation as to the facts were entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company; Baker, Voorhis and Company; Bancroft-Whitney Company; Matthew Bender and Company, Inc.; Bender-Moss Company; Clark Boardman Company, Ltd.; Bobbs-Merrill Company; John Byrne and Company; Dennis and Company, Inc.; The Harrison Company; The Lawyers Co-Operative Publishing Company; Little, Brown and Company; The Michie Com-

Findings

38 F. T. C.

pany; National Law Book Company; Public Utilities Reports, Inc.; Soney and Sage Company; Thomas Law Book Company; Williamson Law Book Company; and Fallon Law Book Company, whereby it was stipulated and agreed that, subject to the approval of the Commission, the statement of facts contained in said stipulation and supplemental stipulation may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint and in opposition thereto, and that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure.

Thereafter, hearings were held in this matter, at which time testimony and other evidence were introduced in support of and in opposition to the allegations of the complaint as to the respondents, American Association of Law Book Publishers, an unincorporated association, and its officers. James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary; and The American Law Book Company; George T. Bisel, an individual, trading as George T. Bisel Company; The Frank Shepard Company; Burdette Smith Company; Edward Thompson Company; Vernon Law Book Company; Washington Law Book Company; West Publishing Company; and Callaghan & Company, before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission.

Thereafter, this proceeding regularly came on for final hearing before the Commission on said complaint, answers thereto, stipulation and supplemental stipulation as to the facts executed by certain of the respondents (such stipulations having been approved, accepted, and filed) testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, American Association of Law Book Publishers, (hereinafter referred to as "respondent Association"), is an unincorporated, voluntary, nonprofit trade association, organized to promote the mutual interests of its members. The membership of this Association was composed of individuals, partnerships, and corporations engaged in the publication of law books and related legal publications. Respondent Association was dissolved by motion adopted by its members on September 5, 1940. During the time of its existence the headquarters of the respondent Association were in the offices of its secretary, R. Walter White, who was associated with respondent The Lawyers Co-Operative Publishing Company, Rochester, N. Y.

With the exception of the period from September 1924 to September 1927, respondent, R. Walter White, was at all times secretary of respondent Association until the date of its dissolution. The individual

respondents, James R. Spillane, Clifford W. Mueller, and Richard Reiner, were president, vice president, and treasurer, respectively, of respondent Association from September 1939, until dissolution of said Association on September 5, 1940.

PAR. 2. Respondent, The American Law Book Company, is a New Jersey corporation, having its office and principal place of business at 272 Flatbush Avenue Extension, Brooklyn, N. Y.

Respondent, The W. H. Anderson Company, is an Ohio corporation, having its office and principal place of business at 524 Main Street, Cincinnati, Ohio.

Respondent, Baker, Voorhis and Company, is a New York corporation, having its office and principal place of business at 119 Fulton Street, New York City.

Respondent, Bancroft-Whitney Company, is a California corporation, having its office and principal place of business at 200-214 McAllister Street, San Francisco, Calif.

Respondent, Matthew Bender and Company, Inc., is a New York corporation, having its office and principal place of business at 109 State Street, Albany, N. Y.

Respondent, Bender-Moss Company, is a California corporation, having its office and principal place of business at 91 McAllister Street, San Francisco, Calif.

Respondent, George T. Bisel, was an individual, trading as George T. Bisel Company, with his office and principal place of business at 724 Sansom Street, Philadelphia, Pa. Said respondent, George T. Bisel, died on March 28, 1941, and answer on behalf of his estate was filed in this proceeding by the Pennsylvania Company for Insurances on Lives and Granting Annuities and Raymond M. Remick, executors and trustees under the will of George T. Bisel, deceased.

Respondent, Clark Boardman Company, Ltd., is a New York corporation, having its office and principal place of business at 11 Park Place, New York City.

Respondent, Bobbs-Merrill Company, is an Indiana corporation, having its office and principal place of business at 724 North Meridian Avenue, Indianapolis, Ind.

Respondent, John Byrne and Company, is a District of Columbia corporation, having its office and principal place of business at 1324 Eye Street, N. W., Washington, D. C.

Respondent, Dennis and Company, Inc., is a New York corporation, having its office and principal place of business at 269 Main Street, Buffalo, N. Y.

Respondent, The Harrison Company, is a Georgia corporation, having its office and principal place of business at 151 Spring Street, N. W., Atlanta, Ga.

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Respondent, Little, Brown and Company, is a Massachusetts corporation, having its office and principal place of business at 43 Beacon Street, Boston, Mass.

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Respondent, Public Utilities Reports, Inc., is a Delaware corporation, having its office and principal place of business at 1329 E Street, N.W., Washington, D. C.

Respondent, The Frank Shepard Company, is a New York corporation, having its office and principal place of business at 76-88 LaFayette Street, New York City.

Respondent, Burdette Smith Company, is an Illinois corporation, having its office and principal place of business at 111 West Washington Street, Chicago, Ill.

Respondent, Soney and Sage Company, is a New Jersey corporation, having its office and principal place of business at 71 Clinton Street, Newark, N. J.

Respondent, Thomas Law Book Company, is a Missouri corporation, having its office and principal place of business at 209 North Third Street, St. Louis, Mo.

Respondent, Edward Thompson Company, is a New York corporation, having its office and principal place of business at 141 Willoughby Street, Brooklyn, N. Y.

Respondent, Vernon Law Book Company, is a Missouri corporation, having its office and principal place of business at 915 Grand Avenue, Kansas City, Mo.

Respondent, Washington Law Book Company, is a Delaware corporation, having its office and principal place of business at 810 Thirteenth Street, N. W., Washington, D. C.

Respondent, West Publishing Company, is a Minnesota corporation, having its office and principal place of business at 50 West Kellogg Boulevard, St. Paul, Minn.

Respondent, Williamson Law Book Company, is a New York corporation, having its office and principal place of business at 51 State Street, Rochester, N. Y.

Respondent, Callaghan & Company, is an Illinois corporation, having its principal office and place of business at 401 East Ohio Street, Chicago, Ill.

Respondent, Fallon Law Book Company, is a New York corporation, having its office and principal place of business at 292 Broadway, New York, N. Y.

The above-named respondents are all publishers of law books and related legal publications and constituted the entire membership of respondent Association, except for the periods of time hereinafter described. For convenience, the above-named respondents are hereinafter referred to as "respondent members."

PAR. 3. As of October 1, 1924, the membership of respondent Association was composed of all of the respondent members hereinbefore named except George T. Bisel Company and Burdette Smith Company, which were accepted to membership in November 1924; The Michie Company and Fallon Law Book Company accepted in July 1925; Williamson Law Book Company accepted February 18, 1926; Public Utilities Reports, Inc., accepted August 21, 1933; National Law Book Company accepted September 11, 1934; Dennis and Company, Inc., accepted September 20, 1935; and Washington Law Book Company accepted July 15, 1937.

Respondent Callaghan & Company resigned from respondent Association November 26, 1924, was reinstated September 13, 1926, and again resigned October 14, 1933. Respondent, Fallon Law Book Company, resigned from respondent Association November 8, 1938. There were several other publishers who were members of respondent Association for only a short period of time who either resigned or discontinued business. These latter publishers were not included as respondents in this proceeding.

PAR. 4. All of the respondent members are engaged in the business of compiling, publishing, selling, and distributing textbooks, treatises, legal reference books, official reports of court decisions in State and federal courts, codes, digests, annotations of codes, and other legal publications. With a few exceptions each respondent member sells its own publications and sells and distributes publications of the other respondent members. Exceptions to this general rule are that The American Law Book Company sells its publication Corpus Juris and its publication Corpus Juris Secundum exclusively itself. The Lawyers Co-Operative Publishing Company and West Publishing Company sell their publications exclusively through their own sales forces. These three respondents, however, do sell and distribute books of other respondents. The Frank Shepard Company publishes sets of citations for decisions of the United States Supreme Court, federal, district, and circuit courts, and various State courts with the exception of Mississippi and Nebraska, and does not sell publications of the other respondents or sell its publications through the other respondents.

The West Publishing Company is the largest publisher of law books in the United States and owns the controlling interest in the following respondents: Vernon Law Book Company, The American Law Book Company, Edward Thompson Company, Burdette Smith Company, and Washington Law Book Company, having purchased the majority of the stock of the Vernon Law Book Company in 1911, The American Law Book Company in 1930, Edward Thompson Company in 1935, and the Burdette Smith Company in 1935. The Washington Law Book Company was incorporated in 1935 as a subsidiary of respondent, West Publishing Company.

The Lawyers Co-Operative Publishing Company owns the majority stock interest in the following named respondents: Baker, Voorhis and Company, Bender-Moss Company, and Bancroft-Whitney Company.

Callaghan & Company, since 1934, has owned the controlling interest in the capital stock of John Byrne and Company.

PAR. 5. In the course and conduct of their respective businesses, respondent members cause their publications, when sold, to be transported from their respective places of business to the various purchasers thereof located in the various States of the United States other than the States in which their respective shipments originate. Said respondent members maintain, and at all times mentioned herein have maintained, a course of trade in said law books and related legal publications in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 6. In 1923 and prior thereto, price cutting was more or less prevalent in the law-book industry. On September 25, 1923, a meeting was held at the offices of The Lawyers Co-Operative Publishing Company in New York, N. Y., to consider the conditions in the industry.

At this meeting the following respondent members were present: Vernon Law Book Company, West Publishing Company, Thomas Law Book Company, Bobbs-Merrill Company, The W. H. Anderson Company, Edward Thompson Company, Baker, Voorhis and Company, Little, Brown and Company, Bancroft-Whitney Company, Bender-Moss Company, and The Lawyers Co-Operative Publishing Company. At this meeting a number of topics were discussed, among which were protection of a publisher against competition from work on a similar subject, the practice of trading for an old edition of a textbook when a new edition is announced, maintenance of list prices, discounts to the trade, basis of determining royalties, soliciting approval orders from attorneys, disposition of overstock of textbooks, and uniformity of size of advertising circulars.

At this meeting, motion was unanimously adopted that it was the consensus of opinion of the representatives present that the maximum discount to libraries from October 1, 1923, to January 1, 1925, be 10 percent. As there was a variance as to the cash discounts allowed by the various members present, further discussion was continued until the next meeting. A further motion was unanimously carried that any house cutting prices should not be sold books. Respondent Association was formed at this meeting, to be known as the "American Association of Law Book Publishers," which was to meet annually on the third Tuesday in September.

At the next meeting of the respondent Association, held September 30, 1924, discounts to libraries were discussed, and it was the consensus of opinion that libraries were entitled to a discount of not to exceed 10 percent. Cash discounts were discussed at this meeting but no decision arrived at.

The question of library discounts was further discussed at the meeting held in September 1929, and respondent members agreed to discontinue entirely the discount of 10 percent to libraries and public institutions. This is indicated by the fact that subsequent to said meeting West Publishing Company, Vernon Law Book Company, The W. H. Anderson Company, Little, Brown and Company, Matthew Bender and Company, Inc., Bobbs-Merrill Company, The Harrison Company, and John Byrne and Company issued notices to the trade that discounts to libraries had been discontinued except the cash discount of 6 percent allowed to all purchasers.

PAR. 7. At the next meeting of the respondent Association, held in September 1930, a general discussion was held as to the desirability of making the cash discounts uniform, which was referred to a committee. This committee reported that most houses were giving a cash discount on \$40 or more and that discounts varied from 5 percent to 8 percent for cash, and recommended that the respondent members work out a uniform maximum discount. Motion was carried that the report of the committee be sent to each respondent member for study during the coming year.

At the meeting of respondent Association held September 24 and 25, 1931, the committee appointed to investigate cash discounts reported that it thought it would be for the best interests of the general publishers to give a 6 percent discount for cash within 30 days from date of invoice on total purchase of \$40 or over and that maximum approval period on books be set at 10 days.

The following month The Lawyers Co-Operative Publishing Company wrote Callaghan & Company and Clark Boardman Company, Ltd., advising them as to its policy of cash discount, which conformed to the recommendations of the committee. During the same month, West Publishing Company sent a notice to the trade setting out a cash discount of 6 percent on amounts of \$40 or over, which likewise conformed with the recommendations of the committee.

This cash discount was adopted and followed by all of the respondent members from the time of the 1931 meeting until the early part of 1934, when the required amount of the order was reduced from \$40 to \$35, at the instance of respondent, The Frank Shepard Company, to conform with the usual amount received on sales of its Citators. This schedule of discounts as modified was followed by all the respondent members of the Association and is still in force and effect.

PAR. 8. The respondent members also entered into agreements among themselves and through the respondent Association to establish uniform discounts on bids to the United States Government and to make such bids identical. In this connection and for the purpose of assuring that identical bids be made, respondent members from time to time exchanged information relative to proposed bids to be made to the Federal Government.

In endeavoring to reach an agreement which would establish uniform discounts on bids and uniform bids to the United States Government, the respondent members encountered some difficulties, due to the fact that while they had agreed upon a cash discount of 6 percent payable in 30 days to purchasers generally, the Federal Government in most instances did not pay invoices within the 30-day period, and the question arose as to whether or not the cash discount should be refused the United States Government when payment of invoice was not made within 30 days. The West Publishing Company took the initiative on this on May 26, 1931, when it sent out a notice to the trade that it would quote the Department of Justice on Hughes Federal Practice a discount of 6 percent on \$40 or over, provided cash in full was paid within 30 days, stating:

This information is being sent to you because of the fact that you may wish to make your bid uniform with ours.

At the September 1933 meeting of respondent Association the cash discount to the Government and method of bidding were clarified and immediately thereafter, on November 3, 1933, The Lawyers Co-Operative Publishing Company wrote Dennis and Company, Inc., with copy to Matthew Bender and Company, Inc., stating:

At the annual convention of the Law Book Publishers held in Chicago, the question was raised concerning the technique to be observed in submitting bids for law books to the government.

* * *

It was agreed at the Convention that hereafter in submitting bids to the government, all books would be shown on the bidding list at list price. Then, in connection with the bid or at the bottom of each sheet, will appear the memorandum: "Any order amounting to \$40.00 or over is subject to 6% discount for cash."

We hope you will find it agreeable to join with the others in following this uniform technique in order that none may have any unfair advantage over the others.

Findings

38 F. T. C.

PAR. 9. In 1933 the members of respondent Association had under consideration the formulation of a code under the National Industrial Recovery Act. They did not wish to join the general code for publishers but, instead, presented a code limited to the law book publishing industry. This code was never accepted during the existence of the National Industrial Recovery Act. During the time, however, that these negotiations were taking place a code committee appointed by the respondent members, from time to time made suggestions with reference to discounts and at first recommended reducing the cash discount from 6 percent to 5 percent. This, however, was never accepted by the respondent members, and in the code submitted on April 23, 1934, to the Deputy Administrator of the NRA, it was provided that quotations should be at net list price and that no trade discount should be extended to any dealer who did not comply with this condition, and that the cash discount should not exceed 6 percent, payable in 30 days, on amounts of \$35 or more.

On May 31, 1934, the respondent Association sent out a notice over the signature of John T. Bender, president, and R. Walter White, secretary, with reference to the provisions of the revised Law Book Code on cash discounts, showing 6 percent cash discount on purchases of \$35 or more, with the exception that the 30-day stipulation might be omitted on any bids to the United States Government.

The officers of respondent Association, following the issuance of the above notice, then insisted upon the wording of the provisions of the code being strictly followed in making bids to the United States Government. On June 18, 1934, R. Walter White, secretary of respondent Association, wrote John Byrne and Company, objecting to the dropping of the word "cash" and calling attention to the copy of letters sent out to members of the Association the latter part of May containing the statement:

"A cash discount of not more than 6% may be offered on purchases of \$35.00 or more (not \$40.00 as heretofore), and provided payment is made with order, or within 30 days from date of invoice.

"The only exception is that the thirty day stipulation may be omitted from any Bids to the United States Government."

On August 23, 1934, John T. Bender, president of respondent Association, wrote John Byrne and Company with reference to discrepancies in bids to the Government, stating:

As President of the Association, I have been requested to see that we, at the next Convention, take such action as will standardize the methods of bidding to the Government.

However, the respondent members did not standardize the method of bidding to the Government at the next meeting of respondent Association because they became concerned about the legality of this method of standardization, as is indicated by statement in letter of October 19, 1934, from Baker, Voorhis and Company to Bobbs-Merrill Company, as follows:

The problem of government bidding was intentionally kept off the program at the suggestion of our legal advisor. We do not have any code yet so we must still be careful that we do not run afoul of the Sherman Act.

Instead, standardization was accomplished by having the secretary of respondent Association discuss the matter of Government bids with the respondent members, and thereafter, on January 10, 1935, the respondent Association issued a notice to its members, reading as follows:

Your Code Committee, after carefully canvassing the situation, and in order to prevent uncertainty in the matter of Federal Government Bids, recommends that in bidding on Federal Government orders the retail selling price on Text-Books should be stated (do not figure and deduct any discount).

At the end of the Bid should appear the following:

"Any order amounting to \$35.00, and over, subject to a 6% discount."

Apparently this finally settled the method of bidding to the Government, since from that time, with the exception of minor individual variations, the method suggested was followed by all the respondent members.

PAR. 10. At the meeting held on September 19, 1935, the question came up as to whether the members of respondent Association should continue to operate under the code, since the National Industrial Recovery Act had been declared unconstitutional, and it was agreed that the members of the Association should continue the code.

On September 23, 1935, R. Walter White, secretary of respondent Association, in a letter to Fred O. Dennis of Dennis and Company, Inc., advising him that Dennis and Company had been accepted as a member of the Association, stated:

Enclosed you will find copy of the By-Laws of the Association, copy of the Code of Fair Competition (under which, by the way, we are still operating), also a copy of the writer's letter dated January 10th, regarding 6% discount on Bids to the Federal Government.

PAR. 11. The question of disposition of secondhand books and overstock of books came up from time to time among respondent members of the Association, with the particular view of keeping secondhand books off the market. During the year 1938 the respondent members became quite active in discussing means or methods which might be employed to dispose of overstock of books and secondhand books. This was probably induced by letter of Baker, Voorhis and Company dated February 2, 1938, signed by Geoffroy Billo, at that time president of respondent Association, to the respondent members, in which he suggested disposition of overstock books at reduced price after first giving the publisher notice and opportunity to make other disposition of the books, and requested an expression of opinion on this matter from the respondent members.

At the subsequent meeting of respondent Association in September 1938, an agreement among the members was reached with reference to the methods of disposing of Abbott's New York Digest, as is indicated by letter of Edward Thompson Company dated May 25, 1939, to West Publishing Company, stating:

As you may know, practically all of the law book houses in New York State are now offering Abbott's second hand, for a minimum of \$350.00.

This agreement, I understand, was entered into at the last Law Book Convention over the protest of Mr. Spillane.

The respondent members from time to time made regulations or conditions as to the method of handling secondhand books issued by their

respective companies, particularly when a new edition was placed on the market. The various respondent members agreed to, and did, follow such plan in the handling of secondhand books. These plans in most instances were designed to take secondhand books off the market and particularly to prevent either secondhand or new editions getting into the hands of dealers in secondhand law books.

PAR. 12. The respondent members from time to time since the organization of respondent Association have entered into mutual agreements and understandings relative to preventing the duplication of various textbooks, as is evidenced by interchange of correspondence between Bancroft-Whitney Company and Bobbs-Merrill Company. On November 14, 1939, Bancroft-Whitney Company wrote Bobbs-Merrill Company relative to the publication of Thompson on Real Property, in which it was stated:

Wouldn't it have been better for all should you have put the publication of Thompson ahead a year. We did that twice and I am sure we didn't lose anything by so avoiding conflicts with other books on the same subject.

One of the underlying purposes of the forming of the American Association of Law Book Publishers was to avoid the duplication of textbooks within too short periods, and to avoid conflicts occasioned by the publication of two or more works on the same subject at the same time, or within too short intervals.

Has all the work of our Association these years since 1923 in this regard been for naught? I should not like to think that. I do not think it.

to which Bobbs-Merrill Company replied, stating:

We had no intention of publishing Thompson on Real Property at this time and you will recall that we wrote to some of our friends in the trade when Jones on Real Property was announced and all of them, including yourself, suggested that we announce the book the first of 1940.

PAR. 13. The respondent members entered into and carried out agreements and understandings providing that in the sale and distribution of law books and related publications, each respondent, when selling or offering for sale any law book or related legal publication published by it or by any of the other respondents, would observe and adhere to the selling price and conditions of sale fixed and established by the publisher of such books or publications, and refrain from deviating in any manner therefrom. In order to accomplish this, a respondent, on issuing a new publication, sent out a prospectus or notice to the trade giving in detail the terms and conditions of sale, discounts, and other information pertaining to the sale of such publications. In sending out such notices or information relative to a new publication, the respondent as publisher specified the conditions, if any, under which old editions would be accepted in trade and the trade-in allowance to be made. In some instances the publisher was not content with sending out notices but, in addition, held meetings with the salesmen of other respondent members for the purpose of establishing rules of procedure in selling such publications. This was done by The Lawyers Co-Operative Publishing Company at the outset of the sale of its publication Standard Pennsylvania Practice.

PAR. 14. The respondent members jointly and cooperatively attempted to, and have, promoted adherence to the agreements and understandings hereinbefore described by employing the Association offices to that end,

by the interchange of correspondence between them, by personal contact with one another individually and in groups, and by systematically observing, checking, and policing the bids, sales, transactions, and activities of each and all of them through the Association and otherwise.

On March 3, 1931, Callaghan & Company wrote West Publishing Company, advising that Edwin Valentine Mitchell, Inc., of Hartford, Conn., was allowing a 10 to 15 percent discount to libraries, to which West replied that it had had no dealings with this party but would see that it was not given any discount that would enable it to sell West publications at a discount to libraries or other parties.

On April 20, 1932, The Lawyers Co-Operative Publishing Company wrote The W. H. Anderson Company relative to activities of the firm of Barnes and Noble, stating that it had discontinued selling any books to this firm and that if The W. H. Anderson Company continued to sell them at a discount The Lawyers Co-Operative Publishing Company, in the natural course of events, would probably have to eliminate Anderson's textbooks from its list. The W. H. Anderson Company, in reply, stated that it was withdrawing the 20 percent discount allowed Barnes and Noble and in the future would extend only a 6 percent discount for cash.

On April 27, 1932, Baker, Voorhis and Company sent a notice to the trade calling attention to the activities of J. J. Sanders, who had started in the law-book business by telling lawyers that he could undersell any dealer, and stated that the entire law-book business would be better off if this type of individual were not encouraged. The Lawyers Co-Operative Publishing Company replied to this notice, stating:

You may rest assured that we will not be of any assistance to this fellow.

In March or April 1934, John T. Bender, then president of the respondent Association, held a meeting at Chicago with C. C. Kryter of Bobbs-Merrill Company, Gosnell of The Lawyers Co-Operative Publishing Company, S. M. Banks of John Byrne and Company, and Evan Jones, who represented four of the concerns who had been bidding to the Government deducting the 6 percent discount from their bids, and it was agreed at this meeting that such method of bidding should be discontinued and that each should bid as heretofore, without actually making the deduction and reducing the price accordingly, with the right, however, to omit the 30-day stipulation on Government bids.

On June 25, 1934, The Lawyers Co-Operative Publishing Company wired The Harrison Company, calling attention to improper wording of bid to the Department of Justice, and on the same day The Harrison Company wired the Department of Justice changing the bid to conform with the request of The Lawyers Co-Operative Publishing Company.

In February 1936, in connection with application of Mason Publishing Company for membership in the Association, R. Walter White, as secretary of respondent Association, required the Mason Publishing Company to change its method of advertising as a prerequisite to admission.

In the early part of 1936 it came to the attention of R. Walter White, secretary of respondent Association, that Dennis and Company, Inc., and Soney and Sage Company were making improper bids to the Department of Justice, and R. Walter White suggested to W. G. Packard of The Frank Shepard Company, president of respondent Association, that he write a letter to these parties, and on May 8, 1936, W. G. Packard

wrote to both Dennis and Company, Inc., and Soney and Sage Company, stating in part:

As President of the Association I have been asked to direct this to your attention so that there will be no misunderstanding in submitting bids to the Federal Government during the present year.

Both of these respondents replied that they would make their bids strictly in accordance with the rules of respondent Association.

When any representative of a respondent member engaged in price-cutting activities or other violations of the rules of the respondent Association, such respondent member was immediately notified of such activities by one or more of the other respondent members, and was requested to take punitive action against such representative, which usually resulted in prompt corrective action.

PAR. 15. Respondent, Callaghan & Company, has contended in this proceeding that it was not a party to any of the agreements hereinbefore described. This respondent joined the Association in the year 1924; resigned therefrom on November 26, 1924; and was reinstated as a member of the Association September 13, 1926, remaining a member until October 14, 1933, at which time it again resigned. During the times that this respondent was a member of respondent Association and also during the time that it was not a member of said Association, this respondent cooperated with the other respondent members in carrying out the agreements heretofore described. The only matter in which this respondent did not agree with the remaining members was in limiting cash discount to sales of \$40 and later \$35 on sales of its own publications. As to publications of the other respondent members it maintained the 6 percent discount limited to said amounts. As an example of the cooperation with the other respondent members, on May 5, 1931, Callaghan & Company wrote John T. Bender, president of Matthew Bender and Company, Inc.:

Your position is right as usual and I sincerely hope that we can all get together for the purpose of arranging a uniform program.

and again on May 8, 1931, said respondent wrote said John T. Bender, stating:

I agree heartily with what you say on the discount proposition. It illustrates the importance of getting together and framing a program which will have the unanimous consent of all the members of the committee and all of the big text book houses.

J. C. Cahill, the representative of Callaghan & Company, was a member of the executive committee of respondent Association from September 28, 1928, to September 15, 1933. In 1930 he was appointed chairman of the committee to investigate the question of cash discounts and took an active interest in arriving at the cash-discount formula reported by the committee at the meeting of respondent Association in September 1931 and which was subsequently adopted by the respondent members.

In 1934 Callaghan & Company purchased the controlling interest in John Byrne and Company, one of the respondent members of the Association, and subsequent to that time said John Byrne and Company continued to take an active interest in the affairs of respondent Association and in the agreements and understandings entered into between and

among the various respondent members. In addition to the cooperation of said respondent, Callaghan & Company, by and through John Byrne and Company, there is further indication of the cooperation of this respondent after it had discontinued its membership in said Association. For example, on July 20, 1935, Callaghan & Company wrote Geoffroy Billo of Baker, Voorhis and Company, stating:

So far as the Association is concerned, even though we are not members, we want to cooperate with the trade and its policies as expressed by the Association, and we have done so, so far as I know, in all matters except a single one of allowing a cash discount on our own publications where the sale amounts to less than \$35.00.

On August 28, 1935, J. C. Cahill of Callaghan & Company wrote John T. Bender of respondent, Matthew Bender and Company, Inc., stating:

In the matter of a return to the Association, I question its advisability at this time. It is our aim to cooperate with the Association and its policies except in so far as we find those policies in conflict with what we believe our own best interest. Thus far the only conflict that I know of is on the matter of discounts on purchases of \$35.00 or more. This limitation obviously was imposed by the subscription book houses for their benefit. I honestly feel that we can cooperate more effectively outside the Association than within it although I greatly miss the social feature.

On September 9, 1937, J. C. Cahill of Callaghan & Company wrote Arthur Duhig of Little, Brown and Company, stating that Mr. Cudahy thought it better not to rejoin the respondent Association and mentioned the fact that the Federal Trade Commission was checking up on the Association, and further stated:

Under these circumstances don't you think it would be better if we were outside of the Association so that you could say that the practices followed by the Association were not the result of an agreement but were the result of common business practices in the trade, and then point to this Company which is not a member of the Association and yet adopts the same practices.

In view of the above, and also in view of other activities of the respondent, Callaghan & Company, as appears from the record and the participation of said respondent through the instrumentality of John Byrne and Company, the Commission finds that respondent, Callaghan & Company, entered into the various agreements with the other respondent members as herein found, and participated in all the acts and practices described herein.

PAR. 16. It is contended by respondent, The Frank Shepard Company, that since it does not sell any of its publications to or through the respondent members and does not sell any publications of the respondent members, it has not entered into or participated in any of the agreements charged in the complaint. This respondent has at all times been a member of the respondent Association since its organization and has taken an active interest in all of the activities of the Association and has attended all the meetings of the Association except the original meeting held on September 25, 1923. In addition, the president of said respondent, W. G. Packard, was a member of the executive committee from September 1931 to September 1933 and from September 1934 to September 1935. He served as vice president of respondent Association from September 1933 to September 1934 and was president of respondent Associ-

ation for the period from September 1935 to September 1936. In addition, said W. G. Packard acted as a member of the code committee of respondent Association, having been appointed to this committee on September 14, 1933.

As a member of the code committee said W. G. Packard was active in outlining and establishing the plan of discounts and bids to the Federal Government on the part of the Association and which were adopted and followed by the members of the Association, and in addition thereto, as president of the Association, took an active interest in bringing members of the Association who had departed from the rules and regulations of the Association with reference to making bids to the Federal Government back into line. In fact, the cash-discount formula was reduced from \$40 to \$35 at the instance of this respondent so that it might allow cash discount on its publication without violating the rules of respondent Association with reference to cash discounts.

The Commission finds that the respondent, The Frank Shepard Company, through its participation in the affairs of respondent Association, and through the participation of its president, W. G. Packard, in the affairs of the Association, and in the agreements entered into among the respondent members, did, itself, participate in the agreements and the acts and practices herein described.

PAR. 17. The aforesaid understandings, agreements, combinations, and conspiracies and the things done thereunder and pursuant thereto and in furtherance thereof as hereinabove found, have had, and do have, the capacity, tendency, and effect of substantially reducing, lessening, hindering, and restraining competition in the sale and distribution of law books and related legal publications between and among respondent members and between and among respondent members and other firms, partnerships, corporations, and individuals in the same or similar lines of business, in commerce among and between the various States of the United States and in the District of Columbia; of maintaining in existence arbitrary discounts and terms and conditions of sale for respondents' publications; of substantially enhancing the cost of such publications and products to the purchasing public, and of making it more difficult for lawyers and other members of the purchasing public to acquire, obtain, and own law books and related legal publications; of increasing the cost of establishing and maintaining law libraries; of increasing the cost to the Federal Government and to other public agencies of establishing and maintaining law libraries; of providing those having dominant positions in the industry with an effective means of control over those less favorably situated; and of unduly and unlawfully restricting and restraining interstate trade and commerce in law books and related legal publications between, among, and in the several States of the United States and in the District of Columbia.

CONCLUSION

The aforesaid acts and practices of the respondents, as herein found, are all to the prejudice of the public and have a tendency to and have actually hindered, lessened, restricted, restrained, and eliminated competition in the sale and distribution of law books and related legal publications in commerce as "commerce" is defined in the Federal Trade Commission Act; have placed in respondents the power to control and

enhance prices; and constitute unfair acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

MODIFIED ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission; the answers of the respondents; a stipulation as to the facts and a supplemental stipulation as to the facts entered into between W. T. Kelley, Chief Counsel for the Federal Trade Commission, and the following corporate respondents: The W. H. Anderson Company, Baker, Voorhis and Company, Bancroft-Whitney Company, Matthew Bender and Company, Inc., Bender-Moss Company, Clark Boardman Company, Ltd., Bobbs-Merrill Company, John Byrne and Company, Dennis and Company, Inc., The Harrison Company, The Lawyers Co-Operative Publishing Company, Little, Brown and Company, The Michie Company, National Law Book Company, Public Utilities Reports, Inc., Soney and Sage Company, Thomas Law Book Company, Williamson Law Book Company, and Fallon Law Book Company, which stipulations provide, among other things, that the Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon, and enter its order disposing of the proceeding without the presentation of further testimony, argument, filing of briefs, or other intervening procedure; and also upon testimony and other evidence taken in support of the allegations of said complaint and in opposition thereto as to the respondents, American Association of Law Book Publishers, an unincorporated association, and its officers James R. Spillane, president, Clifford W. Mueller, vice president, Richard Reiner, treasurer, and R. Walter White, secretary, and The American Law Book Company, George T. Bisel, an individual, trading as George T. Bisel Company, The Frank Shepard Company, Burdette Smith Company, Edward Thompson Company, Vernon Law Book Company, Washington Law Book Company, West Publishing Company, and Callaghan & Company, before a trial examiner of the Commission theretofore duly designated by it; report of the trial examiner upon the evidence and exceptions filed thereto; briefs in support of the complaint and in opposition thereto; and oral argument of counsel; and the Commission having made and entered its findings as to the facts, conclusion, and order to cease and desist April 27, 1944, thereafter, upon request by counsel for certain of the respondents, the Commission reconsidered the order to cease and desist heretofore entered and being of the opinion that a modified order to cease and desist should be issued in said cause and having duly considered the record and being now fully advised in the premises issues this its modified order to cease and desist.

It is ordered, That the respondents, American Association of Law Book Publishers, an unincorporated association; The American Law Book Company, a corporation; The W. H. Anderson Company, a corporation; Baker, Voorhis and Company, a corporation; Bancroft-Whitney Company, a corporation; Matthew Bender and Company, Inc., a corporation; Bender-Moss Company, a corporation; Clark Boardman Company, Ltd., a corporation; Bobbs-Merrill Company, a corporation; John Byrne and Company, a corporation; Dennis and Company, Inc., a corporation;

The Harrison Company, a corporation; The Lawyers Co-Operative Publishing Company, a corporation; Little, Brown and Company, a corporation; The Michie Company, a corporation; National Law Book Company, a corporation; Public Utilities Reports, Inc., a corporation; The Frank Shepard Company, a corporation; Burdette Smith Company, a corporation; Soney and Sage Company, a corporation; Thomas Law Book Company, a corporation; Edward Thompson Company, a corporation; Vernon Law Book Company, a corporation; Washington Law Book Company, a corporation; West Publishing Company, a corporation; Williamson Law Book Company, a corporation; Callaghan & Company, a corporation; and Fallon Law Book Company, a corporation, and their respective officers, agents, representatives, and employees, in connection with the offering for sale, sale, and distribution of law books and related legal publications 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, or directing, instigating, or cooperating in, any planned common course of action, mutual agreement, understanding, 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. Establishing, fixing, or maintaining discounts, terms, or conditions of sale for law books and related legal publications or adhering to or promising to adhere to the discounts, terms, or conditions of sale so fixed.

2. Maintaining or adhering to the selling price, terms, and conditions of sale of law books and related publications fixed and established by the respondent who publishes such books.

3. Holding or participating in any meeting, discussion, or exchange of information among themselves or under the auspices of the respondent, American Association of Law Book Publishers, or any other medium or agency concerning proposed or future discounts, terms, or conditions of sale or concerning bids and price quotations in advance of the submission of such bids or price quotations to purchasing officials of the Federal Government or to awarding authorities of other governmental units or subdivisions or to any buyer of law books and related legal publications.

4. Arriving at the amount of any bid or the discount, terms, or conditions of sale to be submitted to purchasing officials of the Federal Government, to awarding authorities of other governmental units or subdivisions, or to any buyer of law books and related legal publications through agreement, understanding, or collusion with other bidders.

5. Establishing, fixing, or maintaining the rates of allowances to be made, used, and applied on books and other publications received in trade, or fixing and maintaining the prices, terms, or conditions of sale governing the resale of such law books and related legal publications taken in trade.

6. Jointly or cooperatively inducing or promoting adherence to, or attempting to induce or promote adherence to, agreements and understandings relative to the sale and distribution of law books and related legal publications by interchange of correspondence, by personal contact with one another individually or in groups, or by policing the bids or sales transactions of respondent members through the respondent Association or otherwise.

7. Employing or utilizing any of the actual practices specifically prohibited herein as a means or instrumentality of otherwise restricting, restraining, or eliminating competition in the sale and distribution of law books and related legal publications.

8. Employing or utilizing American Association of Law Book Publishers or any other medium or central agency as an instrument, vehicle, or aid in performing or doing any of the acts and practices prohibited by this order.

It is further ordered, That nothing herein contained shall be construed as prohibiting a parent corporation from directing the prices or terms at which any of its subsidiary corporations shall sell any law book or related legal publication published by the parent corporation or by any of its subsidiaries when such prices or terms have been arrived at by the parent corporation acting separately and independently of any competitor of the parent corporation or of any of its subsidiary corporations.

It is further ordered, That nothing in this order is to be construed as prohibiting any of said corporate respondents from entering into such contracts or agreements relating to the maintenance of resale prices as are not prohibited by the provisions of an act entitled, "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (the Sherman Act), as amended.

It is further ordered, That the complaint herein be, and it hereby is, dismissed as to George T. Bisel, an individual, trading as George T. Bisel Company.

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

IN THE MATTER OF

ACME ASBESTOS COVERING AND FLOORING COMPANY,
ET AL.

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

Docket 4613. Complaint, Dec. 27, 1941¹—Decision, Apr. 27, 1944

Where a number of corporations, engaged as manufacturers or as winders or converters of insulating materials and in interstate sale and distribution thereof, in competition with one another to the extent that competition had not been restrained as below set forth, and including the volume producers and more important members of the industry, which—characterized before the National Recovery Administration by a few practices in general use, such as zoning, customer classification, freight equalization, and the use of a standard price list—operated, during said period, under a code which provided for the filing of prices and adherence thereto until the filing of others, and under a code merchandising plan, which—continued after the Act's invalidation and until the adoption of the program below described—regulated in great detail for virtually the entire country, numerous trade practices such as classification of buyers and discounts, units of sale, use of standard list prices, standardization of contracts, freight allowances and zones, etc., and fitted into a detailed written document the prior practices before referred to, supplemented by numerous other provisions;

Acting in cooperation with an individual who had been secretary of a trade association of the industry prior to being made manager for the division concerned in the industry's code;

Combined and conspired to control and stabilize prices, terms and conditions of sale, and trade practices and conditions pertaining thereto, and to carry on and perfect the control over such matters accomplished under said N.R.A. code, through the establishment of a patent licensing and merchandising plan which was in general a reestablishment, with additions, of that created under N.R.A., substituting direct price fixing for price reporting, stopping some loopholes for competition which existed in the other, and providing more direct and effective means of enforcement, and under which the aforesaid individual (1) was given exclusive license under a patent of one of the members, for use in the manufacture of asbestos paper and insulating fabrics, along with the exclusive right to grant non-exclusive sub-licenses to others, and (2) proceeded to sub-license the various concerns herein involved, under uniform terms and conditions, as considered, evolved, changed and agreed upon by them from time to time, and under provisions which, among other things, provided for inspection of sub-licensee's books, prohibited the sub-licensees from selling at lower prices or upon more favorable terms or conditions of sale than specified by the licensor, and provided that liquidated damages of 50 per cent of the proper net selling price be paid to the licensor on any sales of licensed materials in violation of the licensor's schedule; and thereby—

- (1) Established and maintained uniform prices, discounts and terms and conditions in the sale of the insulating materials herein involved—including asbestos paper and rule board, wool felt and sponge felt paper, corrugated asbestos paper, pipe coverings, boiler jackets and sheets and blocks, and accessories usually sold therewith—

¹ Amended.