

IN THE MATTER OF
RIGID STEEL CONDUIT ASSOCIATION, ET AL.

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

Docket 4452. Complaint, Jan. 25, 1941—Decision, June 6, 1944

In a basing-point delivered-price formula such as employed in the rigid steel conduit industry, under which the matching of price quotations by all sellers at any given destination is achieved through use of a combination of the same base price and uniform freight delivery factors and each concern increases or decreases its mill net, or true price, so as to produce identical delivered prices or quotations at any point, such matching of prices may not correctly be characterized as "meeting competition." The resulting systematic price variations do not represent competition in the ordinary meaning of the term, each participant consciously intending, in the use of such formula, that no attempt shall be made to exclude any seller from the natural freight advantage territory of another and, in effect, inviting others to share the available business in his natural market in return for a reciprocal invitation.

A basing-point delivered-price formula, under which the different sellers make use of a combination of the same base price and uniform freight delivery charge and each increases or decreases his mill net or true price so as to produce identical delivered prices to any purchaser at any point, is recognized by economists as a controlled or monopolistic price system, and does not in its operation or results conform to the economic principles which indicate the existence of free or effective competition. Ready response to changing conditions of supply and demand as contrasted with operation of the system concerned which produced a high degree of rigidity and under which at times prices even moved contrary to what would be expected in a market amenable to the law of supply and demand, is one of the characteristics of effective competition. The existence of such competition is also inconsistent with the condition of mutual dumping produced by the use of the basing point pricing formula, as is the systematic pattern of discrimination among purchasers resulting therefrom, and the absence of such competition is indicated by the use of a formula which produces matched delivered price quotations.

The economic principle that in a truly competitive market the unit price of a homogenous commodity tends to become approximately uniform does not serve to explain the results of the use of a delivered-price basing-point system under which, through use by all sellers of a combination of base price and uniform freight delivery charges, there were produced identical delivered prices or quotations at each point. The tendency toward price uniformity in a free market results from the fact that in the purchase and sale of units of a homogenous commodity in such a market, sellers are indifferent as to whose money they get for their commodity, as are buyers as to whose commodity they thus acquire. The systematic differences in mill nets accepted by sellers making use of such a basing-point delivered-price system, under which each seller increases or decreases his mill nets or true prices to arrive at the matched delivered prices, violates said economic principle. It is also true, furthermore, that the law of uniform price is limited in its application to prices which eventuate from actual sales and has no application to, and cannot explain, uniformity of price quotations.

Where eighteen corporations, manufacturers and sellers of all the rigid steel conduit produced in the United States, in competition with one another to the extent that it had not been lessened through the acts and practices below described; acting with and through the association of which substantially all were members, a rate expert, a management corporation and its president, and various individuals and officers concerned—

With intent of limiting and restraining the normal forces of competition by means of a formula system of pricing, which enabled all sellers to quote the same price to a prospective purchaser at any location, and under which it was possible to maintain a price level high enough to permit each seller to sell in the natural territories of other sellers, and higher profits were offered to the favorably located seller on sales made in his natural territory in return for his refraining from pressing his advantage—

- (a) Entered into, cooperated in, and carried out a planned common course of action and understanding, agreement, combination and conspiracy, pursuant to which they—
- (1) Quoted and sold rigid steel conduit at prices determined in accordance with the basing-point delivered-price system long employed by them, and under which sellers, through use of the same base prices and uniform delivery charge factors, were enabled to quote identical delivered prices to any given destination and purchaser; issuing price cards from time to time, which were identical in all material particulars, and cooperatively determining upon and putting into operation alterations and simplifications;
- (2) Published and distributed, first through their said association, and later directly through a Pittsburgh traffic and rate expert whom they had theretofore employed for such compilation and service, and who advised and cooperated with the association's transportation committee and executive secretary, freight rate bulletins and supplements, which were not intended or adapted for use by purchasers as bona fide information for shipping purposes, but to supply a common factor for inclusion in price of conduit delivered at various destinations under aforesaid pricing formula; and made use, as aforesaid, of said bulletins and supplements or copies thereof; and

Where the aforesaid association, following employment of a management corporation and its president, who undertook the formulation and execution of plans for controlling certain conditions which tended to interfere with and disturb the operation of said basing-point delivered-price system; with the cooperation and assistance of wholesalers involved and their association—

- (b) Prepared and adopted uniform consignment contracts, to standardize the price structure in the industry and avoid the disturbing influence resulting from the action of distributive agents who sold at prices which did not accurately reflect the basing-point formula, in competition with wholesalers—theretofore free to quote their own prices; and to insure maintenance of formula prices under such contracts, exerted various forms of pressure upon the sellers and wholesalers and threatened cancellation of agreements with price cutters;
- (c) With a view to correcting irregular price conditions which had resulted from the floating supply of conduit left in the hands of contractors due to duplicate contracts and excessive amounts of conduit provided in contracts, and following complaint and recommendations of the conduit committee of the wholesalers association, prepared and brought about the use of a uniform specific building contract under which contractors were to be supplied conduit for specific jobs only, and established means for investigating and controlling the use of such contracts through aforesaid service corporation, and took action through use of forms and

exchange of information with those concerned so to do; whereby cancellations and partial cancellations of such contracts for large quantities of conduit were brought about;

- (d) Made trade discounts the subject of collective consideration by conduit sellers and wholesalers, following which identical trade discounts were put in effect by the various sellers, which in general outline followed a plan reported as meeting the consensus of opinion of the manufacturers or sellers, and the jobbing concerns and their associations; and

Where said sellers, or member sellers,

- (e) Supplemented the restraining effects of their general practices affecting price by direct action through exchange of information and other activity between themselves and their officers, agents and wholesalers, directed to maintenance of the desired price structure and correction or avoidance of departures therefrom;
- (f) Engaged, through the medium of their association, in collective activity directed to the classification of customers, and to determining whether or not particular concerns were to be treated as wholesalers; exchanged lists of presumed wholesalers or jobbers and invited comment thereon; and in their aforesaid uniform consignment contracts, included provisions whereby the distributive agent represented that he (1) conducted a warehouse suitable for carrying a stock of conduit and accessories in sufficient volume and range of sizes and types adequately to serve the territory involved, (2) regularly employed a force of salesmen, and (3) did not sell, as a contractor or otherwise, in significant amounts direct to the general public or individual ultimate consumers; reflecting thereby the more important qualifications required by the wholesalers' association, membership lists of which were available to the conduit sellers on request;
- (g) Discontinued, with the aid and cooperation of said wholesalers association, the maintenance by the sellers—except on the Pacific coast—of warehouse stocks in many large cities, which had been a source of dissatisfaction to large wholesalers, able to buy in carlot quantities at the lower carload freight rate, but who secured no advantage thereby in their competition with small wholesalers, who received on their smaller purchases from the warehouses the benefit of carload rates, and which had also created competitive difficulties among the conduit sellers; and

Where said rate expert, said organization service corporation and its president, said wholesalers' association, and various members thereof including the most influential in the industry—

- (h) Knowingly advised and cooperated with respect to the accomplishment of the aforesaid purposes, as above indicated;

Capacity, tendency and effect of which combination and conspiracy as above set forth, and acts and practices performed in connection therewith were to restrain and suppress competition in the sale and distribution of rigid steel conduit among the several states, deprive purchasers thereof of the benefits of competition in price, and maintain artificial and monopolistic methods and prices in the sale and distribution of said product; and bring about preparation, maintenance and use of common or uniform delivery charges or "freight adders," customer classifications, discounts, terms and conditions, and distributive and job contracts; control warehouse use; and use of investigations, reports, etc., in, in aid of their price maintenance purpose and program, as hereinabove indicated; and

Where said manufacturers and sellers, severally, and with knowledge that each of the others was simultaneously doing likewise—

- (i) Generally refrained from quoting f.o.b. particular seller's place of production of shipment, or prices independent of and unrelated to delivered price quotations

determined from a basing-point formula, but consistently made use of said basing-point delivered-price formula, under which the Chicago base price was maintained at about \$4.00 per ton above the Pittsburgh base price and through use of which, supplemented by the use of common delivery charge factors and common freight rate books to eliminate price differences which might arise through individual calculation of freight rates, a substantial degree of delivered price identity was brought about; and

- (j) Notwithstanding differences between the actual freight rates from the place of business of each concern and the rates from competitors' places of business, as an incident to the use of their said basing-point delivered-price formula, habitually and systematically demanded and received larger sums for products of equal quality and quantity from customers located at or near their respective places of business than from others farther away, and caused such nearby customers thereby to pay more to each seller for conduit and the more distant customers within a particular basing point area to pay less than would otherwise be the case; and thus deprived nearby customers of price advantages which they would naturally enjoy by reason of their proximity to points of production;

Capacity, tendency and effect of which concurrent use by sellers of said basing-point formula was to restrain competition in price in the sale and distribution of conduit, deprive purchasers of the benefits thereof, unfairly discriminate among purchasers, and create in each of said sellers a dangerous tendency toward a monopolistic control over price of said product:

Held, That said acts and practices constituted unfair methods of competition in commerce.

Systematic investigations made on special forms by an association of manufacturers and sellers of rigid steel conduit, of so-called "closed transactions," to ascertain whether the product was being sold in conformance with a delivered-price basing-point system made use of by such members; which automatically resulted in a uniform quotation and price at any given point to any given purchaser, as carried out, pressed and followed up, in conception and execution amounted in fact to a sophisticated form of price maintenance through united action, by means of which a conduit seller who did not maintain prices and require his distributors so to do was exposed to the collective pressure of his associates, with the effect of tending to prevent departures from the prices established pursuant to the formula; and such investigations could not be said, as contended, to constitute a proper activity necessary to enable sellers to secure information as to the condition of the conduit market.

As respects the use by manufacturers and sellers of rigid steel conduit, of a basing-point delivered-price formula under which the delivered price was a combination of controlling base price plus a uniform freight delivery charge, and through use of which there resulted an identical delivered price or quotation by all sellers to each purchaser at each point: the exact degree of adherence by individual sellers for particular periods of time was immaterial where it was clear that the percentage of adherence was substantial and at times almost complete, and where it also appeared that the record tended to show that departures from card prices were often largely confined to particular and limited areas and did not represent a condition throughout the country.

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

Mr. Everette MacIntyre for the Commission.

Tibbets, Lewis, Lazo & Welch, of New York City, for Herbert S. Blake,

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Paul Weiss, Robert S. Booth, N. Myles Brown, Thomas B. Jordan and C. C. Gregory.

Stewart & Lewis, of Pittsburgh, Pa., for Lawrence R. Quinn, Enamelled Metals Co., Steelduct Co., and along with—

Montgomery & McCracken, of Philadelphia, Pa., for H. S. Walker and Walker Brothers.

Mr. James M. Houston, of Pittsburgh, Pa., for I. A. Bennett, Charles Donley and Frank C. Hodkinson.

Mr. Thomas F. Patton and *Mr. A. J. Gentholtz*, of Cleveland, Ohio, for J. M. Barton, Fretz-Moon Tube Co., Inc., Steel and Tubes, Inc. and Republic Steel Corp.

Sullivan & Cromwell, of New York City, for H. G. Morrow and Spang Chalfant, Inc.

Mr. Gerard Swope, Jr., of Bridgeport, Conn., and *Wright, Gordon, Zachry, Parlin & Cahill*, of New York City (appearing also, in case of latter, for Youngstown Sheet and Tube Co.), for A. E. Newman, General Electric Supply Corp. and General Electric Co., represented also as below set forth.

Cravath, de Gersdorff, Swaine & Wood, of New York City, and *Cravath, Swaine & Moore* (appearing also, in case of latter, for Youngstown Sheet and Tube Co.), of New York City, for General Electric Co.

Blaxter, O'Neill & Houston, of Pittsburgh, Pa., for Central Tube Co.

Pope & Ballard, of Chicago, Ill., and *Pope, Ballard & Loos*, of Washington, D. C., for Clayton Mark & Co.

Ilch & Poskanzer, of Albany, N. Y., for Cohoes Rolling Mill Co.

Campbell, Wick, Houck & Thomas, of Pittsburgh, Pa., for Garland Manufacturing Co. and *Mr. Frank W. Stonecipher*, of Pittsburgh, Pa., for J. R. Patrick and A. G. Holmes, Trustees in Bankruptcy.

Lewis, Rice, Tucker, Allen & Chubb, of St. Louis, Mo., for Laclede Steel Co. and Laclede Tube Co.

Mr. Morton Peyser, of New York City, for Triangle Conduit and Cable Co., Inc. and The M. B. Austin Co.

Monroe, Byrne & Kaye, of New York City, for Clifton Conduit Co.

Breed, Abbott & Morgan, of New York City, for The National Electrical Wholesalers Ass'n, its officers, members of its Conduit Committee and various members of said association.

Mr. Thomas J. Ward, of New York City, for Graybar Electric Co., Inc.

Mr. Harold Smith and *Mr. Job Taylor, 2nd*, of New York City, for Westinghouse Electric Supply 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, corporations and associations named or included by reference in the caption hereof and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of said parties, stating its charges in that respect as follows:

COUNT I

PARAGRAPH 1. Respondent, Rigid Steel Conduit Association, is an unincorporated trade association with its offices and principal place of business located at 17 East 42nd Street, in the city of New York, N. Y. It was formed in 1934 to promote the interests of its members and has since that time included among its membership manufacturers of rigid steel conduit including respondents, Central Tube Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Clayton Mark & Company, Steelduct Company, Walker Brothers, Youngstown Sheet and Tube Company, Cohoes Rolling Mill Company, Laclede Steel Company, Laclede Tube Company, Triangle Conduit and Cable Company, Inc. Said respondent members manufacture substantially all rigid steel conduit produced in the United States. Until about June 1, 1940, the said respondent members made use of the offices and other facilities of said respondent, Rigid Steel Conduit Association, for actively advising, assisting and cooperating with all members of that association and others in the industry in furtherance of the unlawful acts, things, practices and methods hereinafter set forth.

Respondent, Herbert S. Blake, at various times during the six years last past has as its president directed the affairs of the respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y.

Respondent, Lawrence R. Quinn, at various times during the six years last past functioned as treasurer and a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and is vice president of respondent, Enamelled Metals Company, Etna, Pa.

Respondent, Paul Weiss, at various times during the six years last past functioned as assistant treasurer of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y.

Respondent, Robert S. Booth, at various times during the six years last past has functioned as executive secretary of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y. He succeeded one George H. Sicard, who served as executive secretary of respondent, Rigid Steel Conduit Association, from the time of its formation in 1934 for a period of approximately two years.

Respondent, I. A. Bennett, is chairman of the board of directors of the respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and vice president of respondent, National Electric Products Corporation, Fulton Building, Pittsburgh, Pa.

Respondent, J. M. Barton, is a member of the board of directors of the respondent, Rigid Steel Conduit Association, and president of respondent, Fretz-Moon Tube Company, Butler, Pa.

Respondent, H. G. Morrow, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and vice president of respondent, Central Tube Company, First National Bank Building, in the city of Pittsburgh, Pa.

Respondent, H. S. Walker, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and president of respondent, Walker Brothers, Conshohocken, Pa.

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Respondent, A. E. Newman, is a member of the board of directors of respondent, Rigid Steel Conduit Association, 17 East 42nd Street, in the city of New York, N. Y., and manager of the Wiring Materials Sales Division of respondent, General Electric Company, and in that capacity also serves respondent, General Electric Supply Corporation, 1285 Boston Avenue, Bridgeport, Conn.

Respondent, Central Tube Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the First National Bank Building, in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Clayton Mark & Company, is a corporation, organized and existing under the laws of the State of Delaware with its principal office and place of business located at 1900 Dempster Street, in the city of Evanston, Ill. It manufactures rigid steel conduit and sells and distributes the same through jobbers and wholesalers throughout the United States.

Respondent, Cohoes Rolling Mill Company, is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located in the city of Cohoes, N. Y. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Enamelled Metals Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Etna, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Fretz-Moon Tube Company, Inc., is a corporation, organized, and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Butler, Pa. It is 50% owned by respondent, Republic Steel Corporation, and is engaged in the manufacture of rigid steel conduit which it causes to be sold and distributed through its sales agent, the respondent, Steel and Tubes, Inc., 200 East 131st Street, in the city of Cleveland, Ohio, which is 100% owned by respondent, Republic Steel Corporation.

Respondent, Garland Manufacturing Company, is a corporation, organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, General Electric Company, is a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located on River Road, in the city of Schenectady, N. Y. It manufactures conduit and sells and distributes the same to jobbers and others throughout the United States directly and through its subsidiary, the respondent, General Electric Supply Corporation, 1285 Boston Avenue, in the city of Bridgeport, Conn.

Respondent, Laclede Steel Company, and respondent, Laclede Tube Company, are corporations organized and existing under the laws of the State of Missouri with their principal offices and places of business located in the Arcade Building, in the city of St. Louis, Mo. The respondent, Laclede Steel Company, several years ago acquired the assets, ownership

and business of the Laclede Tube Company, a Delaware corporation, which had maintained membership in respondent, Rigid Steel Conduit Association, and which was engaged in conduit manufacture and sale to jobbers and others throughout the United States, prior to 1938. The respondent, Laclede Steel Company, has also maintained membership in said respondent, Rigid Steel Conduit Association. At that time respondent, Laclede Steel Company, dissolved the Laclede Tube Company, a Delaware corporation, and immediately formed as a nominal corporation the respondent, Laclede Tube Company, a Missouri corporation, for the purpose of preserving its corporate name.

Respondent, National Electric Products Corporation, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Fulton Building, in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

The respondent, Steelduct Company, is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Republic Steel Building, 335 Market Street in the city of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, Triangle Conduit and Cable Company, Inc., is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located at Horace Harding and Queens Boulevards, Elmhurst, N. Y. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent, Walker Brothers, is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the city of Conshohocken, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent, Youngstown Sheet and Tube Company, is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Stambaugh Building in the city of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

The respondents, Spang Chalfant, Inc., Steel and Tubes, Inc., the M. B. Austin Company, and George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as Clifton Conduit Company, have cooperated with and assisted the members of the said respondent, Rigid Steel Conduit Association, in using and otherwise furthering the unlawful acts, things, practices and methods hereinafter set forth.

Respondent, Spang Chalfant, Inc., is a corporation, organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Grant Building in the city of Pittsburgh, Pa. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

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Respondent, Steel and Tubes, Inc., is a corporation, organized and existing under the laws of the State of Ohio with its principal office and place of business located at 200 East 131st Street in the city of Cleveland, Ohio. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States conduit manufactured by the respondent, Fretz-Moon Tube Company, Inc.

Respondent, The M. B. Austin Company, is a corporation, organized and existing under the laws of the State of Illinois with its office and principal place of business located at 108 South Desplaines Street, in the city of Chicago, Ill. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States rigid steel conduit which it causes to be manufactured for it by the respondent, Triangle Conduit and Cable Company, Inc.

Respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, are company partners, operating and trading under the name and style of Clifton Conduit Company, with their offices and principal place of business located at 75 Montgomery Street, Jersey City, N. J. They sell and distribute to wholesalers, jobbers, and others throughout the United States rigid steel conduit which they cause to be manufactured for them by the respondent, General Electric Company.

Respondent, General Electric Supply Corporation, is a corporation, organized and existing under the laws of the State of Delaware with its offices and principal place of business located (in so far as such business relates to conduit manufacture and sale) at 1285 Boston Avenue, in the city of Bridgeport, Conn. It assists and cooperates with its parent corporation, the respondent, General Electric Company, in promoting and furthering the unlawful things, practices and methods hereinafter set forth.

Respondent, Republic Steel Corporation, is a corporation, organized and existing under the laws of the State of New Jersey with its office and principal place of business located in the Republic Steel Building, 335 Market Street, in the city of Youngstown, Ohio. It owns 50 per cent of the capital stock in the respondent, Fretz-Moon Tube Company, Inc., and all of the outstanding capital stock in respondent, Steel and Tubes, Inc., and controls, assists and cooperates in the activities of said respondent, Steel and Tubes, Inc. Said respondent, Republic Steel Corporation, in that manner and otherwise, cooperates with the respondents in promoting and furthering the unlawful acts, things, practices and methods hereinafter set forth.

The respondents, Central Tube Company, Clayton Mark & Company, Cohoes Rolling Mill Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Laclede Steel Company, Laclede Tube Company, National Electric Products Corporation, Steel-duct Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Youngstown, Sheet and Tube Company, Spang Chalfant, Inc., Steel and Tubes, Inc., Republic Steel Corporation, The M. B. Austin Company, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as the Clifton Conduit Company, more particularly named and described in the immediately preceding subparagraphs in this paragraph 1 will for the sake of brevity and convenience hereinafter be referred to collectively merely as respondent "conduit sellers."

Respondent, Charles Donley, has during the six years last past served as adviser to and traffic manager for shippers and their trade associations including respondent, Rigid Steel Conduit Association, and respondent members thereof in connection with preparation and distribution of compilations of freight factors or "adders" for use in calculating delivered price quotations. His office and principal place of business is located in the Dravo Building in the city of Pittsburgh, Pa.

Respondent, Frank C. Hodkinson, during the six years last past has served as a member of committees of the respondent, Rigid Steel Conduit Association, and also attended and participated in numerous meetings of the members of the Rigid Steel Conduit Association as a representative of the American Circular Loom Company, 205 East 42nd Street in the city of New York, N. Y., a wholly owned subsidiary of the respondent, National Electric Products Corporation, the present address of which is Fulton Building, in the city of Pittsburgh, Pa.

The aforesaid respondent "conduit sellers" have for a substantial period of time during the six years last past engaged in the manufacture of rigid steel conduit or caused it to be manufactured and shipped for them from the following locations: Central Tube Company, Pittsburgh, Pa.; Clayton Mark & Company, Evanston, Ill.; Spang Chalfant, Inc., Pittsburgh, Pa.; Cohoes Rolling Mill Company, Cohoes, N. Y.; Enamelled Metals Company, Etna, Pa.; Fretz-Moon Tube Company, Inc., Butler, Pa.; Garland Manufacturing Company, West Pittsburgh (Lawrence County), Pa.; General Electric Company, New Kensington, Pa.; General Electric Supply Corporation, New Kensington, Pa.; Clifton Conduit Company, New Kensington, Pa.; Laclede Steel Company, St. Louis, Mo.; Laclede Tube Company, St. Louis, Mo.; National Electric Products Corporation, Pittsburgh, Pa.; the Steelduct Company, Youngstown, Ohio; Triangle Conduit and Cable Company, Inc., Moundsville, W. Va.; The M. B. Austin Company, Moundsville, W. Va.; Walker Brothers, Conshohocken, Pa.; Steel and Tubes, Inc., Butler, Pa.; Youngstown Sheet and Tube Company, Cleveland, Ohio, and Youngstown, Ohio, to their respective customers located in the States of the United States other than the States of origin of such shipments. They sell and distribute principally through jobbers or wholesalers who buy and sell electrical supplies including conduit outright and on a consignment basis. Many such wholesalers or jobbers to whom they sell are members of respondent The National Electrical Wholesalers Association. Such wholesalers resell principally to electrical contractors and to government agencies. Each of said respondent "conduit sellers" has been, and is, in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among the various States of the United States and in the District of Columbia, of rigid steel conduit except in so far as said competition has been hindered, lessened, restricted or forestalled, by the understanding, agreement, combination or conspiracy and acts, things, practices and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

To the extent that they act collusively and collectively, or engaged in monopolistic practices in the production, price, or sale of rigid steel conduit respondent "conduit sellers" and respondent "conduit wholesalers" have been and are in a position to dominate and manipulate the price quotations which are made to unorganized purchasers of rigid steel conduit.

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PAR. 2. Respondent, Organization Service Corporation, is a corporation, organized and existing under the laws of the State of New York with its principal office and place of business located at 74 Trinity Place in the city of New York, N. Y. It has served as organizer, manager, and director of and adviser to various trade associations including the respondent, Rigid Steel Conduit Association, and its members at various times during the six years last past.

Respondent, Herbert S. Blake, is president of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Respondent, Herbert S. Blake, Jr., is vice president of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Respondent, N. Myles Brown, is vice president of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, Thomas B. Jordan, is vice president of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, Paul Weiss, is treasurer of respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place, in the city of New York, N. Y.

Respondent, C. C. Gregory, is secretary of the respondent, Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the city of New York, N. Y.

Said respondent, Organization Service Corporation, is not engaged in commerce, but it and its officers, employees and agents have during the six years last past aided, assisted, advised, managed, directed, and otherwise cooperated with respondent "conduit sellers" in carrying out the alleged unlawful acts, methods, policies, rules, and practices as hereinafter set forth in such manner as to directly and substantially hinder, suppress and lessen competition among such respondent "conduit sellers" who are engaged in commerce.

PAR. 3. Respondent, The National Electrical Wholesalers Association, with principal place of business and offices located at 165 Broadway in the city of New York, N. Y., is an unincorporated trade association of numerous wholesalers and jobbers, who are located in the various States of the United States and who are engaged in the purchase and wholesale distribution of electrical supplies in interstate commerce, including rigid steel conduit.

Said respondent, The National Electrical Wholesalers Association, was organized for the ostensible purpose of promoting the interests of its members through the furthering of a closer relationship between and among them.

The names and addresses of the officers and other leaders of the said respondent, National Electrical Wholesalers Association, who, as individuals, as such officers, and as representatives of its membership are named as respondents herein, are: J. G. Johannesen, Chairman, % General Electric Supply Corporation, 585 Hudson Street, New York, N. Y.; Alfred Byers, Secretary, % National Electrical Wholesalers Association, 165 Broadway, New York, N. Y.; L. E. Latham, Chairman of the Conduit Committee of National Electrical Wholesalers Association, % E. B. Latham & Company, 250 Fourth Avenue, New York, N. Y.; and D. L.

Fife, % Fife Electric Supply Company, 541 E. Larned Street, Detroit, Mich.; W. S. Blue, % Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.; W. J. Drury, % Graybar Electric Company, Inc.; 180 Varick Street, New York, N. Y.; A. H. Kahn, % General Electric Supply Corporation, 350 N. Ogden Avenue, Chicago, Ill.; C. H. McCullough, % W. T. McCullough Electric Company, 317 First Avenue, Pittsburgh, Pa.; H. E. Rasmussen, % Peerless Electric Supply Company, 122 South Meridian Street, Indianapolis, Ind.; H. O. Smith, % The Hardware and Supply Company, 475 High Street, Akron, Ohio; F. R. Eiseman, % Revere Electric Company, 757 West Jackson Blvd., Chicago, Ill.; W. R. Kiefer, % Kiefer Electrical Supply Company, 318 South Washington Street, Peoria, Ill.; H. B. Tompkins, % Westinghouse Electric Supply Company, 50 Varick Street, New York, N. Y.; A. L. Hallstrom, % Graybar Electric Company, Inc., 190 Cherry Street, Philadelphia, Pa.; A. S. Riechman, % F. D. Lawrence Electric Company, 217 West Fourth Street, Cincinnati, Ohio; D. M. Smith, % The C. S. Mersick and Company, 278 State Street, New Haven, Conn., members of the Conduit Committee of the National Electrical Wholesalers Association.

The membership of said respondent, The National Electrical Wholesalers Association, constitutes a class so numerous and changing as to make it impracticable to name as respondents each and all of such members without manifest delay, inconvenience and much expense. Therefore, the Commission names and includes as respondents in this proceeding the following:

1. General Electric Supply Corporation, a corporation, organized and existing under the laws of the State of Delaware with its office and principal place of business located (insofar as such business relates to jobber distribution of "conduit") at 585 Hudson Street in the city of New York, N. Y.

2. E. B. Latham & Company, a corporation, organized and existing under the laws of the State of New York with its office and principal place of business located at 250 Fourth Avenue in the city of New York, N. Y.

3. Fife Electric Supply Company, with office and principal place of business located at 541 E. Larned Street in the city of Detroit, Mich.

4. Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.

5. Graybar Electric Company, Inc., a corporation, organized and existing under the laws of the State of New York with office and principal place of business located at 420 Lexington Avenue in the city of New York, N. Y.

6. W. T. McCullough Electric Company, with offices and principal place of business located at 317 First Avenue in the city of Pittsburgh, Pa.

7. Peerless Electric Supply Company, with office and principal place of business located at 122 South Meridian Street in the city of Indianapolis, Ind.

8. The Hardware and Supply Company, with office and principal place of business located at 475 South High Street in the city of Akron, Ohio.

9. Revere Electric Company, a corporation, organized and existing under the laws of the State of Illinois with office and principal place of business located at 757 W. Jackson Street in the city of Chicago, Ill.

10. Kiefer Electrical Supply Company, a corporation, organized and existing under the laws of the State of Illinois with office and principal

place of business located at 318 South Washington Street in the city of Peoria, Ill.

11. Westinghouse Electric Supply Company, a corporation, organized and existing under the laws of the State of Delaware with office and principal place of business located at 150 Varick Street in the city of New York, N. Y.

12. F. D. Lawrence Electric Company, with office and principal place of business located at 217 West Fourth Street in the city of Cincinnati, Ohio.

13. The C. S. Mersick and Company, with office and principal place of business located at 278 State Street in the city of New Haven, Conn.

all of whom are hereinafter referred to as "respondent conduit wholesalers," individually and as representatives of all the members of respondent, National Electrical Wholesalers Association.

Each of said respondent "conduit wholesalers" has been, and is in competition with one or more of the other respondent "conduit wholesalers" in making or seeking to make sales of rigid steel conduit in commerce between and among the various States of the United States and in the District of Columbia, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

PAR. 4. Rigid steel conduit (hereinafter referred to merely as "conduit") is the commodity with which this proceeding is concerned. It is used as raceways specially constructed for the purpose of pulling in or withdrawing of wires or of cables after the conduit is in place. It is made of milled steel pipe that has been cleaned of scale and rust and been given enamelled, galvanized or metallic corrosion-resistant coatings. The galvanizing or enamelling is for the purpose of producing smooth surfaces so that when it is used as raceways for electric wiring such wiring may be drawn through it with facility and without injury to the wires. It is usually placed in large buildings as they are erected and the electric wiring is later drawn through the "conduit." In recent years, volumes exceeding 125,000 tons annually have been sold, and distributed in the United States by the respondent "conduit sellers."

PAR. 5. For more than six years last past, the respondents, acting between and among themselves, or through and by means of respondent, Rigid Steel Conduit Association, or through and by means of respondents, Organization Service Corporation, Herbert S. Blake, Herbert S. Blake, Jr., Thomas B. Jordan, Paul Weiss, C. C. Gregory, Robert S. Booth, George H. Sicard, Charles Donley, Frank C. Hodgkinson and others, while they and others were acting in their official positions with respondent, Rigid Steel Conduit Association, or through and by means of cooperation with respondents, National Electrical Wholesalers Association, its officers, employees, agents and members or by other means and methods, have entered into, and thereafter engaged in and carried out, and are still engaged in and carrying out, a wrongful and unlawful understanding, agreement, combination and conspiracy, for the purpose and with the effect of substantially restricting, suppressing, eliminating and frustrating actual and potential competition as to price, and otherwise, in the sale and dis-

tribution of "conduit" in trade and commerce between and among the various States of the United States and in the District of Columbia.

PAR. 6. Pursuant to said understanding, agreement, combination and conspiracy, and in furtherance thereof, said respondents, acting in cooperation with each other and others not named herein as respondents, in the manner and by the methods herein set forth, have done and performed, and still do and perform, among other acts, things, practices and methods the following:

1. Agreed to adopt, maintain and use and have adopted, maintained and used a basing point method or system in calculating and quoting prices on "conduit" to dealers, distributors and to certain users thereof, including various governmental agencies.

2. Adopted and continued in effect, by agreement, understanding, and concerted action among themselves, a price-fixing formula for ascertaining amounts or sums to be quoted to prospective purchasers as delivered costs of "conduit" to such prospective purchasers at destinations, whereby delivered price quotations of respondent "conduit sellers" and respondent "conduit wholesalers" have been and are uniform or identical as published to "conduit" users at any given destination by respondent "conduit sellers" and respondent "conduit wholesalers," and in that way have hindered and frustrated buyers and users of "conduit" from securing price quotations on such basis as would permit them to make purchases in disregard of and without relation to the uniform or identical delivered cost quotations presented them by respondent "conduit sellers" and respondent "conduit wholesalers."

3. Agreed to adopt, and have adopted and maintained, a system of delivered price quotations designed to prevent, and which does prevent, reflection of any differences in the cost of freight delivery between the respective places of manufacture of respondent "conduit sellers" and the places of business of the intending purchasers of "conduit" and creation of any advantage or disadvantage to said purchasers in delivery costs which would otherwise result because of different locations of different purchasers and sellers.

4. Agreed to adopt and have adopted and maintained, a plan whereby the United States is divided into so-called Pittsburgh and Chicago basing point areas so that all purchasers within one or the other of those two areas, regardless of the distance of the place of business of said purchaser from the place of origin of shipments of "conduit" made to him or caused to be made to him by respondent "conduit sellers" and respondent "conduit wholesalers" receive at a given point of time uniform or identical delivered cost quotations on "conduit" from all said respondent "conduit sellers" and said respondent "conduit wholesalers."

5. Agreed to adopt and have adopted, maintained and used through the cooperation and with the assistance of respondent, Charles Donley, and otherwise, a cooperative system of preparing, calculating and circulating among themselves a compilation of common freight factors or "adders" from points designated as basing points for pricing purposes to various destinations in the several States of the United States in order to negative differences in the actual freight charges from actual shipping points to said destinations and in order to negative differences in the interpretations and applications of official freight tariffs from the basing points.

6. Agreed to seek and secure and have sought and secured the advice, assistance, cooperation and management of respondent, Organization

Service Corporation, its officers, employees and agents, including respondent, Herbert S. Blake, and others, in formulating, adopting, publishing and using uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements, "protective" contracts covering special jobs and contracts with manufacturers' agents or dealers and other buyers.

7. Agreed to adopt and have adopted, maintained and used uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements "protective" contracts covering special jobs and other contracts with manufacturers' agents, dealers and other buyers.

8. Agreed to seek and secure and have sought and secured the advice, assistance and cooperation of respondent, Organization Service Corporation, its officers, employees, and agents, including respondent Herbert S. Blake, and others in developing, adopting and using a method or system of espionage or investigation of "protective" special building contracts and other forms of contracts.

9. Agreed to adopt, maintain and use and have adopted, maintained and used a method or system of espionage or investigation of "protective" special building contracts and other forms of contracts.

10. Agreed to seek and have sought and secured the advice, cooperation and assistance of respondent, Organization Service Corporation, its officers, employees and agents, including respondent, Herbert S. Blake and others in the preparation, publication and use of uniform price quotation sheets and uniform business practices.

11. Agreed to adopt, maintain and use and have adopted, maintained and used uniform price quotation sheets and uniform business practices.

12. Agreed to adhere to their announced prices, terms and conditions of sale and have for substantial periods of time adhered to such prices, terms and conditions of sale without deviation until other prices, terms and conditions of sale were likewise quoted and published.

13. Agreed and cooperated in defining and have defined what constitutes a "recognized" jobber or dealer and further cooperated and agreed in determining what individuals or firms should be recognized as jobbers or dealers and thereby entitled to purchase "conduit" at prices involving discounts and generally allowed to recognized jobbers and dealers.

14. Agreed to and have circulated lists of "recognized" jobbers and dealers.

15. Agreed to adopt and have adopted and used uniform terms and conditions of sale providing for uniform discounts or other amounts to be allowed their respective dealers, jobbers, wholesalers or "agents."

16. Agreed to act, and do act, concertedly to maintain said agreements.

17. Agreed to waive in some instances to competitors their respective economic and competitive advantages due to location and efficiency in management and operation and to require in other instances that their respective purchasers pay greater sums than other purchasers for equal merchandise or goods in order that respondent "conduit sellers" may conform to the aforesaid agreements.

18. Agreed to require by retaliatory pricing action and otherwise all firms and individuals engaged in the sale and distribution of "conduit" in commerce to conform to respondents' agreements.

19. Agreed to hold, and have held, meetings from time to time under the auspices and supervision of respondent, Organization Service Corpora-

tion, its officers, employees and agents, respondent, Rigid Steel Conduit Association, and respondent, National Electrical Wholesalers Association. During the course of said meetings and at other times respondents, Charles Donley, Organization Service Corporation, Rigid Steel Conduit Association and National Electrical Wholesalers Association, their officers, directors, employees, agents and members cooperated with and assisted the respondent "conduit sellers" their officers, directors, employees and agents and respondents "conduit wholesalers" their officers, employees and agents in furthering and carrying out the unlawful acts, practices and methods herein set forth.

PAR. 7. The acts, things, practices, methods and agreements of the respondents, as hereinbefore alleged, are all to the prejudice of actual and potential competitors of respondent "conduit sellers," respondent "conduit wholesalers" and of the public; have a dangerous tendency to, and have actually hindered, suppressed, eliminated, frustrated and prevented competition in the sale of "conduit" in 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 product; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of said product and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PARAGRAPH 1. Respondents, Central Tube Company; Clayton Mark & Company; Cohoes Rolling Mill Company; Enamelled Metals Company; Fretz-Moon Tube Company, Inc.; Garland Manufacturing Company; General Electric Company; Laclede Steel Company; Laclede Tube Company; National Electric Products Corporation; Steelduct Company; Triangle Conduit and Cable Company, Inc.; Walker Brothers; Youngstown Sheet and Tube Company; General Electric Supply Corporation; Spang Chalfant, Inc.; Steel and Tubes, Inc.; Republic Steel Corporation; The M. B. Austin Company; George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners, trading as Clifton Conduit Company more particularly and fully described in paragraph 1 of Count I hereof (hereinafter for the sake of brevity and convenience referred to collectively merely as respondent "conduit sellers") have for a period of several years last past and do now sell and manufacture, or cause to be manufactured and shipped for them rigid steel conduit (more particularly and fully described in paragraph 4 of Count I hereof and hereinafter referred to merely as "conduit") from the following locations: Pittsburgh, Pa.; Evanston, Ill.; Cohoes, N. Y., Etna, Pa.; Butler, Pa.; West Pittsburgh, Pa.; St. Louis, Mo.; Youngstown, Ohio; Cleveland, Ohio; Moundsville, W. Va., and Conshohocken, Pa., to their respective customers located in the several States of the United States other than the States of origin of such shipments. In the course of such business they are in competition with each other, except to the extent such competition has been hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by the acts, things, practices and methods hereinafter set forth.

PAR. 2. Each said respondent "conduit seller," with knowledge that the other said respondent "conduit sellers" simultaneously do likewise,

generally refrain from quoting f.o.b. its place of production or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Each said respondent "conduit seller," in arriving at the sums or amounts quoted in their respective published price cards or published price sheets, at a given point of time specify that delivered costs to any intending purchaser at his destination shall be the figure resulting from the use of a formula made up of a so-called basing point price, plus freight "adders" or factors specified in supplements to such price cards or sheets and applying from one or more specified basing points, irrespective of whether shipment is to be made or is made from such basing points or some other locations from which other and different freight factors actually apply. Since each respondent "conduit seller" uses the formula to quote delivered prices at a given point of time to customers at a given destination, uniformity in the delivered price quotations of all said respondent "conduit sellers" for such given time and destination is inherent in, and a necessary result of, such method or system of basing-point-delivered-price-quotations.

PAR. 3. Each said respondent "conduit seller" notwithstanding differences between the actual freight rates from its place of business and manufacture and the rates from its competitors' places of business, habitually and systematically demands, charges, accepts and receives as an incident to the aforesaid basing point method of delivered price quotations, larger sums and amounts for products of equal quality and quantity from their respective customers located at or near their respective places of business and manufacture than from other customers located at greater distances, and thereby causes such nearby customers to pay more to each said respondent "conduit seller" for "conduit," and the more distant customers within and without a particular basing point area to pay less, than would otherwise be the case; thus depriving the nearby customers of each said respondent "conduit seller" of price advantages which they would naturally enjoy by reason of their proximity to points of production.

PAR. 4. The acts, practices and methods of each said respondent "conduit seller," as described in paragraph 2 and paragraph 3 of Count II hereof (when so done and used and with the results therein described) are all to the prejudice of the public; have a dangerous tendency to, and have actually, hindered, restrained, lessened, suppressed, frustrated, eliminated and prevented competition in price in the sale of "conduit" in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have unreasonably restrained, such commerce in said product; have a dangerous tendency to create in each of said respondent "conduit sellers" a monopolistic control over price in the sale and distribution of "conduit"; cause substantial unfair and discriminatory treatment among the customers of each said respondent "conduit seller" and therefore constitute unfair methods of competition in commerce 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 provisions of the Federal Trade Commission Act, the Federal Trade Commission on January 25, 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 methods of competi-

tion in commerce in violation of the provisions of said act. After the issuance of said complaint and the filing of respondents' answers thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before an 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 upon the complaint, the answers thereto, testimony and other evidence, report of the trial examiner and exceptions thereto, briefs in support of and in opposition to the complaint, and oral arguments by opposing 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. (a) Respondent, Rigid Steel Conduit Association (hereinafter frequently referred to as RSCA), was an unincorporated voluntary association, the membership of which included the manufacturers of substantially all the rigid steel conduit produced in the United States. It was organized in April 1934 as the immediate successor to the Rigid Steel Conduit Section of the National Electrical Manufacturers Association, the members of which voted to dissolve that section and on the same day organized RSCA. In turn, the Rigid Steel Conduit Section of the National Electrical Manufacturers Association was successor to the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, which was organized about 1915 and which became the National Electrical Manufacturers Association about 1926. RSCA was organized for the stated general purposes of considering matters of common interest in the manufacture and sale of rigid steel conduit, improving methods of distribution, and collecting and distributing information and data of value to the industry. The first step toward the dissolution of RSCA was taken at a meeting on April 19, 1939, the minutes of which recite in part:

* * * on motion, seconded and carried, it was voted to cease all forms of Association activities, except such as are necessary to close up outstanding commitments and obligations, and place the Association in abeyance, subject to its possible revival in the future, should conditions at a later date indicate the possibility of its functioning successfully in keeping with its originally expressed purposes (Comm. Ex. 35-E).

At a meeting on April 16, 1940, a resolution for the dissolution of RSCA was passed, to be effective as of May 31, 1940. From the time of its organization in 1934 until its formal dissolution it maintained its offices in New York City.

(b) Respondent, Herbert S. Blake, an individual, is a lawyer with offices in New York, N. Y., and as president of respondent, Organization Service Corporation, is engaged in the management of the affairs of a number of trade associations. In October 1936, he undertook to aid in and direct the affairs of RSCA, and in March 1937 he became president of RSCA and continued in that office until his resignation in April 1939.

(c) Respondent, Lawrence R. Quinn, an individual, vice president of respondent, Enameled Metals Company, was active in the Interior Con-

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duit Section of the Associated Manufacturers of Electrical Supplies, in the Rigid Conduit Section of the National Electrical Manufacturers Association, and in RSCA, in which at various times he served as treasurer, member of the board of directors, and chairman of the board of directors.

(d) Respondent, Paul Weiss, an individual, treasurer of respondent, Organization Service Corporation, served as assistant treasurer of RSCA from December 1936 until April 1938, and also supervised and carried on statistical work for RSCA.

(e) Respondent, Robert S. Booth, an individual, in the employ of respondent, Organization Service Corporation, served as secretary pro tem of RSCA from December 1936 to January 1938, when he became executive secretary of RSCA and continued in that capacity until April 1939. During his connection, and that of Organization Service Corporation, with RSCA he supervised and carried on many activities for and in behalf of that association.

(f) Respondent, I. A. Bennett, an individual, vice president of respondent, National Electric Products Company, was active in the Rigid Conduit Section of the National Electrical Manufacturers Association and took a leading part in the affairs of RSCA. At various times he served as a member of the board of directors of RSCA and as chairman of such board.

(g) Respondent, James M. Barton, the individual referred to in the complaint as J. M. Barton, president of respondent, Fretz-Moon Tube Company, Inc., was active in and at various times served as a member of the board of directors of RSCA.

(h) Respondent, Harry G. Morrow, the individual referred to in the complaint as H. G. Morrow, formerly vice president of respondent, Central Tube Company, and thereafter connected with respondent, Spang Chalfant, Inc., was active in the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, in the Rigid Conduit Section of the National Electrical Manufacturers Association, and in RSCA. At various times he was a member of the board of directors of RSCA.

(i) Respondent, Hervey S. Walker, the individual referred to in the complaint as H. S. Walker, president of respondent, Walker Brothers, was active in the Rigid Conduit Section of the National Electrical Manufacturers Association and in RSCA. At various times he served as an officer of RSCA and as a member of its board of directors.

(j) Respondent, A. E. Newman, an individual, manager of Wiring Materials Sales of respondent, General Electric Company, was active in the affairs of RSCA. He was elected to the board of directors of that association in January 1938, but after attending at least two board meetings declined to accept the position, and on July 13, 1938, the board of directors accepted his resignation.

(k) Respondent, Central Tube Company (hereinafter frequently referred to as Central Tube), was a corporation, organized under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It was engaged in the manufacture and sale of rigid steel conduit until about February 1940, when its assets were purchased by respondent, Spang Chalfant, Inc., and thereafter its corporate existence was terminated in November 1940. Central Tube was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and a member of RSCA and participated in its affairs throughout the existence of that association.

(l) Respondent, Clayton Mark & Company (hereinafter frequently referred to as Clayton Mark), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in Evanston, Ill. It succeeded the Mark Manufacturing Company, which was purchased by respondent, Youngstown Sheet and Tube Company, in 1923. Clayton Mark discontinued the manufacture of rigid steel conduit about October 1938 and has subsequently sold conduit bearing its own brands which it has secured principally from Youngstown Sheet and Tube Company, and, to a limited extent, from respondents, Enameled Metals Company and Fretz-Moon Tube Company, Inc. The Mark Manufacturing Company was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. Clayton Mark was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and a member of RSCA and participated in its affairs from the organization of that association until its dissolution.

(m) Respondent, Cohoes Rolling Mill Company (hereinafter frequently referred to as Cohoes), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business at Cohoes, N. Y. It is a manufacturer of rigid steel conduit, with a plant capacity of about 800 tons of such conduit per month, and also manufactures other iron and steel products. Its conduit business constitutes but a small part of its total business. About January 1934, Mohawk Tube Company, Inc., successor to Mohawk Conduit Company, was merged with Cohoes. Mohawk Conduit Company was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, to which membership the Mohawk Tube Company succeeded. The latter became a member of RSCA, in which membership it was succeeded by Cohoes. Cohoes resigned from RSCA effective July 31, 1938, but its representatives thereafter continued to attend meetings of that association and to take part in association activities.

(n) Respondent, Enameled Metals Company (hereinafter frequently referred to as Enameled Metals), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Etna, Pa. It manufactures rigid steel conduit from pipe purchased from respondent, Spang Chalfant, Inc., and has a plant capacity of about 3,000 tons of such conduit per month. It was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, thereafter a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(o) Respondent, Fretz-Moon Tube Company, Inc. (hereinafter frequently referred to as Fretz-Moon), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at East Butler, Pa. It manufactures rigid steel conduit and has a plant capacity of about 1,000 tons of such conduit per month. Its conduit is fabricated in part from pipe produced by itself, in part from pipe purchased from respondent, Spang Chalfant, Inc. Its sales of conduit were made exclusively through respondent, Steel and Tubes, Inc., a wholly owned subsidiary of respondent, Republic Steel Corporation, from January 1934 until about September 1939. At that time Republic Steel Corporation, which owned 50 percent of the voting stock of Fretz-Moon, took over the assets of Steel and Tubes, Inc., including the contract between Fretz-Moon and Steel and Tubes, Inc., and thereafter conduit sales were

made by Republic. Fretz-Moon was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and became a member of RSCA. It resigned from RSCA on October 5, 1939, but continued the payment of dues to RSCA and its representatives continued to attend meetings and participate in the affairs of RSCA until the dissolution of that association.

(p) Respondent, Garland Manufacturing Company (hereinafter frequently referred to as Garland), is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It is successor by change of name to Safety-Armorite Company, which in turn was successor by change of name to Safety Conduit Company, under which name this respondent, one of the earliest producers of rigid steel conduit, entered the conduit business about 1897. Garland has a plant capacity of about 1,400 tons of conduit per month. It was reorganized under the bankruptcy laws and since June 1936 has been under the control of trustees and receivers. Robert Garland, formerly president of the company, has been manager for such trustees and receivers. Safety-Armorite Company was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, and Garland was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and of RSCA and participated in the affairs of that association until its dissolution.

(q) Respondent, General Electric Company (hereinafter frequently referred to as General Electric), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in Schenectady, N. Y. Although one of the largest manufacturers of rigid steel conduit, having a plant capacity of about 5,000 tons of conduit per month, that commodity constitutes a very small portion of the total business of General Electric. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and of RSCA. In July 1938, it submitted its resignation to RSCA but continued to participate in the activities of RSCA until approximately the time that association was dissolved.

(r) Respondent, Laclede Steel Company (hereinafter frequently referred to as Laclede Steel), is a corporation, organized and existing under the laws of the State of Missouri, with its principal place of business in St. Louis, Mo. For a number of years preceding 1936 Laclede Steel, which manufactures wire and other steel products, has a wholly owned subsidiary, the Laclede Tube Company (hereinafter frequently referred to as Laclede Tube), a corporation organized under the laws of the State of Delaware, which had a plant capacity of about 200 tons of rigid steel conduit per month. In December 1936, Laclede Steel took over the assets of Laclede Tube and the latter corporation was dissolved. Thereafter, Laclede Steel manufactured, sold, and distributed rigid steel conduit, and in general carried on directly the business previously carried on through its subsidiary, Laclede Tube. Immediately after the dissolution of Laclede Tube, Laclede Steel caused the organization of Laclede Tube Company, a Missouri corporation, for the purpose of preserving that name, but this corporation has not actively engaged in any business since its creation. Laclede Tube was a member of RSCA from January 1935 to June 1936, and although no representatives of either Laclede Steel or Laclede Tube attended meetings of the association, they both participated in carrying on the association activities and Laclede Steel continued to co-

operate with RSCA and its members until that association was dissolved.

(s) Respondent, National Electric Products Corporation (hereinafter frequently referred to as National Electric), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at Ambridge, Pa. Successor by change of name to National Metal Molding Company, it is one of the largest producers of rigid steel conduit, having a plant capacity of about 5,500 tons per month, and is also engaged on a substantial scale in the production and sale of other products. American Circular Loom Company, a Delaware corporation, was a wholly owned subsidiary of National Electric from about 1914 until its dissolution in January 1937. For a substantial portion of this period it manufactured, sold, and distributed rigid steel conduit, and thereafter sold and distributed under its own brand names conduit manufactured for it by National Electric. Certain of its brands have been continued by National Electric to the present time. National Metal Molding Company and American Circular Loom Company were members of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. National Electric and American Circular Loom Company were members of the Rigid Conduit Section of the National Electrical Manufacturers Association and were members of RSCA and participated in its affairs until the dissolution of RSCA in the case of National Electric, and until its own dissolution in the case of American Circular Loom Company.

(t) Respondent, Steelduct Company (hereinafter frequently referred to as Steelduct), is a corporation, organized and existing under the laws of the State of Ohio, with its principal place of business in Youngstown, Ohio. It is engaged in the sale and distribution of rigid steel conduit produced and shipped for it by Enameled Metals. Steelduct was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(u) Respondent, Triangle Conduit & Cable Company, Inc. (hereinafter frequently referred to as Triangle), is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business at Elmhurst, N. Y. In June 1940, through a merger, it succeeded to the assets and business of Triangle Conduit & Cable Company, Inc., a New York corporation. For several years prior to 1929, Triangle secured its supplies of conduit from Fretz-Moon, but since that date has manufactured its own conduit. It is one of the largest producers of rigid steel conduit, having a plant capacity of about 6,000 tons of such conduit per month, and is also engaged in the manufacture and sale of other products. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and thereafter a member of and active in the affairs of RSCA until the dissolution of that association.

(v) Respondent, Walker Brothers, is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business at Conshohocken, Pa. It is a manufacturer of electrical construction materials, including rigid steel conduit, and has a plant capacity of approximately 2,000 tons of conduit per month. It was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association, and thereafter a member of RSCA and participated in its affairs until the dissolution of that association.

(w) Respondent, Youngstown Sheet and Tube Company (hereinafter frequently referred to as Youngstown), is a corporation, organized and

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existing under the laws of the State of Ohio, with its principal place of business in Youngstown, Ohio. As a small part of its business, it is engaged in the manufacture of rigid steel conduit and its two plants where this commodity is produced have a productive capacity of about 4,400 tons per month. For a number of years the rigid steel conduit business of Youngstown was carried on through a subsidiary known as the Western Conduit Manufacturing Company, which was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies. Youngstown was a member of the Rigid Conduit Section of the National Electrical Manufacturers Association and a member of RSCA and participated in its affairs from December 1935 to May 1938. Prior to its becoming a member of RSCA a representative of Youngstown attended meetings of that association as a guest, and subsequent to its resignation from that association Youngstown representatives frequently attended association meetings and served as members of association committees. Youngstown thus participated in the activities of RSCA at times when it was not a member of that association.

(x) Respondent, Spang Chalfant, Inc., is a corporation, organized and existing under the laws of the State of Pennsylvania, with its principal place of business in Pittsburgh, Pa. It began the manufacture of conduit in February 1940, when it purchased certain assets of Central Tube and immediately began the operation of the conduit plant thus purchased. It has a productive capacity of about 2,500 tons of conduit per month, but this represents but a small part of its total business, as it is engaged in the sale and distribution of many other commodities. Spang Chalfant, Inc., was not a member of RSCA. In fact, the association dissolved soon after Spang Chalfant, Inc., acquired the assets of Central Tube in February 1940 and the only association meeting its representatives attended was the meeting of April 16, 1940, at which dissolution was voted.

(y) Respondent, Steel and Tubes, Inc., was a corporation, organized under the laws of the State of Ohio. It was a wholly owned subsidiary of respondent Republic Steel Corporation until October 1939, when it was dissolved, its assets taken over by Republic Steel Corporation, and its business continued as the Steel and Tubes Division of Republic Steel Corporation. As set out in subparagraph (o) above, Steel and Tubes, Inc., until its dissolution, was the rigid conduit sales agent of respondent Fretz-Moon, and thereafter the Steel and Tubes Division of Republic Steel Corporation was the exclusive sales agent for Fretz-Moon, one half of the voting stock of which is owned by Republic. Steel and Tubes, Inc., was not a member of RSCA but, nevertheless, its representatives frequently attended meetings of that association and Steel and Tubes, Inc., cooperated with and assisted in the activities of that association and its members.

(z) Respondent, Republic Steel Corporation (hereinafter frequently referred to as Republic), is a corporation, organized and existing under the laws of the State of New Jersey, with its principal place of business in Cleveland, Ohio. Republic is concerned in the manufacture of rigid steel conduit through its ownership of 50 percent of the voting stock of Fretz-Moon. From 1934 until the dissolution of its wholly owned subsidiary, Steel and Tubes, Inc., in October 1939, it was indirectly engaged in the sale and distribution of conduit, and thereafter, through its Steel and Tubes Division, it was directly engaged in such activities. Through the membership of Fretz-Moon in RSCA and through the activities of Steel and Tubes, Inc., and those of its own Steel and Tubes Division, Republic

has cooperated with and assisted in the activities of RSCA and its members.

(1-a) Respondent, M. B. Austin Company (hereinafter frequently referred to as Austin), is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Ill. It sells and distributes rigid steel conduit which in recent years has been manufactured for it by respondent, Triangle, but marked with Austin brands. In January 1935 it became a sales agent for Triangle under a purported consignment arrangement by which sales were made at the prices and on the terms specified by Triangle. It presently operates under a contract negotiated with Triangle in November 1939 by which it purchases conduit bearing its brands from Triangle. This contract contains provisions respecting passing on to purchasers any part of discounts, commissions, or allowances received from Triangle under the contract. The provisions of this contract amount in substance to control of Austin's resale prices by Triangle. Though not a member of RSCA, through the relationship to Triangle directly, Austin has cooperated and assisted in the activities of that association and its members.

(1-b) Respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, are copartners, trading as Clifton Conduit Company (hereinafter frequently referred to as Clifton), with their principal place of business in Jersey City, N. J. Clifton sells and distributes rigid steel conduit purchased from General Electric and marked with Clifton brands. Clifton's price announcements conform to those of General Electric. This concern was a member of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies and applied for membership in the Rigid Conduit Section of the National Electrical Manufacturers Association, but apparently was not accepted because of difficulty over its status as a manufacturer. It was not a member of RSCA but followed many of the practices established or maintained by that association and its members.

(1-c) Respondent, Charles Donley, an individual, with offices in Pittsburgh, Pa., is engaged in serving various individuals, firms, and associations as traffic manager or adviser. Mr. Donley furnished railroad freight rate services to various individual conduit manufacturers; for a period of time he prepared and furnished compilations of rates to RSCA for the use of its members in computing delivered prices; and thereafter, with the collaboration and aid of RSCA, furnished such compilations directly to the individual conduit manufacturers. At various times he advised and consulted with RSCA and the transportation committee of that association as to the form of data to be furnished and the scope and manner of its distribution.

(1-d) Respondent, Frank C. Hodkinson, an individual, of East Orange, N. J., was connected with the rigid steel conduit industry in various capacities from 1897 to 1936. He has been connected with the Safety Conduit Company, Safety-Armorite Conduit Company, Garland, and American Circular Loom Company. His connection as vice president and general manager of the last-named concern was terminated in 1936 when that company was dissolved by its parent, National Electric, and he has not since had any substantial connection with the industry. During his service with the various concerns named, he was active in trade association matters. He assisted in the formation of the Associated Manufacturers of Electrical Supplies, and after the merger of that association with National

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Electrical Manufacturers Association was at various times a member of its board of governors. During the NRA Code period he was appointed by the board of governors of the National Electrical Manufacturers Association as the supervisory agency of the Roughing-in Classification of the Electrical Manufacturing Industry for the administration of the NRA Code as it applied to rigid steel conduit and other products included in the roughing-in classification. He also served as representative of the American Circular Loom Company at various meetings of RSCA from April 1934 to July 1936.

(1-e) Respondent, Organization Service Corporation (hereinafter frequently referred to as OSC), is a corporation, organized and existing under the laws of the State of New York, with its principal place of business at 74 Trinity Place, New York, N. Y. Respondent, Herbert S. Blake, an individual, is the president and active head of OSC; respondents, Herbert S. Blake, Jr., an individual, N. Myles Brown, an individual, and Thomas B. Jordan, an individual, are vice presidents of OSC; respondent, Paul Weiss, an individual, is treasurer of OSC; and respondent, C. C. Gregory, an individual, is secretary of OSC. Among the activities carried on by OSC and its officers is that of managing and directing the activities of a number of trade associations and furnishing various services and facilities to such associations. By contract executed October 29, 1936, OSC undertook to manage the affairs of RSCA subject to the association's board of directors, and also undertook to supply RSCA with offices and facilities for the conduct of its affairs. This contract remained in effect until December 31, 1938, and thereafter was reduced in scope and continued until April 1, 1939, when relations between OSC and RSCA ceased. As heretofore found, certain officers and employees of OSC also served as officers of RSCA.

(1-f) Respondent, National Electrical Wholesalers Association (hereinafter frequently referred to as NEWA), is an unincorporated trade association of wholesalers and jobbers of electrical supplies, with its offices in New York City. It has a membership of approximately 200 such wholesalers and jobbers who are engaged in the sale and distribution of electrical supplies, including rigid steel conduit, through some 500 establishments scattered throughout most of the States of the United States. In the conduct of its affairs NEWA has various committees, designated as commodity committees, the members of which devote their attention, for the benefit of the entire membership, to particular classifications of electrical material. One such commodity committee is the rigid steel conduit committee. Respondents, J. G. Johannesen, D. L. Fife, and Alfred Byers, have served as chairman, vice chairman, and secretary, respectively, of the conduit committee, and respondents, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. O. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Hallstrom, A. S. Reichman and D. M. Smith, have at various times served as members of such committee. Through the activities of this committee NEWA and its members have cooperated with and assisted RSCA and its members as hereafter set forth.

(1-g) Respondent, General Electric Supply Corporation, is a corporation, organized and existing under the laws of the State of Delaware, with its principal offices in Bridgeport, Conn. It is a wholly owned subsidiary of General Electric. Respondent, E. B. Latham & Company, is a corporation, organized and existing under the laws of the State of New York,

with its principal place of business in New York City. Respondent, Fife Electric Supply Company, has its principal place of business at 541 East Larned Street, Detroit, Mich. Respondent, Columbian Electrical Company, has its principal place of business at 206 Grand Avenue, Kansas City, Mo. Respondent, Graybar Electric Company, Inc., is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in New York City. Respondent, W. T. McCullough Electric Company, has its principal place of business at 317 First Avenue, Pittsburgh, Pa. Respondent, Peerless Electric Supply Company, has its principal place of business at 122 South Meridian Street, Indianapolis, Ind. Respondent, The Hardware and Supply Company, has its principal place of business at 475 South High Street, Akron, Ohio. Respondent, Revere Electric Supply Company (the concern referred to in the complaint as Revere Electric Company), is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Ill. Respondent, Kiefer Electric Supply Company, is a corporation, organized and existing under the laws of the State of Illinois, with its principal place of business in Peoria, Ill. Respondent, Westinghouse Electric Supply Company, is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business in New York City. Respondent, The F. D. Lawrence Electric Company, has its principal place of business at 217 West Fourth Street, Cincinnati, Ohio. Respondent, The C. S. Mersick and Company, has its principal place of business at 278 State Street, New Haven, Conn. The respondents named in this subparagraph are wholesalers of electrical supplies, including rigid steel conduit. Each is a member of NEWA and representatives of each have at various times served on the conduit committee of that association.

PAR. 2. (a) Each of the respondents named in subparagraphs (k) to (1-b), inclusive, of paragraph 1, except as otherwise stated therein, is engaged in the sale and distribution of rigid steel conduit to and through wholesalers, and pursuant to sales made, transports such conduit, or causes it to be transported, among and between various States of the United States and, in some instances, its territories, possessions, and foreign countries, and maintains, and has maintained, a course of trade in rigid steel conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act. These respondents are hereinafter frequently referred to, both individually and collectively, as "conduit sellers."

(b) Each of the respondents named in subparagraph (1-g) of paragraph 1 is engaged in the sale and distribution of rigid steel conduit at wholesale, and in the course and conduct of their respective businesses, pursuant to sales made, transports rigid steel conduit, or causes it to be transported, between and among various States of the United States, and maintains, and has maintained, a course of trade in such conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act. These respondents are hereinafter frequently referred to, both individually and collectively, as "conduit wholesalers."

(c) The respondents other than those referred to in (a) and (b) above are not individually engaged in the sale and distribution of rigid steel conduit in commerce but have directed, cooperated with, or assisted conduit sellers or conduit wholesalers in planning and executing the various policies, practices, and methods, as hereinafter set forth. Each of the various conduit sellers and conduit wholesalers is in competition with other con-

duit sellers and conduit wholesalers to the extent that such competition has not been lessened or restrained by the acts and practices hereinafter described.

PAR. 3. Rigid steel conduit (frequently referred to herein merely as conduit) is steel pipe which has been cleaned and galvanized or enameled in order to give it a smooth surface, particularly on the interior of the pipe. Usually made in 10-foot lengths and in sizes having interior diameters ranging from $\frac{1}{4}$ -inch to 6 inches, it is installed in buildings and other construction projects where electrical wiring is necessary in order to furnish a continuous channel or container for such wiring. It is ordinarily put in place during the progress of the construction work and wiring is later installed by drawing it through the conduit. Thereafter, such wiring may at any time be withdrawn or supplemented as circumstances may require.

PAR. 4. (a) For a long period of years respondent conduit sellers have used a delivered-price, basing-point system of quoting prices for and selling conduit. The manufacture of conduit had its origin a few years before the beginning of the present century. Several of the pioneer producers of conduit were merely agents of steel companies for the purpose of converting pipe into conduit and distributing it. Safety-Armorite Company and National Metal Molding Company, predecessors of Garland and National Electric, respectively, were converting and selling agents for the National Tube Company, a subsidiary of the United States Steel Corporation. The first price card of the series presently in use to announce prices offered by respondent conduit sellers was issued by these converting agents about August 1, 1913, and was designated as card No. 1. Similar price cards were issued by other conduit sellers then in business. These cards quoted conduit prices in terms of cents per foot and stated the Pittsburgh basing discounts from such prices, with provision for reducing the rate of discount and thus increasing the price according to the railroad freight rate from Pittsburgh to the purchaser's destination. Using card No. 1 of the American Circular Loom Company of Boston, Massachusetts, as an example (Resp. Ex. 257-A), $\frac{1}{2}$ -inch conduit was quoted at $8\frac{1}{2}$ cents per foot; the Pittsburgh basing discount on jobbers' carloads of galvanized conduit was 60 percent, so that the price delivered in Pittsburgh was \$3.30 per hundred feet. At any destination other than Pittsburgh the discount was reduced at the rate of one-tenth of a point per one cent of railroad tariff rate per hundred pounds. Thus, at a destination having a freight rate of 34 cents from Pittsburgh, the discount would be reduced 3.4 points to 56.6 percent, and the delivered price at such destination would therefore be \$3.69 per hundred feet. This formula does not produce a price difference between Pittsburgh and other points exactly equal to the freight rate.

(b) In 1924, at about the time the steel companies added Chicago, Illinois, as a basing point in the sale of pipe, Youngstown, which had a conduit plant at Evanston, Illinois, announced an Evanston base price for conduit \$4 per ton higher than the Pittsburgh base, and all other conduit sellers announced identical Evanston base prices. Clayton Mark, which established a conduit plant in Chicago in 1924 and began the distribution of conduit therefrom early in 1925, used a Chicago base price instead of an Evanston base. This did not amount to the general establishment of a third basing point, however, because the freight rates from Evanston and Chicago are the same to all points except locations within the Chicago switching district. The discounts from the Evanston and Chicago base prices quoted by all conduit sellers were two points lower than those ap-

plicable to the Pittsburgh base and the same provisions for determining delivered prices at other points according to the freight rates were applied as had previously existed with respect to the Pittsburgh base. The formula used also provided that at any given location the delivered price quotation of a conduit seller should be based upon Pittsburgh or Evanston, depending upon which base price and accompanying discount produced the lower figure at the purchaser's destination.

(c) Respondent conduit sellers followed the above-described list-and-discount method of determining delivered prices pursuant to their basing-point system until June 1930, when certain alterations cooperatively determined upon were made in the method of calculating such prices. The minutes of a meeting of the Rigid Steel Conduit Section of the National Electrical Manufacturers Association on June 4, 1930, attended by representatives of American Circular Loom Company, Central Tube, Enameled Metals, Fretz-Moon, Garland, General Electric, Mohawk Conduit Company, National Electric, Triangle, Walker Brothers, and Youngstown show the following action:

The matter of simplified billing of Rigid Conduit along the lines of the plan submitted to Mr. Neagle by Mr. Sicard was discussed and it was the consensus of opinion of the meeting that it is to the best interests of the public and the electrical trade that some such simplified method of net billing be followed (Comm. Ex. 692-Z84).

National Electric issued a booklet dated June 10, 1930 (Comm. Ex. 80-R), entitled "Freight Adders and Terms" containing various tables by the use of which a sum to be added to the base price as a delivery charge per thousand feet of conduit could be determined for a large number of destinations. These sums called "delivery charges" did not represent the exact amount of the freight rate from the controlling basing point to the destination specified, in part because of the manner in which fractions were treated in the calculations and in part because 5 percent was added to and included in such sum. Purchasers who took the discount for payment within the cash discount period were permitted to take such discount upon the delivered price, which included the so-called delivery charge. National Electric also issued price card No. 61 (Resp. Ex. 139-B), dated June 16, 1930, which was prepared for use in connection with the freight adders described above. Other conduit sellers made a similar change from the list-and-discount method of quoting prices. Price card No. 61 of Laclede Tube (Resp. Ex. 306-A to D), effective June 16, 1930, is in all substantial features and in almost all non-essential features a duplicate of the National Electric card. Beginning with card No. 1, all price cards issued by each of the respondent conduit sellers have borne numbers identical with those of the corresponding cards of the other conduit sellers, and the cards of all conduit sellers of any given number have been identical in all material particulars. In some instances individual conduit sellers have not issued a card of a given number and instead have announced a percentage discount from a previous card. Where the issuance of a card was thus omitted, however, the next card issued bore a number coinciding with that borne by corresponding cards of the other conduit sellers.

(d) The modification in pricing method described in the preceding subparagraph was followed by a further change made in the same year. Youngstown prepared a delivery charge booklet dated November 15, 1930 (Comm. Ex. 89), which was more comprehensive and somewhat easier to use than the one devised by National Electric. This booklet, instead of

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using arbitrary key numbers, set out the delivery charges per thousand feet of each size of conduit according to any railroad tariff rate from one-half cent to \$2.24½ per hundred pounds, in steps of one-half cent each. These delivery charges also included an additional 5 percent, as had been the case with those devised by National Electric. Upon the request of other conduit sellers, Youngstown had copies of its publication printed without covers and sold numbers of them to respondents, Cohoes, Triangle, Walker Brothers, Enameled Metals, Steelduct, Steel and Tubes, Inc., Fretz-Moon, Garland, and Clifton. Upon the basis of circumstances shown in the record and a comparison of the pamphlets, it is concluded that Clayton Mark also secured copies of the Youngstown pamphlet. Respondent conduit sellers distributed these pamphlets to their-salesmen, sales agents, wholesalers, and other customers, for use by such parties in calculating delivered prices for conduit. At about this time Clayton Mark abandoned the use of a Chicago base and adopted the Evanston base, so that all respondent conduit sellers were then using only Pittsburgh and Evanston as basing points.

(e) The use of the Pittsburgh and Evanston bases exclusively continued until late in 1934, when Clayton Mark again instituted a Chicago base and ceased using Evanston. As heretofore stated, the rates from Chicago and Evanston are the same to all points except a few locations adjacent to these bases. Effective January 2, 1935, Youngstown instituted Chicago as a base and continued the Evanston base (Resp. Ex. 182). The situation thus created had prompt collective consideration. The minutes of a meeting of RSCA on January 17, 1935, recite in part:

(c) The Board of Directors recommends to the Association that the Evanston basing point be eliminated, leaving the two basing points—Pittsburgh, Pa. and Chicago, Ill.

After considerable discussion this recommendation was laid upon the table pending the report of the Special Committee on zoning (Comm. Ex. 3-B).

At the time of this meeting respondent conduit sellers' price cards No. 70, issued in July 1934, were in effect. The next price cards (No. 71) were issued by respondent conduit sellers in January 1936 and were limited to the Pittsburgh and Chicago bases, the Evanston base being eliminated. With the exception of a minor change by which freight adders were shown in terms of hundred feet of conduit instead of thousand feet, respondent conduit sellers have continued their basing-point system without further change. The last proposed change as shown by the record was one considered at a meeting of RSCA on November 16, 1939. The minutes of this meeting do not show that any consideration was given to basing points, but H. H. Benfield, who was present at the meeting as a representative of Fretz-Moon, addressed a memorandum marked "Confidential" to certain of his associates under date of November 20, 1939, in which he described various occurrences at the meeting. He said in part:

Please note this memorandum and destroy.

There was a meeting of the various manufacturers of conduit in New York on November 16th at which all major manufacturers were represented except Triangle.

* * * * *

The fact that neither Youngstown nor Clayton-Marks manufacture conduit in Chicago any more, the dropping of the Chicago base was briefly discussed but it was decided not to do anything about it for the time being because of the possibility of investigation (Comm. Ex. 622-A).

PAR. 5. (a) In the establishment and maintenance through collective action of the basing-point, delivered-price system in its present form, respondent conduit sellers had the purpose of limiting and restraining the normal forces of competition. They recognized that by virtue of location, some conduit sellers could, by reflecting such advantage of location in their prices, exclude others from selling in certain markets; that their basing-point, delivered-price system offered compensations in the form of higher profits to the favorably located seller on sales made in his natural territory in return for refraining from pressing his advantage of location; that in order to maintain a price level high enough to permit each seller to sell in the natural territories of other conduit sellers, price competition must be restrained; and that the operation of their formula system of pricing enables each seller to quote to a prospective purchaser at any location the same price as that quoted by other sellers, through the use of the same formula, and thus bring about a condition of matched prices. Examples of the knowledge and purpose of these respondents appear in the record in various ways. For example, the president of Garland, in his testimony concerning the basing-point system and the location of Walker Brothers' plant at Conshohocken, only a few miles from Philadelphia, stated:

If we didn't have our present practice, why, Walker would walk away with all the Philadelphia business (T. 1487).

Another example appears in the testimony of the president of Walker Brothers, who, when asked if he knew of any method other than the basing-point, delivered-price system which would afford a similar degree of uniformity in price, stated:

A. Oh, I am not willing to admit that the Pittsburgh basic method of selling is the only way by which uniform prices can be put together. It is one.

Q. Well, can you name other ways in which you could have reached the same degree of identity and uniformity as you did here, through the use of any other method?

A. I imagine that there are a great many other ways of figuring uniform prices outside of the Pittsburgh basic method of selling, but I can't answer your question without distorting the picture. This is one method by which it is done. There must be others. (T. 883-84).

(b) Certain aspects of respondent sellers' desire and purpose to restrain competition in the sale and distribution of conduit were openly revealed during the negotiations for and the administration of their Code promulgated under the National Industrial Recovery Act and through various activities claimed to be pursuant to such Code. For example, respondent conduit sellers' Code (Resp. Ex. 259) provided for the filing of prices, discounts, and terms of payment, for the relaying thereof to competitors, and for adherence thereto so long as the filing was not changed. Respondent, F. C. Hodkinson, who was appointed by the board of directors of the National Electrical Manufacturers Association as supervisory agency for the division of the electrical manufacturing industry which included conduit, in his capacity as such supervisory agency, called upon Garland by letter dated November 29, 1933, for an explanation of an apparent departure from its filed prices in a bid to The Panama Canal. In replying, Garland explained that:

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* * * our own price .1547 was in error, inasmuch as we used the 67¢ freight adder which at that time we thought was correct but now find that the less carload freight adder is 70¢, which hereafter will be used by us.

* * * * *

In the prices as quoted some confusion evidently exists as to the proper freight adder as several of the prices are slightly different from the correct which we figure should be .1554 (Comm. Ex. 247).

In replying to Garland, Mr. Hodkinson stated in part:

The filing of price lists, if these lists happen to be uniform, will assure all uniform quotations made on any inquiry, whether from the Government or a private individual, but with the matter of the delivery charges left up in the air as it has been, there is room for differences. I am therefore calling for the filing of these delivery charge schedules (Comm. Ex. 248).

The basis for pricing delayed deliveries of conduit on specific building contracts was determined as shown by the minutes of a meeting of RSCA on January 17, 1935, which read in part:

Upon motion made, seconded and carried, it was resolved that it is the understanding of each member of the Rigid Steel Conduit Association that any delivery of conduit upon any specific building contract, or order, after its six months expiration, shall be billed on the basis of current filed Card with N.R.A. Supervisory Agency, unless previously an extension has been granted by the Supervisory Agency under the prescribed method of investigation and substantiation of the requirement of extension. And to eliminate confusion, each member shall file a list of all existing contracts on January 25th and February 25th, 1935 (Comm. Ex. 3-B).

In their efforts to maintain identical prices and prevent purchasers from finding any advantage in dealing with one seller as against another, respondent conduit sellers did not stay within the provisions of their Code. An example of this appears in connection with bids made in February 1935 to the United States for supplying certain conduit for use in the Canal Zone. There were 30 bids submitted: 28 of these were each in the amount of \$3,080; one bid was at a higher figure; and one bid, that of Home Lighting Company, a jobber located in Baltimore, was low at \$3,075. Home Lighting Company received the award and sought to purchase the conduit from Cohoes, which was its regular source of supply. Before the order was shipped Mr. Hodkinson, in his capacity as supervisory agency under the Code, telegraphed Cohoes under date of March 28, 1935, in part:

REFERRING TO YOUR TELEPHONE MESSAGE WISH TO INFORM YOU THAT AS SUPERVISORY AGENCY I PROTESTED TO WASHINGTON BID SUBMITTED BY HOME LIGHTING COMPANY * * * I HAVE HAD NO REPLY AND BEFORE YOU SHIP THIS SPECIFICATION ON HOME LIGHTING ORDER THE MATTER SHOULD BE ADJUDICATED AT WASHINGTON (Comm. Ex. 287).

Under date of March 30, 1935, Cohoes advised Home Lighting Company in part:

We are in receipt of your letter of March 27th, and while we fully appreciate your situation, we are powerless to ship this specification until we have authority to do so from the Supervisory Code Authority (Comm. Ex. 289).

Home Lighting Company sought to purchase the conduit needed to fulfill its obligation under the bid from other conduit sellers. On April 5, 1935, it telegraphed Austin, as follows:

ADVISE WESTERN UNION CAN YOU MAKE SHIPMENT IN FIVE DAYS FIFTY THOUSAND FEET HALF INCH HOT DIPPED CONDUIT (Comm. Ex. 291).

On the same day Austin replied to Home Lighting Company that it could make the shipment, and added:

We sincerely hope to be favored with your order (Comm. Ex. 291).

On the next day, April 6, 1935, Austin advised Home Lighting Company that upon receipt of shipping instructions the order was identified as a Panama Canal bid, that evidently Austin conduit was not specified in the bid and it would be difficult to change the brand with the Government, and concluded by saying:

In view of this being for the Panama Canal I believe it will be very essential that you furnish the brand of conduit nominated in your proposal to avoid complications with the governmental authorities.

We, therefore, regret exceedingly that we are unable to handle the order and beg to remain (Comm. Ex. 292).

Home Lighting Company had secured an authorization from the Government purchasing agency on March 23, 1935, to supply Clayton Mark conduit "provided it complies with the specifications" (Comm. Ex. 332). However, Home Lighting Company was unable to purchase the conduit necessary to fulfill its bid. It secured some conduit from other jobbers and the Government purchased the remainder in the open market and charged the difference in cost to Home Lighting Company.

It was impossible for the bid by Home Lighting Company to be in violation of the Code administered by Mr. Hodgkinson because that company was not subject to that Code. In addition, at the time these events occurred, Executive Order No. 6767, dated June 29, 1934, was in effect and provided that in sales to instrumentalities of the Government a price as much as 15 percent below filed prices would not violate Code provisions concerning filed prices.

PAR. 6. (a) The use of the same base prices and uniform delivery charge factors by the several respondent conduit sellers will, as a matter of simple mathematics, enable all such sellers to quote identical delivered prices to any given destination, provided the same railroad tariff rate is used by each seller in selecting the applicable delivery charge factor. Frequently, however, it is difficult to exactly determine the tariff rate and even experts sometimes differ as to the applicable rate. Mistakes by conduit sellers in the selection of the railroad tariff rate to be used in a particular instance were a fruitful source of differences in the delivered prices quoted.

(b) The record does not disclose the details of various steps taken by the respondent conduit sellers with respect to railroad tariff rates prior to 1936. In the beginning of the industry the conduit manufacturers who acted as converting and selling agents for pipe manufacturers used a freight bulletin on standard pipe prepared by National Tube Company. Apparently such rates on pipe were used generally by conduit sellers and

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no freight bulletin on conduit was published until sometime after the organization of RSCA. During the Code period the problem of price differences resulting from variations in delivery charges was handled by the action of Mr. Hodgkinson requiring the filing of delivery charge schedules in connection with the price-filing provisions of the Code. This was supplemented by the action of George A. Sicard, secretary of RSCA, in furnishing a tariff rate for the common use of members of RSCA in cases involving unusual destinations or rates. An example of this appears in the bulletin dated January 31, 1935, addressed by Mr. Sicard to members of the association, concerning bids to be opened February 11, 1935, for 50,000 feet of $\frac{1}{2}$ -inch galvanized conduit for The Panama Canal. He wrote:

The published freight rate to Cristobal, Canal Zone is 47 $\frac{1}{2}$ ¢ per hundred pounds (Comm. Ex. 419).

The results on this bid have been heretofore set out in subparagraph (b) of paragraph 5.

(c) Sometime after its organization and before September 10, 1936, RSCA began the publication of freight rate bulletins for the common use of respondent conduit sellers in conjunction with the delivery charge pamphlets in ascertaining delivered prices to be quoted at the various destinations set out in the rate bulletins. Under date of September 10, 1936, RSCA published a rate bulletin entitled:

SUPPLEMENT
TO RIGID CONDUIT FREIGHT RATE BULLETIN
DATED APRIL 25, 1935
TO BE USED AS A BASIS IN
DETERMINING DELIVERED PRICES
ON
RIGID CONDUIT—LESS—CARLOAD
FOR
RAIL STATION DELIVERY
also
STORE DOOR DELIVERY
INCLUDING ALL TRUCK DELIVERIES
FROM
PITTSBURGH or CHICAGO and EVANSTON
TO
VARIOUS DESTINATIONS
IN
WESTERN and CENTRAL
UNITED STATES

(Comm. Ex. 74-Z26)

On October 9, 1936, I. A. Bennett, vice president of National Electric, addressed his sales representatives:

We are in receipt of a copy of letter, dated September 26th, sent out by the Tri-angle Conduit Company to their Sales Offices in which they enclose copy of the Rigid

Steel Conduit Association Supplement on Freight, which takes care of store door delivery at the rates shown.

This company wants to follow these rates, and charge will be made on all shipments on Pittsburgh or Chicago base where Rigid Conduit is shipped by truck to a job site, or to the store door of jobber.

It is difficult to put into effect any new program as each customer naturally resists paying for something he has been getting for nothing. Therefore, you will unquestionably run up against the story that someone is not doing this or doing that, and therefore, we should not do it.

It certainly seems logical to equalize on freight and transportation service, and therefore, we sent you on October 6th, copies of the Rigid Steel Conduit Association Supplement and ask that you use this to familiarize your customers, where effective, with this tariff, and endeavor to standardize it (Comm. Ex. 392).

The minutes of a meeting of RSCA on December 8, 1936, recite in part:

Chairman Bennett introduced the subject of the recently published freight supplement for discussion, and certain discrepancies were brought to light in the rates as published.

It was suggested that Mr. Kim confer with Mr. Donley, who compiled the supplement, with a view to having corrected certain errors which had been noted.

Further, it was voted to employ Mr. Donley to keep the supplement up to date in the light of such changes in existing rates as may be made from time to time (Comm. Ex. 9-D).

The last rate bulletin issued directly by RSCA was dated January 1, 1937. Supplements to this rate bulletin, however, were issued directly by the association until the RSCA meeting of September 27, 1937, the minutes of which recite in part:

At a meeting earlier in the year, Chairman Bennett had been authorized to employ Mr. Donley as Traffic Manager for the Association, and, following discussion, it was voted to pay Mr. Donley's bill as submitted to Mr. Booth, and advise him that his services were no longer required.

It was then voted to establish a Committee on Traffic to consist of Messrs. Kim, Welsh and Matthews, of the National Electric Products Corporation, Youngstown Sheet and Tube Company and Central Tube Company respectively (Comm. Ex. 22-D).

The rate bulletin of January 1, 1937 carried as a foreword:

METHOD OF FIGURING DELIVERED PRICE

The freight rates listed herein are to be used to ascertain delivery charges in figuring F.O.B. destination prices to all points in the United States and their possessions.

Where the freight rates shown are from Pittsburgh, Pa., the Pittsburgh basing prices must be used. If the freight rates shown are from Chicago or Evanston, Ill., the Chicago or Evanston basing prices must be used.

For an example:—To determine the F.O.B. destination on $\frac{1}{2}$ " Sherarduct Conduit F.O.B. Fort Wayne, Ind.—C/L—Mill Shipment.

Pittsburgh Basing Card 74.....\$4.67 per 100 ft.

Freight rate 27 cwt. or (delivery charge)......24

4.91 per 100 ft.

(Comm. Ex. 79-Z127 and others).

Some of the respondent conduit sellers used and distributed to the trade the bulletins issued by RSCA; and some, of which General Electric is an example, had bulletins separately printed which, though somewhat differ-

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ent in appearance, were identical in material particulars and obviously merely copied from the association bulletins.

(d) The rate bulletins and supplements issued directly by RSCA were prepared by Charles Donley, a traffic and rate expert in Pittsburgh, engaged in the business of supplying rate information and other rate and traffic services to various business concerns and trade associations. Mr. Donley had furnished rate services to some of the individual conduit sellers prior to his employment by the association. On July 22, 1937, Mr. Donley addressed a letter to Mr. Booth, who was then acting as secretary for RSCA, with copies to the members of RSCA, in which he referred to his previous services, stated he understood the association would discontinue publication and distribution of a joint schedule, and continued:

May we suggest that it would be to the best interests of the individual members to prepare a freight rate schedule that would be distributed in the name of or by the individual member, such a schedule to contain the freight rates as they are not published, in carload and less carload, and from the origins of Pittsburgh, Chicago and Evanston to the various destinations and to be published in such form as to reduce the number of pages and then to have it printed, as some of the companies are already doing.

I am also suggesting that this schedule should not contain any reference whatever to the methods of figuring delivered prices and in the place of being prepared and issued by the Rigid Steel Conduit Association, that it be prepared and distributed, as suggested above, by the individual company. I believe if these two changes were made it would be of much more value and of more practical benefit to all who are concerned.

I am taking the liberty of submitting a suggested title page as well as a second page which contains the changed statements from those that are shown in the present schedule. Also a third page giving an idea as to the method of showing the actual freight rates (Comm. Ex. 401-A and B).

Thereafter, Mr. Donley, in compiling and publishing rate bulletins and supplements for the use of conduit sellers which were purchased and paid for individually by conduit sellers, advised and cooperated with Mr. Booth and with the transportation committee of RSCA. He wrote Mr. Booth, as executive secretary of RSCA, under date of August 11, 1938:

Confirming phone conversation today, wish to advise that our Bulletin of August 3, Subject 7080, Pick-up and Delivery Service Official Territory, was mailed (1 copy only) to all the firms on the list; namely:—

M. B. Austin Company	Chicago
Central Tube Co.	Pittsburgh
Clayton Mark & Co.	Chicago
Cohoes Rolling Mill	Cohoes, N. Y.
Fretz-Moon Tube	Butler, Pa.
Garland Mfg. Co.	West Pittsburgh, Pa.
Laclede Steel Co.	St. Louis, Mo.
Nat'l Elec. Prod.	Pittsburgh
*Steelduct Company	Youngstown
Triangle Conduit	New York
Walker Brothers	Conshohocken, Pa.
Youngstown S. & T.	Youngstown, O.

*Steelduct Company are furnished with a copy of bulletins of general nature such as the one above mentioned, but they have not been furnished with any Conduit Rate

Change Bulletins, as they did not have any printed when the last issue was prepared. Please advise if this firm should be furnished with Conduit Rate Change Bulletins from this office (Comm. Ex. 390).

Under date of September 14, 1938, Mr. Donley wrote Mr. Booth as follows:

After you phoned us yesterday we got in touch with Mr. Kim regarding the store door delivery situation about which the Triangle Conduit and Cable Company have written you.

Based on that conversation, we are to submit to the Transportation Committee some figures to show what the approximate cost would be for making the necessary changes in the Rigid Conduit Bulletin. This will be supplied within the next day or so and we will then await advices as to what we should do (Comm. Ex. 385).

Under date of November 24, 1939, Mr. Donley directed the printer as follows:

Enclosed are stickers for mailing revised pages to the rigid conduit schedule.

The following number of copies are to be mailed to respective companies:

Fretz-Moon Tube Co.	550
The M. B. Austin Co.	300
Garland Manufacturing Co.	280
Clayton Mark and Co.	825
Cohoes Rolling Mill Co.	600
Youngstown Sheet & Tube Co.	2200
Triangle Conduit & Cable Co.	1000
Central Tube Co.	660
Walker Brothers	500
Laclede Steel Co.	110
(Comm. Ex. 373).	

(e) The freight rate bulletins heretofore described were intended for use and used to provide respondent conduit sellers with common factors in determining delivery charges to be included in the price of conduit delivered at various destinations. They also designated the rate from one or the other of the basing points to each destination, thus indicating the base price applicable at such destination. In determining the controlling base as shown in these bulletins, Mr. Donley used an arbitrary figure of \$4 per ton difference in base prices between Pittsburgh and Chicago, when in fact the difference between these base prices was generally slightly above or below \$4 per ton. These bulletins could not be used for shipping purposes by a conduit seller whose plant is not located in Pittsburgh or Chicago, because those are the only points from which rates are shown in such bulletins. They are not adequate for shipping purposes even for conduit sellers whose plants are in Chicago or Pittsburgh, because they do not contain information affecting rates, such as routing, loading, minimum weights, and other data ordinarily needed for shipping purposes.

(f) The following respondent conduit sellers purchased or otherwise secured and used so-called rate bulletins prepared by Mr. Donley: Central Tube, Clayton Mark, Cohoes, Fretz-Moon, Garland, Laclede Steel, National Electric, Spang Chalfant, Inc., Steelduct, Triangle, Walker Brothers, Youngstown, and Austin. Rate bulletins distributed by Enameled Metals are either Donley bulletins or copied therefrom; Laclede Tube used

Donley bulletins secured by Laclede Steel; Republic and Steel and Tubes, Inc., used Donley bulletins secured by Fretz-Moon; Clifton copied its bulletins from General Electric, which in turn prepared or copied its bulletins from Donley bulletins. The above finding that Donley bulletins were copied by certain conduit sellers is in part based upon the identity of language, arrangement, destinations, and rates, as appears from a comparison of such bulletins with bulletins known to have been prepared by Mr. Donley.

(g) In preparing and selling the rate bulletins as aforesaid, Mr. Donley knew that they were not intended or adapted for use by the purchasers thereof as bona fide rate information for shipping purposes. He knew that they were intended for use as a common factor in pricing conduit according to a basing-point formula of pricing which included a differential of substantially \$4 per ton between the Pittsburgh and Chicago bases, and he was necessarily aware that the base prices which came to his attention were uniform as among respondent conduit sellers and would, therefore, through the application of a common rate factor, result in identical delivered prices at any given point.

PAR. 7. Following negotiations covering about two months, RSCA employed Herbert S. Blake and his company, OSC, to manage its affairs. After conferences with members of RSCA and an examination of merchandising policies and practices of conduit sellers, Mr. Blake, in collaboration with RSCA, undertook the formulation and execution of plans having the fundamental purpose of controlling certain conditions which tended to interfere with and disturb the operation of the basing-point, delivered-price system in producing matched price quotations and prices to conduit purchasers. Many of these activities supplementing the pricing system were purported to be carried on in the name of the Robinson-Patman Act, which apparently was viewed by these respondents as a grant of authority for collective action to prevent any departure from uniformity in prices, discounts, terms of sale, and merchandising policies, rather than as being directed toward the preservation of competition for the benefit of the public. The principal matters which were subjects of collective action and were promoted by Mr. Blake and RSCA were the use of consignment contracts, protection contracts, and other means to control distributors and prices, the investigation and control of specific building contracts, so-called closed transaction inquiries, elimination of warehouses, uniformity of trade discounts, and classification of purchasers.

PAR. 8. (a) For a long period of time preceding the employment of Mr. Blake and OSC, all the respondent conduit sellers except Clayton Mark sold substantial quantities, and in several instances a major part, of the conduit each handled to and through distributors pursuant to so-called consignment contracts. Little serious effort had been made to enforce price maintenance under these contracts, however, apparently because the distributor agents were obliged to compete with wholesalers who purchased conduit and were at liberty to use their own judgment as to the prices which they quoted. These distributor agents also sold conduit from time to time at prices which did not accurately reflect the use of the basing-point pricing formula. Such price variations had a disturbing influence upon the entire price structure. During the Code period means of controlling the prices at which wholesalers sold conduit were frequently considered. Lack of effective control under the Code was deplored and attention was given to the possibility of securing a uniform policy on this

subject by all conduit sellers. The minutes of a meeting of RSCA on April 4, 1935, recite in part:

The matter of a Sales Agent Contract was discussed at length and upon motion made, seconded and carried, Messrs. Hodkinson, Walker and Sicard were appointed as a Special Committee to consider this matter further (Comm. Ex. 4-B).

(b) It was a part of the plan engaged in by RSCA under the leadership of Mr. Blake to stabilize the price structure in the industry through the general use of consignment contracts which were to be made uniform and enforced according to their terms. Pursuant to this plan, Mr. Blake called upon the association members for copies of their forms of contracts with distributors, analyzed them, and prepared a tentative draft of a uniform consignment contract which was considered and discussed at length by the board of directors of RSCA. The minutes of a meeting of the board on November 20, 1936, recite in part:

It is the intention of the Board of Directors to try and have in the hands of the members a Uniform Jobber Agency Contract, a Uniform Specific Building Contract, and a set of Fair Trade Practice Rules for consideration of the Association at its next meeting to be held on Tuesday, December 8th, so that the Industry, if it so decides, could put these uniform instruments into operation by our next reporting period—namely, December 25th (Comm. Ex. 8-C).

The minutes of a meeting of RSCA on December 30, 1936, report that it was called to study the "recommendations relative to the Distributor Agents Contracts and other suggested forms in order to enable the manufacturers to adopt them without further delay if they cared to do so" and that Mr. Blake explained a number of changes which had been made (Comm. Ex. 10-D).

(c) One of the necessary steps was to enlist the cooperation and assistance of wholesalers, and this was done. The report of the conduit committee of NEWA on its meeting of September 28, 1936, at which representatives of Central Tube, Fretz-Moon, Laclede Tube, National Electric, Triangle, and Walker Brothers were present, includes the following:

Inasmuch as several manufacturers have expressed the opinion to various members of the Committee that the Conduit Industry can be placed on a sound economic and service basis only by Wholesalers acting as agents for the manufacturers, with consigned stocks, your Committee is of the opinion that this Association should recommend that the Conduit Manufacturers consider the advisability of selling conduit on a consignment basis (Comm. Ex. 39-A).

The regular procedure of the conduit committee of NEWA, referred to above, is for the members of that committee to have a meeting in the morning and this is followed by an afternoon meeting to which representatives of the various respondent conduit sellers are invited.

On January 14, 1937, H. G. Morrow of Central Tube wrote H. S. Walker of Walker Brothers in part:

Speaking for our own company, we are not holding back to see what other people are doing, believing that under Blake's leadership each member of the Association is sincerely in earnest to put his own house in order.

Here is what we have done—

1st—The Board recommended, and the Industry approved, a uniform contract with manufacturers' agents. We sent these contracts out and our agents have all signed them,

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2nd—The Board recommended, and the Industry approved a form of specific building contracts, covering three types. We yesterday OK'd the proofs of these contracts and they will be sent to our district offices this week, to be used in connection with all future jobs.

3rd—Mr. Blake approved an addendum to our regular consigned stock contract which gives the same effect to resale price control as the agency contract which was adopted by the Industry. These forms are now being filled in and will be sent to our district offices this week, for presentation to the jobbers for signature.

4th—Assuming that all the manufacturers are sincere in regard to building contracts, we have acted on Blake's recommendation in the case of all contracts reported to us, with the result that we have already cancelled upward of 900 tons.

5th—The joint meeting of the Board of Governors and some of the other members of the Industry with representatives of the Jobbers' Association, in my opinion, did more to get the jobbers in a frame of mind to cooperate with us than anything we have heretofore done and it is my idea at the next general meeting of the Association, some definite program can be worked out which will be satisfactory to the manufacturers and pleasing to the jobbers.

I think the foregoing accomplishments since the employment of Blake show a very satisfactory rate of progress, in view of the divergent opinions of many manufacturers on certain fundamental problems, to say nothing of the pet peeves which had grown up between manufacturers.

So far as our company is concerned, we are going ahead, in good faith, with this whole program, with the full knowledge that should our competitors not follow an approved program, we can always turn back and make our marketing conditions conform exactly to those of our competitors (Comm. Ex. 577-A and B).

At a meeting of RSCA on January 27, 1937, Mr. Bennett of National Electric made an extended statement concerning the chaotic conditions which had developed in the industry, referred to the plans made with Mr. Blake and OSC to obtain better results, and stated that he was going to announce a policy to his sales department and customers, with copies to competitors, under which:

* * * It is our intent and purpose to obtain the support of our customers for this policy, and in our program we will establish such trade practices, customs, and forms of contracts as we deem necessary to protect our company from fraudulent manipulations (Comm. Ex. 11-H).

The minutes of the meeting record that thereafter:

There was a lengthy discussion of the various recommendations heretofore made by Organization Service Corporation, during which Mr. Blake stated that he had been informed that Messrs. Garland, Walker, Morrow, Bennett and Barton [all of whom were present at this meeting] had adopted for their individual companies many of the recommendations.

The discussion brought out the fact that all members were revising their merchandising procedure to include as many of the recommendations as were applicable to their individual needs (Comm. Ex. 11-I).

The report of the conduit committee of NEWA dated May 24-25, 1937, at which meeting representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Steel-

duct, Triangle, Youngstown, and Walker Brothers were present, includes the following:

It is very gratifying that the manufacturers are offering electrical wholesalers an equitable form of sales agency agreement.

Since coming to Hot Springs we have learned that quite a number of wholesalers have, for some reason or another, not executed an agency contract. No one believes the present contract is perfect, but many of us are sure it is better than anything we have had previously. If the present contract is made effective it can be bettered. If it is not supported, it will fail (Comm. Ex. 39-B).

The report of the same committee on its meeting of October 19, 1937, states in part:

On Wednesday morning, October 20, 1937, we had a further meeting at which several of our manufacturer friends entered into our discussions quite freely. More than ever your Committee decided on urging the wholesaler's whole-hearted cooperation in the sales agency plan of selling conduit. Don't abuse the plan by fictitious contracts or amounts of conduit needed. It ought to pay dividends to you in the near future (Comm. Ex. 39-C).

The report of this committee on its meeting of May 23, 1938, attended by representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steelduct, Steel and Tubes, Inc., Walker Brothers, and Youngstown, states in part:

The results of the questionnaires sent out by NEWA a few months ago show that 92% of those replying were of the opinion the sales agency plan for selling conduit represents an improvement over previous methods. The membership also recorded that in most instances manufacturers were cooperating to make the sales agency plan effective (Comm. Ex. 39-D).

The report of the meeting of the conduit committee of May 22, 1939, attended by representatives of Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown, recites in part:

While due to a combination of circumstances beyond the control of the manufacturers and wholesalers, the sales agency plan has failed to operate as originally designed, it is the definite desire of both industry groups that the plan be retained as a basis upon which to build a more satisfactory sales picture in connection with our conduit business (Comm. Ex. 40-C).

The conduit committee report of October 17, 1939, attended by representatives of Clayton Mark, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown, contains the following:

As reiterated on the occasions of our Chicago and Hot Springs meetings, your committee again informed the manufacturers that wholesalers heartily approved the sales agency plan in connection with the distribution of rigid conduit. It is the opinion of your Committee that the general situation as it exists today is such that it appears the time is appropriate to give careful and serious consideration to the definite adoption of all the desirable features of this plan, and that the manufacturers study the matter with a view to this end in the reasonably near future. We were pleased during the course of our discussion with the manufacturers to find that their opinions coincided with the thinking of your Committee and encouraged to believe some action along these lines might soon be expected (Comm. Ex. 41-A).

(d) Respondents, Cohoes, Enameled Metals, Fretz-Moon, Garland, National Electric, Steel and Tubes, Triangle, Walker Brothers, and Austin adopted the Blake form of consignment contract, either without change or with insignificant changes. General Electric, Laclede Tube, Clifton, Steelduct, and Youngstown already had in use forms of consignment contracts which provided for price control, and they continued the use of those forms without adopting the Blake form. Spang Chalfant, Inc., when it entered the conduit business, adopted consignment contracts but not the Blake form.

(e) After the adoption of the uniform consignment contracts, the next logical step was taken to secure maintenance of prices according to the basing-point, delivered-price formula under these contracts. Various forms of pressure were exerted upon both conduit sellers and conduit wholesalers to that end. Among the steps taken was the request of the conduit committee of NEWA that conduit sellers insist that distributors observe the prices specified in the contracts and refuse to supply conduit to those who did not. Herbert S. Blake wrote the various conduit sellers urging that they terminate the contract of any distributor who failed to follow the manufacturer's instructions. Some of the conduit sellers wrote to their distributor agents insisting on full observance of prices. For example, in writing an agent on June 8, 1938, Garland stated in part:

We do not wish to threaten, but we are definitely going to cancel some of our distributor agent's agreements if they do not carry out our instructions, and if they are known as price cutters, it is going to be very hard for them to sign up new agreements with ourselves or others (Comm. Ex. 555).

The RSCA, in connection with reports of price cutting by distributors, wrote conduit sellers that they were responsible for the actions of these distributors and should insist upon distributors maintaining the manufacturers' "published position." Some distributors' contracts were in fact canceled because of their having cut prices.

PAR. 9. (a) Electrical contractors are called upon to submit bids for supplying and installing electrical wiring and equipment, and frequently a considerable period of time may elapse between the submission of a bid and the completion of the job. Consequently, such contractors desire protection against an advance in the price of conduit during that interval. It has been customary for conduit sellers, either directly or through their distributors, to protect the price of electrical contractors on specific construction projects. In actual practice these so-called specific building contracts have not amounted to more than options, because the conduit seller does not insist upon the contractor taking the conduit and if there is a price decrease the contractor receives the benefit thereof. The result has been that contractors sometimes entered into contracts with more than one conduit seller, each for the full requirements on a particular job, or took a contract for substantially more conduit than actually needed to complete the job purported to be covered by the contract. Duplicate contracts and excess amounts of conduit provided in contracts were of substantial importance to respondent conduit sellers only after a general increase in the price of conduit. Following a price increase, excess quantities of conduit covered in such contracts in effect constituted a floating supply of conduit available at a lower price. The contractor might transfer such excess to some other job or possibly sell it at a profit. The effect

of this floating supply was to create irregular price conditions and to make it difficult for conduit sellers to maintain an advance in price.

(b) The practices existing under the so-called specific building contracts were considered by the conduit committee of NEWA and the report of its meeting of May 4, 1936, recommended:

To correct the waste and unfairness of the building protection contracts your committee recommends: 1. That the manufacturer consider the economic value and the advisability of limiting such contracts to building operations requiring at least one car-load of conduit; 2. That efficient means be established to determine the actual amount of conduit required; 3. A bureau or bureaus be established to avoid the waste and unfairness of having so many protection contracts for a given building operation.

Both the manufacturer and the wholesaler must, of course, abandon unfair methods to accomplish the desired end (Comm. Ex. 40-A).

Under the leadership of Mr. Blake, as a part of its program to maintain prices and minimize competition in the industry, RSCA undertook the collective preparation of a form of so-called specific building contract to cover sales of conduit to contractors for use on a particular project and the establishment of means for investigating and controlling the use of such contracts. In this program Mr. Blake and RSCA had the cooperation of NEWA.

(c) A draft of a uniform contract was prepared by Mr. Blake through procedure similar to that followed in preparing the uniform consignment contract. The more significant features of this contract form were the detailed identification of the job, including, in addition to its name and location, the name and address of the owner, of the architect or engineer; and of the general contractor; the warranty by the buyer that the conduit will be used only on the job described; the prohibition against diversion; the provision that the price and terms are to be the seller's "regularly published prices and terms as shown by Card No. _____ dated _____"; the non-assignability of the contract; and the requirement for a certification by the architect or engineer that the quantity of conduit specified in the contract for the particular job is correct. Clifton, Garland, Enameled Metals, National Electric, Steel and Tubes, Fretz-Moon, and General Electric adopted the Blake form, in some instances with small alterations. Youngstown continued the use of a form of contract previously adopted which, however, contains provisions substantially the same as the Blake form except the certification by the architect. When Spang Chalfant, Inc., entered the industry, it adopted the Blake form. The record does not disclose whether the other respondent conduit sellers did or did not adopt the Blake form.

(d) Arrangements were made by RSCA and OSC for the latter to investigate or arrange for the investigation of the so-called "validity" of specific building contracts. When this activity was initiated, the conduit sellers sent lists of such contracts as they had in force to OSC and thereafter sent copies of new contracts from time to time as they were negotiated. The forms supplied to conduit sellers for the initial reporting called for the following information on each contract: The name of the reporting member; date of contract, location of job, name and address of the contractor, jobber, and architect, amount of conduit, and the price provided in the contract. The filing of copies of subsequent contracts disclosed similar information. Each conduit seller bore the cost of the investigation of the contracts he reported and the results of such investigations were

transmitted by Mr. Booth to the reporting conduit seller and such others as were interested in the particular job or inquired concerning it. The nature of the practice is best shown by the history of an investigation of an actual contract. Central Tube reported a contract for 110 tons of conduit for the Teaneck Armory, Teaneck, New Jersey. Mr. Booth reported the result of the first investigation made of this contract to Central Tube on January 14, 1937, which indicated that 110 tons would be required and that Central Tube conduit supplied through Westinghouse Electric Supply Company to Badaracco & Company as contractors would be used. He recommended reinvestigation in 90 days. On October 20, 1937, Central Tube asked that reinvestigation be made. The report of this recheck indicated that the contractor was using both Central Tube and Youngstown conduit and that 80 tons would be sufficient. In advising Central Tube of the result of this recheck under date of June 21, 1937, Mr. Booth stated in part:

If you wish to have me, I shall ask Youngstown how much material they have covered on this job as I am sure you will both be glad to cut your allotment in half in view of the card on which taken.

In the meantime, I am marking my records O. K. 80 tons, cancel 30. If you wish me to go into the matter further please advise (Comm. Ex. 487-I).

The contractor and the agent for Central Tube reasserted that 110 tons would be required. Further investigation was made, the result of which showed that the contractor insisted that the full tonnage would be required, while the investigator reported he thought his original estimate of 80 tons would be correct. In reporting this to Central Tube, Mr. Booth wrote in part:

I feel that you should respect our report of June 21st and limit the job to 80 tons or send a representative of your company or make an appointment for a representative of your company and Mr. Lodge to visit the job together but without a representative of the jobber or your New York agents (Comm. Ex. 487-D).

Central Tube gave way to Mr. Booth's insistence and directed its agents, sending a copy of the directions to Mr. Booth:

Do not permit Westinghouse to deliver more than 80 tons against this contract and if after the 80 tons are delivered they need additional conduit we will investigate the matter further (Comm. Ex. 487-B).

(e) This activity was supervised and directed by Mr. Booth, and the collective pressure exerted through him resulted in cancellations and partial cancellations of contracts for large quantities of conduit. From time to time during the progress of these investigations Mr. Booth reported to meetings of RSCA the results attained. A cumulative report made by him to the association appears in the minutes of a meeting of RSCA on July 13, 1937, and shows in part that 1,893 contracts were investigated, that these contracts covered 48,509 tons, that cancellation of 27,166 tons resulted, and that the percentage of tonnage canceled to the tonnage investigated amounted to 56 percent (Comm. Ex. 20-H).

PAR. 10. (a) The amount and terms of trade discounts to be granted by conduit sellers was the subject of collective consideration by such sellers and conduit wholesalers. NEWA made studies to determine an average cost of distribution of various electrical goods, including conduit,

and made recommendations based thereon concerning the trade discounts or margins which wholesalers should receive. This was followed by the action of I. A. Bennett, chairman of the board of directors of RSCA, in calling a conference between conduit sellers and conduit wholesalers. In extending an invitation to the managing director of NEWA to this meeting, Mr. Bennett stated in part:

The Rigid Steel Conduit Association have authorized the Board of Directors to make a study of the cost of distribution of Rigid Steel Conduit (Comm. Ex. 46).

(b) NEWA called together in New York City the members of its conduit committee for the purpose of attending the joint session with conduit sellers, and then the managing director of NEWA advised the chairman of its conduit committee in part:

Since issuing this call we have learned, however, that the proposed conference between manufacturers and distributors is wider than we had supposed, that, in fact, the manufacturers have invited to be present at the conference various distributors in their individual capacities as well as representatives of various local wholesaler Associations.

Under the circumstances I believe that you will quite agree that the National Association cannot very well take part, through its representatives, in a conference of this kind.

* * * * *

When you adjourn as a Committee, those of you who plan to take part in the proposed conference with manufacturers of Conduit will, of course, attend such a meeting with the manufacturers in your personal and individual capacities and not as official representatives of the National Electrical Wholesalers Association (Comm. Ex. 47).

One of the principal subjects of discussion at the meeting was the costs to wholesalers of doing business as shown in the cost study made by NEWA. The results of this joint meeting came before RSCA at its meeting of January 27, 1937, and the minutes of that meeting show that L. R. Quinn reported in part:

A brief resume of what transpired at the meeting of January 6, where various individuals representing manufacturing companies, jobbing companies and jobbers' associations met to discuss putting into effect the request of the jobbers made at the N. E. W. A. convention in Buffalo during October.

* * * * *

After a thorough analysis of what the various jobbers present had to report, it seemed to be the consensus of opinion that consideration should be given to the various brackets as follows:

- 6%—for carload and over.
- 17%—5,000 pounds to carload.
- 22%—1,000 to 5,000 pounds.
- 25%—Under 1,000 pounds.

Further, it was suggested that these percentages be based on the Pittsburgh value for each class as published and not include freight (Comm. Ex. 11-E and F).

(c) At the time of the joint conference on January 6th and of the RSCA meeting of January 27th, price cards numbered 74 issued by the various conduit sellers were in effect, quoting only carlot prices on conduit with certain provisions for trade discounts or agent's compensation. The fol-

lowing month respondent conduit sellers issued their price cards numbered 75, and these cards quoted conduit prices in four columns. Using $\frac{1}{2}$ -inch galvanized conduit, Pittsburgh base, as an example, the prices per hundred feet were \$4.72 in carlots, \$5.35 on quantities between 5,000 pounds and carlots, \$5.69 on quantities between 1,000 and 5,000 pounds, and \$5.92 on quantities less than 1,000 pounds. The trade discounts or agent's compensation provided by each conduit seller by card No. 75 differed from those previously in effect, but were identical as among the various conduit sellers, and in general outline followed the plan reported by Mr. Quinn as representing the "consensus" of opinion at the meeting of January 6th.

PAR. 11. (a) As a further step in their plan for maintaining price uniformity in accord with the pricing plan used in quoting conduit prices, RSCA instituted a system of investigating the prices at which specific sales were made, as well as the prices quoted. When a conduit seller lost an order and suspected that this was the result of a price cut by some one else, he could have an investigation made through OSC which would supply him with the information developed, and the same information was supplied to any other conduit seller who desired it or was interested in the particular transaction. The forms used in requesting, acknowledging, and reporting the results of these so-called "closed transaction" investigations were prepared by Herbert S. Blake and OSC and approved by RSCA.

(b) The real nature of these investigations can best be understood through an examination of a specific instance. On June 30, 1937, National Electric sent to Mr. Booth a tabulation of the bids made to a Philadelphia school district showing the amounts bid by "West Phila. Elec. Sy., Silvers Elec. Sy., Royal Electric, Gold Seal Elec., W. A. Leiser," and stated: "14 Other bidders quoted (Correct Price)," and then set out the prices said to be "correct" (Comm. Ex. 489-C). Under date of July 2, 1937, Mr. Booth acknowledged this on the usual form and sent out form inquiries to conduit sellers identifying the transaction and asking for information as to the connection with the transaction of each concern addressed. As a part of this inquiry he included the actual bids of the parties as reported by National Electric and made the statement:

These are not in accord with card 76. If any of the foregoing are handling your material, you should call this bid to their attention as you will be liable under the Robinson-Patman Act for the failure of these people to maintain your published schedule (Comm. Ex. 489-D and others).

Central Tube replied: "We do not sell any of these jobbers and have not quoted through them"; Cohoes replied that it did not receive the order and stated: "We have advised our jobber that the resale must be maintained especially on all public bids in future"; Enameled Metals reported: "We did not quote"; Steel and Tubes and Fretz-Moon answered: "We do not sell Fretz-Moon to any of these"; Garland, in reporting, inserted the names of the conduit sellers whose materials were quoted on; General Electric replied: "Do not sell them"; Clayton Mark reported that it did not receive the order; National Electric replied: "Do not sell any of those listed"; Steelduct reported: "None handling ours"; Triangle reported: "Unfortunately (maybe) the low bidder is not our baby. We do sell Gold Seal but *not lately*"; Youngstown reported: "Not Youngstown"; and Walker Brothers reported that it received the order "and cancelled our contract as per letter attached." The letter of July 2, 1937, from Walker Brothers to the successful bidder advised of the cancelation of the con-

tract because of failure to "observe our prices, selling terms, and other conditions of sale" (Comm. Ex. 490-K). Mr. Booth wrote Walker Brothers on July 21, 1937, and inferred that Walker Brothers should not have supplied the material to West Philadelphia Electric Supply to fulfill its bid. Walker Brothers replied that an unsuccessful effort had been made to get this bidder to withdraw its bid, and stated:

We don't feel that it is good policy to refuse to furnish material on a public bid unless the jobber in quoting reflects a primary price of less than card 76 but we do believe that when a jobber cuts our price and we then should cut him off and in this way teach him to have some respect for our prices without getting ourselves into an inquiry involving the validity of price control (Comm. Ex. 490-M).

On July 26, 1937, Mr. Booth advised National Electric of the results of this investigation, that Walker Brothers had canceled their contract with West Philadelphia Electric Supply, and continued:

Since then I understand that on another public bid, West Philadelphia was right on the line but they no longer have a consigned stock of Walker conduit. They are however, distributor agents for two other manufacturers, so they still have conduit on consigned stock (Comm. Ex. 490-F).

On the same date Mr. Booth similarly advised Garland of the results of the investigation and also said:

I understand that these people also have a stock of your conduit on consignment and hope you will see to it that they do not violate your agreement in any respect. Probably they have learned their lesson (Comm. Ex. 490-C).

(c) Respondent conduit sellers have contended that these "closed transaction" investigations constituted proper activity necessary to enable sellers to secure information as to the condition of the conduit market. The Commission finds, however, that in conception and execution these investigations amount in fact to a sophisticated form of price maintenance through united action by means of which a conduit seller who does not maintain prices and require his distributors to do the same is exposed to his associates and to the force of collective pressure, with the effect of tending to prevent departures from the prices established pursuant to the pricing formula.

PAR. 12. From time to time respondent conduit sellers supplemented the restraining effects of their general practices affecting price by more direct action. The scope and nature of these activities are indicated by many exhibits in the record, among which are those set out below. On October 13, 1937, Garland wrote one of its agents in part:

Yours of October 8th was duly received and we held same over for the reason that we had our Industry Meeting yesterday in Pittsburgh.

* * * * *

The manufacturers are doing their very best to stick to Card 76 on all new business and they believe it can be done. A few of the manufacturers made the statement that they had no difficulty whatever in obtaining Card 76 in the Metropolitan District. This is what we are aiming at, and it is our belief that the New York market will show a decided improvement from now on (Comm. Ex. 541).

On June 7, 1938, Triangle wrote Austin in part:

You received our wire today with regard to the importance of strict adherence to Card 76 prices by all of our conduit distributors.

It is my understanding that there will be a decided improvement in the competitive situation on all makes of conduit. * * * I have talked the matter over with several of our competitors and it is my understanding that they are taking similar action * * * (Comm. Ex. 448).

On June 8, 1938, Enameled Metals wrote a wholesaler in part:

First, we have been assured that the McCarthy Brothers & Ford—Lang deal has been straightened up. At least Youngstown has assured me that it has.

* * * * *

* * * We were directly told that if we wished to have a supply of pipe, we would have to maintain our resale. We have reason to believe that other Manufacturers sent out the same instructions to their agents that we did, and we sincerely trust that an honest effort will be made to hold Card 76. * * * (Comm. Ex. 531-A).

An agent of Garland, in writing to that company under date of June 22, 1938, stated in part:

I attended another meeting of the labeled conduit manufacturers to-day at the New York Athletic Club. In attendance were Robert Milford of Steel Duct, Milton Smith of Enameled Metals, J. Hawks of Triangle, Newt Walker of Walker Brothers and J. Carroll of National Enameled.

* * * * *

Several projects were discussed as to prices and agreements that had been made but nothing was pinned on to any of those present, which was in accordance with our agreement to maintain Card 76 on any new projects that might come up after our first meeting (Comm. Ex. 558).

The contract checking and "closed transaction" inquiries carried on by RSCA through OSC and Robert S. Booth were closely interwoven with other price maintenance activities. An example of this appears in an inter-office memorandum by Garland dated July 8, 1937, reading in part:

Booth called up late yesterday afternoon and got me at home. He said that he was telephoning all manufacturers, because three or four manufacturers had called him asking his ideas on continuing to sell definite carload orders on the basis of Card 75. He called my attention very definitely to the fact that protection orders of this type, not for Specific Buildings and not covered by Specific Building contracts, were only good for ninety days; and we were discriminating against other customers if we supplied any of this material. I told him it was my understanding that we had to ship this material before July 1st, and he said that this was true. He then asked me point blank if we intended to ship any more of such carload business, and I told him we were all through with it. * * * (Comm. Ex. 536).

Another instance appears in a memorandum from Mr. Booth to Garland under date of December 27, 1937:

In further connection with the statements made by Mr. Leiser, one of which involved Philip Cass, the report was that Enameled Metals had offered this party 10% inside, beyond card 76. Following is a reply from Major Quinn:

"Philip Cass, although a personal friend of mine, is one of the damnest liars that ever lived. He used to be our customer. We have sold him \$700.00 worth in the last six (6) months. He is apparently buying from Garland. He is always making some kind of statements about what he could buy material for. I insist that the man that made this complaint go back to Mr. Cass and tell Mr. Cass that if he made the statement that we had quoted him a 10% inside, that Mr. Quinn says he is a plain liar. He is probably trying to chisel another Manufacturer. We have made no inside offer of any nature to Mr. Cass or anybody else."

I have already reported to you in connection with the Philadelphia Electric job on which Walker was involved.

I have asked for more definite information as to where Triangle was quoting off card 76 in Philadelphia as claimed by Mr. Leiser; this request having been made on December 22nd.

If you will furnish me with this information, I will be glad to follow through on it (Comm. Ex. 551).

PAR. 13. (a) The members of RSCA, through the medium of that association, engaged in collective activity directed to the classification of customers and to determining, upon the basis of collective opinion, whether or not particular concerns were entitled to be considered and treated as wholesalers. This activity is shown by the record to have been carried on at least as far back as 1934. Instances of these activities appear in the correspondence of George H. Sicard, then executive secretary of RSCA. Under date of November 28, 1934, Mr. Sicard addressed an inquiry to Mohawk Tube Company, Cohoes, New York, stating the course that should be followed in the case of a particular concern, as follows:

Have you put in a consigned stock with the Marshall Field Company in Chicago? If so, I don't see how they can qualify under your jobber's definition. Will you please advise (Comm. Ex. 445).

A similar instance is shown in Mr. Sicard's letter of December 3, 1934, to the same company:

Are you selling Glen Alden Coal Company, Eastern Pennsylvania as a jobber. I certainly cannot understand it if it is so because they are 100% users.

Will you let me hear from you (Comm. Ex. 444).

Mohawk replied under date of December 4, 1934:

Re: Glen Alden Coal Company—

In answer to yours of December 3rd, kindly note we are selling these people as users and not as jobbers (Comm. Ex. 443).

Under date of December 11, 1934, Mr. Sicard addressed inquiries to the members of RSCA reading:

Will you be good enough to advise me whether you consider the Hershy Lumber Company, Hershy, Pa., as a user or as a jobber.

Will you simply answer on the bottom of this sheet and also I would appreciate it if you would tell me whether this company is one of your customers (Comm. Ex. 440).

On December 30, 1934, Mr. Sicard wrote the members of RSCA:

You will recall that in November I wrote to you asking you for the names of concerns in the New England territory who in your opinion did not qualify as jobbers under the Rigid Steel Conduit Association definition.

I have also received from New England a copy of the list of companies recognized as wholesalers (jobbers) by the Electrical Manufacturers Representatives Club of New England and the Northeastern Electrical Wholesalers Association. This list was compiled jointly by the two associations given above.

From the preliminary investigation it would appear that concerns listed on the attached sheet are considered by some members of the Associations as jobbers, although they do not qualify under the Association definition.

Would you be good enough to tell me by return mail which of these companies you sell and whether you consider them as wholesalers under our definition and why.

When these replies are received I will take the matter up with each of you individually. (Comm. Ex. 430).

On February 6, 1935, Mr. Sicard wrote the members of RSCA in part:

The Rigid Steel Conduit Association is extremely anxious to have a definite authentic list of all wholesalers or jobbers in the United States of America.

Will you send me for confidential compilation a list of all your customers to whom you extend jobbers or wholesalers compensation service commissions.

When these lists are received from all of the members, they will be compiled by States and cities. Naturally, no manufacturer's name will be used in connection with any company on such list (Comm. Ex. 413).

On February 20, 1935, Cohoes replied:

In conformity with yours of February 6th we are enclosing list of jobbers (Comm. Ex. 412).

On March 13, 1935, Mr. Sicard addressed the members of RSCA as follows:

The results of the questionnaire regarding Pusey and Jones was that no manufacturer has sold these people. We are investigating further (Comm. Ex. 435).

(b) When RSCA, with the assistance of Mr. Blake, prepared the uniform consignment contract heretofore discussed, a provision was inserted whereby the distributor agent, in executing the contract, represented that he conducted a warehouse suitable for carrying a stock of conduit and accessories in sufficient volume and range of sizes and types adequately to serve the territory in which he operated, that he regularly employed a force of salesmen, and that he did not sell as a contractor or otherwise in significant amounts direct to the general public or to individual ultimate consumers. These provisions reflect the more important qualifications required by NEWA as a prerequisite to membership, but the NEWA definition is in more detailed form. Membership lists of NEWA are available to conduit sellers on request.

(c) After the employment of OSC and Herbert S. Blake, RSCA continued the practice of seeking the collective opinions of its members as a guide to individual conduit sellers in classifying purchasers. This is illustrated in the case of Sanborn Electric Company of Indianapolis, Ind. On March 15, 1937, Steel and Tubes, Inc., wrote Fretz-Moon that Clayton Mark recognized Sanborn Electric Company as a wholesaler of conduit and stated that this company was strictly an electrical contractor. Fretz-Moon transmitted this inquiry to R. S. Booth, secretary of RSCA, who, on March 22, 1937, sent a questionnaire to members of RSCA, as follows:

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Subject: SANBORN ELECTRIC COMPANY.
INDIANAPOLIS, INDIANA.

I have been asked to ascertain the status of the above company; that is, whether they are treated as Wholesalers or Contractors.

Please reply hereon, returning this sheet to me stating how you treat this company (Comm. Ex. 491-C and others).

The record contains the replies received from Central Tube, Cohoes, Enameled Metals, Garland, General Electric, Clayton Mark, National Electric, Steelduct, Triangle, Walker Brothers, and Youngstown. Mr. Booth, under date of June 24, 1937, advised Fretz-Moon as follows:

Some time ago you sent me a memorandum from Steel & Tubes covering the status of Sanborn Electric Co., Indianapolis, Ind.

The report was that Clayton Mark Co. recognized Sanborn as a wholesaler whereas in the opinion of Steel & Tubes they are strictly electrical contractors.

This inquiry was sent to all members in addition to Clayton Mark and it is the opinion of the majority that they are contractors but Clayton Mark claims that his Jobber Purchase Agreement contract covers this situation and if any part of their sales is on other than a wholesale basis, they settle at the contractor's price.

There is some justification apparently in the position he takes as you will note from Mr. Walker's reply that the Directory of the Wholesalers Magazine states that these people do about 70% wholesaling. A majority of these dual accounts are very bothersome and I presume they will continue to be.

You will notice that no reply is enclosed from Laclede. However Mr. Oberhauser informed me yesterday by telephone that he knew nothing about this transaction.

Kindly return the papers to me when you are through with them with any comment you may care to make (Comm. Ex. 491-A).

PAR. 14. It was formerly the practice of conduit sellers to maintain warehouse stocks of conduit in many large cities. They made shipments of conduit to such stocks in carload lots and reflected the benefit of the lower carload freight rate in the price on warehouse sales of less-than-carload quantities of conduit to small wholesalers. This practice was a source of dissatisfaction to large wholesalers who were able to buy in carlot quantities but secured no advantage thereby in their competition with small wholesalers who purchased in small quantities from warehouse stocks of conduit sellers. In addition to objections by large wholesalers to that practice, the maintenance of such warehouse stocks created competitive difficulties among conduit sellers. By means of collective action, with the aid and cooperation of NEWA, respondent conduit sellers were able to, and did, discontinue the maintenance of warehouse stocks except on the Pacific Coast. Some of the activities of respondents concerning warehousing are indicated in the extracts from the record which follow. The report of the conduit committee of NEWA on its meeting of May 4, 1936, in discussing unsatisfactory conditions in the conduit business, attributed them in part to "manufacturers' uneconomic local warehouse stocks" and said in part:

Last year your committee recommended "the discontinuance of manufacturers' local warehouse stocks for the reason, among others, that sales and deliveries out of these stocks through warehouses or through agents result in unfair price discrimination against those wholesalers who do their own warehousing and otherwise perform the full distribution service for the manufacturer" (Comm. Ex. 40-A).

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The report of the conduit committee of its meeting of September 28, 1936, recites in part:

It is very gratifying to your Committee to be able to state that manufacturers have discontinued local warehouse stocks in all sections of the country except the Pacific Coast. * * * (Comm. Ex. 39-A).

On May 25, 1937, Triangle wrote Austin in part:

* * * it is the general feeling today that once the bars are let down, even in Chicago, warehouses will return generally.

However, we will look into it, feel out our good friends again, and see what can be done. The only argument we have is that Chicago is a basing point, and the only way the whole thing can be worked out is for all companies, in view of Chicago being a basing point, to have a Chicago factory stock to take care of the Chicago basing point territory. There is one thing certain: I cannot get an edge for you in this matter, that is, if you do it I am sure that others will follow. However, let me look into it again (Comm. Ex. 526).

On June 17, 1938, I. A. Bennett of National Electric wrote to W. J. Drury of Graybar Electric, who was then a member of the conduit committee of NEWA, and stated in part:

The Youngstown Sheet and Tube Company and Triangle Conduit and Cable Company, both have local stocks of Rigid Conduit in the Chicago District.

This is the beginning of the opening of manufacturers' warehouse stocks, which have been eliminated everywhere except on the Pacific Coast. * * * (Comm. Ex. 603).

In September 1938 the rumored reinstitution of warehouse stocks was being investigated by RSCA. The minutes of an association meeting at that time show:

Mr. R. M. Garland stated that he had reports that warehouses were being established in various parts of the country, whereupon, Mr. Booth stated that he was investigating several reports which had come to him in this connection, but that his investigation was not complete at the present time (Comm. Ex. 34-Z2).

The conduit committee of NEWA, reporting on its October 18, 1938, meeting, attended by representatives of American Circular Loom Company, Inc., Austin, Central Tube, Enameled Metals, Fretz-Moon, General Electric, National Electric, Steel and Tubes, Inc., Steelduct, Walker Brothers, and Youngstown, said in part:

Much to the dismay of your Committee, information was presented to the effect that there is the possibility of a trend toward the re-establishment of manufacturers' local warehouse stocks in the key cities of the country. In at least one case this has become an accomplished fact. It was the very definite expression of manufacturers present at our meeting that the establishment of such local stocks was highly undesirable from an economic point of view. However, it was pointed out in no uncertain terms that if one or two manufacturers determined on such a policy it is quite obvious that others must in due course follow suit. It is the most apparent issue in this report that the wholesaler urge upon his respective suppliers a continuation of the policy of not establishing local warehouse stocks as being economically unsound, tending to duplicate stocks, and an unnecessary expense and waste (Comm. Ex. 39-E).

The reports of the meetings of the conduit committee of May 22, 1939, and October 17, 1939, contain statements similar to that appearing in the report of May 20, 1940, which reads in part:

The manufacturers continue to express entire satisfaction with the economies resulting from the discontinuance of their local warehouse expense, and reiterate their liking for wholesaler warehousing as now in operation, thereby eliminating the unnecessary waste of additional expense involved in local warehouse stocks (Comm. Ex. 42).

PAR. 15. (a) Through the use of the basing-point, delivered-price formula, supplemented by the use of common delivery charge factors and common freight rate books to aid in reducing and eliminating price differences which might arise through the individual calculation of freight rates and the conversion of such rates from terms of cents per hundred pounds to cents per hundred feet of conduit of any given size, respondent conduit sellers have been able to achieve a substantial degree of delivered price identity in quoting and selling conduit. The effectiveness of respondents' formula is illustrated in the record in several ways. The following examples taken from public bids show varying degrees of uniformity.

Bids to The Panama Canal for supplying 111,000 feet of conduit f.o.b. Cristobal or Balboa, Canal Zone, were opened June 17, 1935, and were as follows:

American Elec. Supply Company	\$8188.90	5%	10 days
M. B. Austin Company	8188.90	5%	10th proximo
Baitinger Electrical Co., Inc.	8188.90	5%	15th proximo
Philip Cass Co.	8188.90	5%	10th proximo
Central Tube Company	8188.90	5%	10th proximo
Clayton Mark & Co.	8188.90	5%	10th proximo
Enameled Metals Company	8188.90	5%	10th proximo
Gaffney Kroese Electric Supply Co.	8188.90	5%	10th proximo
Garland Manufacturing Company	8188.90	5%	10th proximo
Gertler Electric Supply Corp.	8188.90	5%	10th proximo
Graybar Electric Company	8188.90	5%	10th proximo
Greene Wolf Co., Inc.	8188.90	5%	15th proximo
Home Lighting Co., Inc.	8188.90	5%	10th proximo
Hudson Electric Supply Company	8188.90	5%	10th proximo
Laclede Tube Company	8147.70	5%	10 days
Lavenson & Savasta	8188.90	5%	10th proximo
Lee Electric Co.	8188.90	5%	10th proximo
Loman Electric Supply Co.	8188.90	5%	10 days
National Electric Products Corp.	8188.90	5%	10th proximo
Noland Company, Inc.	8188.90	5%	15th proximo
Shell Electric Supply Corp.	8188.90	5%	10 days
Thomas Summerville Co.	8188.90	5%	10th proximo
Steel and Tubes, Inc.	8188.90	5%	10 days
Steelduct Company	8188.90	5%	10th proximo
Triangle Conduit & Cable Co., Inc.	8188.90	5%	after shipment
U. S. Electric Export Corp.	8188.90	5%	10th proximo
Walker Bros.	8188.90	5%	10th proximo
Weinstein Supply Company	8188.90	5%	10 days
West Philadelphia Electric Supply Co.	8188.90	5%	10th proximo

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Westinghouse Electric Supply Co.	8188.90	5%	10th proximo
Youngstown Sheet & Tube Co.	8188.90	5%	10th proximo
Baltimore Electric Supply Co.	8188.90	5%	10th proximo
National Electric Supply Co.	8188.90	5%	15th proximo
(Comm. Ex. 318).			

In the above instance, 12 respondent conduit sellers submitted bids. Austin, Central Tube, Clayton Mark, Enameled Metals, Garland, National Electric, Steel & Tubes, Inc., Steelduct, Triangle, Walker Brothers, and Youngstown each bid \$8,188.90, and Laclede Tube bid \$8,147.70, but under a policy of disregarding bids which did not comply with the invitation, the award in this instance was made by lot.

Bids on 100,000 feet of conduit for The Panama Canal opened January 6, 1938, were as follows:

American Electric Supply Co.	\$6200.00	5%	10th proximo
M. B. Austin Company	6200.00	5%	10th proximo
Baitinger Electric Company, Inc.	6200.00	5%	10th proximo
Enameled Metals Company	6200.00	5%	10th proximo
Gaffney Kroese Electric Company	6200.00	5%	15th proximo
Garland Manufacturing Company	6200.00	5%	30 days
Germantown Electric Supply Co.	6200.00	5%	15th proximo
Gertler Electric Supply Corp.	6200.00	5%	20 days
Gold Seal Electric Supply Co.	6200.00	5%	
Graybar Electric Company, Inc.	6200.00	5%	10th proximo
Greene Wolf Company, Inc.	6000.00	2%	10 days
Laclede Steel Company	6200.00	5%	10th proximo
E. B. Latham & Company	6200.00	5%	10th proximo
Loman Electric Supply Company	6200.00	2%	10th proximo
Louis Electric Corporation	7000.00	2%	10 days
Clayton Mark Company	6200.00	5%	10th proximo
National Electric Products Corporation	6200.00	5%	10th proximo
Noland Company, Inc.	6200.00	5%	10th proximo
Shell Electrical Supply Corp.	6200.00	5%	10 days
Steelduct Company	6200.00	5%	10th proximo
Steel & Tubes, Inc.	6360.00	5%	30 days
U. S. Electrical Export Corp.	6200.00	5%	10th proximo
Walker Brothers	6200.00	5%	10th proximo
S. Weinstein Supply Co.	5823.95	2%	10 days
West Philadelphia Electric Supply Co.	6200.00	5%	10 days
Westinghouse Electric Supply Co.	6200.00	5%	10th proximo
Youngstown Sheet & Tube Company	6200.00	5%	10th proximo
General Electric Supply Corp.	6200.00	5%	10th proximo
Nathan Goodman Company, Inc.	6200.00	5%	10th proximo
(Comm. Ex. 324).			

In the instance above, 10 of respondent conduit sellers submitted bids. Austin, Enameled Metals, Garland, Laclede Steel, Clayton Mark, National Electric, Steelduct, Walker Brothers, and Youngstown each bid \$6,200, and Steel and Tubes, Inc., bid \$6,360.

Bids on 2,000 feet of conduit for The Panama Canal opened December 21, 1938, were as follows:

Graybar Electric Co., Inc.	\$687.00	5%	10th proximo
The Greene-Wolf Co., Inc.	687.00	5%	10 days

Clayton Mark & Co.	687.00	5%—10th proximo
Monumental Electrical Supply Co.	638.00	5%—20 days
Steel & Tubes, Inc.	685.80	5%—10 days
Walker Bros.	687.00	5%—10th proximo
Williamsburg Electric Supl. Cor.	666.40	5%—10 days
General Electric Supply Corp.	686.60	5%—10th proximo
National Electric Products Corp.	687.00	5%—10th proximo
E. B. Latham & Co.	686.60	5%—30 days
Garland Mfg. Co.	687.00	5%—30 days
Gertler Elec. Supply Corp.	666.80	5%—10 days
Associated Hardware & Supplies Corp.	656.00	5%—20 days
Youngstown Sheet & Tube Co.	687.00	5%—10th proximo
Electrical Industrial Equipment & Supply Corp.	640.00	5%—10 days
American Electric Supply Co.	687.00	5%—10 days
(Resp. Ex. 12).		

It will be noted that 6 of respondent conduit sellers bid in the above instance. Clayton Mark, Walker Brothers, National Electric, Garland, and Youngstown each bid \$687, and Steel and Tubes, Inc., bid \$685.80.

(b) The effect of this pricing system in securing and maintaining identity of delivered-price quotations and prices in private sales was substantial. RSCA tabulated the percentage of all sales of conduit which were "on card"; that is, which accurately reflected the controlling base prices. In a memorandum circulated by Mr. Booth under date of February 10, 1938, it is stated:

The percentage of tonnage shipped in the month of December on Card 76 by the Industry was 81.46%.

This includes all the thirteen members in the Industry, and compares with 80.86% in the month of November 1937 (Comm. Ex. 496).

The report of the conduit committee of NEWA of its meeting of May 23, 1938, states in part:

You will probably be interested in knowing the manufacturers' report that in the month of March, 1938, 87½% of the rigid iron conduit sold at card 76 (Comm. Ex. 39-D).

Respondent conduit sellers placed evidence in the record indicating the percentage of adherence to card price by individual respondents for particular periods of time. The exact degree of adherence is immaterial, however, since it is clear from the entire record that the percentage of adherence was substantial and at times almost complete. The record also tends to show that departures from card prices were often largely confined to particular and limited areas and did not represent a condition general throughout the country.

(c) In addition to the statistical showing of the results of respondents' plans and activities, appraisals of results expressed in general terms appear in the record. Among these is a letter of December 23, 1938, from respondent Herbert S. Blake to I. A. Bennett summarizing the successes and failures of RSCA under his management and outlining a future course intended to correct the failures and "strengthen the basic value that the Association should be and can be made to be to the Industry * * *." He stated in part:

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Major Quinn stated that you desired me to summarize my views as to the status of matters in the rigid steel conduit industry and outline what should be done to deal with the situation more effectively. This is rather a large order to fill by letter, especially as there are many "inside" things that should be said which are not desirable in a letter.

* * * * *

When the Association was reorganized, two years ago, consultation with the important factors in the industry resulted in the establishment of a method of merchandising which at that time was deemed necessary in order to correct the ills of the industry. This plan was based on the view that it was absolutely necessary to control the "secondary" market and the probability of the success of the plan was founded upon the belief that the Distributors of conduit would support the plan whole-heartedly, * * *.

There is no question but what the plan, throughout the period, which followed a most chaotic market condition, did, for some months promote a far greater degree of stability in the industry than had existed for a long time previous, and resulted in earnings which could not otherwise have been achieved. * * *

Mr. Blake then stated that the program failed of continued success because distributors did not give it unqualified support and producers did not maintain their published prices, and said both of these conditions were due to a drop in the aggregate volume of sales because of general business conditions and the incursion of substitute products. He continued:

* * * The force which undermines even an approach to stability in the secondary market is weakness in the primary market and the only manner in which a firm secondary market can be developed is on the basis of certainty on the part of Distributors that the primary market is stable (Comm. Ex. 576-A and B).

In writing Mr. Blake after his resignation, Fretz-Moon stated in part:

It requires only casual observation of what has happened to us since we have lost your leadership to realize the benefits sacrificed by our foolish action in allowing you to withdraw. It is costing us today at least \$5.00 per ton for not following your advice and at this rate the total cost runs into very substantial figures (Comm. Ex. 621).

PAR. 16. (a) In addition to the matters heretofore set out, there are certain facts of a general nature which relate to and are explanatory of the basing-point, delivered-price system used in quoting and selling conduit and of the results flowing from its use. Respondent conduit sellers produce all the conduit manufactured in this country. Conduit is produced by Cohoes at Cohoes, N. Y.; by Enameled Metals at Etna, near Pittsburgh, Pa.; by Fretz-Moon at East Butler, Pa.; by Garland at West Pittsburgh, Pa.; by General Electric at New Kensington, Pa.; by Laclede Steel at Alton, Ill., near St. Louis, Mo.; by National Electric at Ambridge, near Pittsburgh, Pa.; by Spang Chalfant at Etna, Pa.; by Triangle at Moundsville, W. Va.; by Walker Brothers at Conshohocken, near Philadelphia, Pa.; and by Youngstown at Struthers, Ohio, and Indiana Harbor, Ind. The Indiana Harbor plant of Youngstown produces only the large sizes of conduit and not a full line. Clayton Mark, Steelduct, Austin, and Clifton do not manufacture conduit, but sell and distribute conduit manufactured for them and under their own brands by one or more of the producers named above, and Republic, through its Steel and Tubes Division, dis-

tributes Fretz-Moon conduit. Seven of the twelve plants producing conduit are located within the switching limits of Pittsburgh, from which freight rates to other areas are the same although they may differ within the local area.

(b) The Chicago base price of conduit has been consistently maintained at a figure approximately \$4 per ton above the Pittsburgh base price. The area controlled by the Chicago base; that is, the area in which the sum of the Chicago base price plus delivery charge factors is less than the sum of the Pittsburgh base price plus delivery charge factors, is relatively quite small. It controls destination price quotations in Wisconsin, parts of Minnesota, Iowa, Missouri, Illinois, and Indiana, and certain small isolated areas in Wyoming, Colorado, Nevada, New Mexico, and Texas. Prices at all other destinations in the United States are controlled by the Pittsburgh base.

(c) Respondent conduit sellers have consistently published identical price quotations, and such quotations were upon a basing-point, delivered-price basis. With respect to the refusal of conduit sellers to quote true f.o.b. mill prices, occasional exceptions have occurred in the bids made to agencies of the Federal Government when land-grant freight rates were available to such agencies. Some of these exceptions, however, were more apparent than real, in that purported f.o.b. prices were in fact related to base prices or a method of freight equalization was used to eliminate differences resulting from the application of land-grant rates. Also, a conduit seller whose plant is located at a basing point can make sales to purchasers at locations where the price is controlled by such basing point upon an f.o.b. basis without necessarily infringing the basing-point price pattern.

(d) The price of conduit has shown a high degree of rigidity. For example, cards 72 and 82 were each in effect for at least 8 months, card 80 for about 10 months, card 69 for about 12 months, and card 70 for about 18 months. The failure of prices to respond to changing conditions of supply and demand, both locally and nationally, indicates the absence of effective competition. Some of the respondents have contended that the demand for conduit is not affected by price but is dependent upon the total volume of construction work, in which the cost of conduit is but a small factor. In some uses conduit must be installed regardless of price. In many uses, however, some of the products which compete with conduit may be installed in lieu of conduit when the price relationship and relative advantages and disadvantages warrant. A correlation of price changes with total sales of conduit, expressed in terms of percentage of industry capacity to produce, indicates not only that the volume of conduit sales responds to price changes, but also that the price of conduit has been rigid for long periods in the face of rapidly decreasing demand. At the time card 76 was issued in March 1937, increasing the price of conduit approximately 25 percent, total sales approximated 70 percent of the industry capacity to produce. Following this price increase, sales decreased rapidly and amounted to less than 25 percent of industry capacity in July 1938. In that month cards 77 and 78 were issued, the last of which reduced the price to the approximate level existing before card 76 was issued, and in November 1938 card 79 made a further reduction, which was canceled by card 80, issued in December 1938. Beginning with the first price reduction in July 1938, sales slowly and somewhat irregularly increased to about 50 percent of plant capacity in October 1939, when there was a price in-

crease by the issuance of card 81, and this increase was followed by a sharp decline in sales to about 25 percent of plant capacity in February 1940. A price reduction was made by card 82 in February 1940, and this was quickly followed by an increase in sales which reached about 60 percent of industry capacity before the end of 1940.

(e) Not all of the respondent conduit sellers distribute conduit on a national scale. The number and, in part, the identity of the conduit sellers whose products are available in any given section of the country vary as between different sections. Similarly, not all conduit sellers have sales representation at all locations where conduit is sold and the number and, in part, the identity of the conduit sellers whose products are available at any given location vary as between locations. The conduit sellers who actually distribute their products in sections and at locations where other conduit sellers do not seek to make sales are able to, and do, there maintain the basing-point, delivered-price formula as fully and as successfully as if all conduit sellers participated. In occasional instances in particular localities or to particular purchasers one or more conduit sellers, through intent or error, quote or sell conduit at prices which are not in accord with the basing-point delivered prices concurrently offered in the same localities or to the same purchasers by other conduit sellers. In such situations, when two or more but not all conduit sellers adhere to the formula prices, the effects produced by such adherence are similar in character but less in degree than those resulting when all conduit sellers adhere to the formula prices.

PAR. 17. (a) The use by respondent conduit sellers of the pricing formula heretofore described requires each such seller to discriminate among purchasers of conduit by charging some more than others for similar goods, not merely in the sense that the delivered cost to one purchaser is higher than to another by the amount of the difference in actual delivery costs, but through deliberately varying the seller's mill nets in order to quote prices identical with those of competitors at the same destinations according to the pattern established by the formula.

(b) A conduit seller whose mill is not located at a basing point charges fictitious delivery costs to purchasers located in his home town and at all other points where he has a freight advantage as compared with mills located at the controlling basing point, because under the formula generally followed his quotations at all such points amount to the sum of the base price plus the delivery charge factor from the basing point, although in fact the actual delivery cost is less than the delivery charge factor included in the delivered price. On such sales the seller's mill net is higher than the base price by the amount of "phantom freight" charged the purchaser. For example, Laclede Steel quotes prices in St. Louis which represent the sum of the Pittsburgh base price plus the delivery charge factor from Pittsburgh to St. Louis, although in fact the conduit is produced in and delivered from Alton, Ill., a few miles from St. Louis. A similar example is Walker Brothers, which has its plant at Conshohocken, Pennsylvania, a few miles from Philadelphia. This company, nevertheless, quotes prices in Philadelphia equivalent to the sum of the Pittsburgh base price plus the delivery charge factor from Pittsburgh. In one large transaction, Walker Brothers quoted a price in Philadelphia which included approximately \$25,000 in phantom freight. In each such quotation the seller increases his mill net or real price by the exact amount necessary to produce a quotation equivalent to the sum of the controlling base

price plus delivery charge factor from that base to the particular destination.

On the other hand, the conduit seller who is not located at a basing point shrinks his mill net below the controlling base price on sales at destinations where he is at a freight disadvantage as compared with the controlling base. In each such quotation the shrinkage of the mill net, or real price, is the exact amount necessary to produce a quotation equivalent to the sum of the controlling base price plus the delivery charge factor from that base to the particular destination.

(c) In the case of a seller whose plant is located at a basing point, his quotations at all destinations controlled by that base are the sum of the base price plus delivery charge factor from that base to the particular destination. However, when such a seller quotes at destinations controlled by another base, he shrinks his mill net or real price by the exact amount necessary to produce at any such destination a quotation equal to the sum of the controlling base price plus delivery charge factor from that base.

(d) In effect, this pricing pattern amounts to each seller inviting other sellers to share in the available business in his freight-advantage territory in return for the privilege of sharing in the available business in the freight-advantage territory of other sellers. It thus promotes the cross-shipping of conduit with the attendant costs, without tending to increase the total consumption of conduit. It requires the maintenance of a higher price level than would otherwise be necessary, in order that each seller may secure an additional margin on some sales to counterbalance the lower mill nets recovered on other sales, or, in other words, to permit sellers to distribute conduit, a heavy commodity upon which freight charges are substantial, upon a national scale. By denying to some purchasers the advantages of their location with respect to points at which conduit is produced, sellers are enabled to subsidize their own sales to other purchasers who are not so favorably located.

(e) Under the conditions which have existed in the industry each conduit seller has necessarily known that the other conduit sellers used the basing-point, delivered-price system in the sale and distribution of conduit. Aside from the conditions which have existed, it is inevitable that the use of such system by any conduit seller in quoting prices on conduit would come to the knowledge of the other conduit sellers through ordinary trade channels. As a practical matter, it would be impossible for one conduit seller to quote prices in accordance with the basing-point, delivered-price system and conceal that fact from the other conduit sellers.

PAR. 18. (a) In addition to knowledge of the use of the basing-point, delivered-price formula by others, each conduit seller knows that by its use each will be able to quote a price at any given destination identical with the prices quoted by others pursuant to such formula, and thus all users of the formula will be enabled to present to a prospective purchaser a condition of matched prices in which such purchaser is isolated and deprived of any choice on the basis of price. Respondent conduit sellers assert that in matching price quotations with other sellers at any given destination they are "meeting competition." In order to produce such matched prices sellers must, at numerous destinations, increase their mill nets or real prices and at numerous destinations concurrently reduce their mill nets. Such systematic price variations according to the pattern described do not represent competition in the ordinary meaning of that

term. Each participant in the use of this pricing formula consciously intends that no attempt be made to exclude any seller from the natural freight-advantage territory of another and by the use of the formula in effect invites others to share the available business in his natural market in return for a reciprocal invitation.

(b) Respondents' basing-point, delivered-price formula is a pricing system recognized by economists as a controlled price or monopolistic price system and does not in its operation or results conform to the recognized economic principles which indicate the existence of free or effective competition. One of the characteristics of effective competition is that prices readily respond to changing conditions of supply and demand, whereas respondents' system has produced a high degree of price rigidity and at times prices have even moved contrary to what would be expected in a market amenable to the law of supply and demand. The use of the pricing formula produces a condition of mutual dumping inconsistent with the existence of effective competition. The systematic pattern of discriminations among purchasers of conduit would not exist concurrently with effective competition and the use of a formula which produces a condition of matched delivered-price quotations indicates the absence of effective competition.

(c) The economic principle that in a truly competitive market the unit price of a homogenous commodity tends to become approximately uniform does not serve to explain the results of the use of respondents' pricing formula. The tendency toward price uniformity in a free market results from the fact that in the purchase and sale of units of a homogenous commodity in such market, sellers are indifferent as to whose money they get for their commodity and buyers are indifferent as to whose commodity they get for their money. The systematic differences in mill nets accepted by respondent conduit sellers violate the principle of indifference. It is also true that the law of uniform price is limited in its application to prices which eventuate from actual sales and has no application to and cannot explain uniformity of price quotations.

PAR. 19. (a) Pursuant to Count I of the complaint herein, the Commission concludes from the evidence of record, and therefore finds, that the capacity, tendency, and effect of the combination and conspiracy maintained by the respondents named therein in the manner aforesaid, and the acts and practices performed thereunder and in connection therewith by said respondents as set out herein, has been, and is, to hinder, lessen, restrain, and suppress competition in the sale and distribution of conduit in, among, and between the several States of the United States; to deprive purchasers of conduit of the benefits of competition in price; to maintain artificial and monopolistic methods and prices in the sale and distribution of conduit; to prepare and maintain common rate factors and common delivery charge factors or "freight adders" used and useful in determining and establishing price quotations and prices for conduit; to classify purchasers of conduit and determine the treatment to be accorded them; to establish and maintain uniform discounts, terms, and conditions of sale; to determine and control the use of warehouses in the distribution of conduit; to prepare, adopt, and use for the purpose of aiding in price maintenance and control, uniform contracts for distributors and for contractors buying for specific projects, and to enforce the terms of such contracts through investigations and reports thereon; to support and maintain their price structure through the conduct of investigations of sales

and offers to sell, and the circulation of reports thereon; and otherwise to maintain and promote the purposes of their combination and conspiracy to hinder, lessen, and restrain competition in the sale and distribution of conduit.

(b) Pursuant to Count II of the complaint herein, the Commission concludes from the evidence of record, and therefore finds, that the capacity, tendency, and effect of the use by each respondent named therein of the basing-point, delivered-price formula to determine price quotations and prices which will be made to conduit purchasers at any given destination concurrently with similar use of the same pricing formula by other of the said respondents has been, and is, to hinder, lessen, and restrain competition in price in the sale and distribution of conduit; to deprive purchasers of the benefits of competition in price; to unfairly discriminate among purchasers; and to create in each of said respondents a dangerous tendency toward a monopolistic control over price in the sale and distribution of conduit.

CONCLUSION

The aforesaid acts and practices of respondents constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers of respondents, testimony and other evidence in support of and in opposition to the allegations of said complaint taken before an examiner of the Commission theretofore duly designated by it, report of the trial examiner and exceptions thereto, briefs in support of the complaint and in opposition thereto, and oral arguments of counsel, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of the Federal Trade Commission Act.

It is ordered. That respondent, Rigid Steel Conduit Association, an unincorporated voluntary association, its officers, directors, representatives, agents, and employees, the corporate respondents, Clayton Mark & Company, Cohoes Rolling Mill Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., General Electric Company, Laclede Steel Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit & Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, Republic Steel Corporation, M. B. Austin Company, their respective officers, representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of rigid steel conduit 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 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 things:

1. Quoting or selling rigid steel conduit at prices calculated or determined pursuant to or in accordance with the basing-point, delivered-price system; or quoting or selling rigid steel conduit at prices calculated or de-

terminated pursuant to or in accordance with any other plan, system, or formula which produces identical price quotations or prices for rigid steel conduit by respondents using such plan, system, or formula at points of quotation or sale, or to particular purchasers, or which prevents purchasers from finding any advantage in price in dealing with one or more of the respondents as against any of the other respondents.

2. Establishing, fixing, or maintaining prices, terms, or conditions of sale for rigid steel conduit, or adhering to any prices, terms, or conditions of sale so fixed or maintained.

3. Collecting, compiling, circulating, or exchanging information concerning common carrier transportation charges used or to be used as a factor in computing the price of rigid steel conduit; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of rigid steel conduit.

4. Collecting, compiling, circulating, or exchanging "freight adders," delivery charge booklets, or other information concerning delivery charges on rigid steel conduit used or to be used as a factor in computing the price of such conduit; or using, directly or indirectly, any such information so collected, compiled, or received as a factor in computing the price of rigid steel conduit.

5. Circulating or exchanging information concerning the classification granted or to be granted to any specific purchaser of rigid steel conduit; or determining upon any basis for the selection or classification of customers, or using any basis so determined for selecting or classifying customers.

6. Determining upon the location, establishment, maintenance, or discontinuance of warehouses or other places for the stocking of supplies of rigid steel conduit.

7. Formulating or adopting consigned stock, specific building, or any other forms of contracts or agreements concerning the sale or distribution of rigid steel conduit, or using any contracts or agreements so formulated or adopted, for the purpose or with the effect of aiding or assisting in arriving at or maintaining uniform prices, terms, or conditions in the sale or distribution of such conduit.

8. Directly or indirectly investigating or checking the prices, quantities, terms, or conditions of any sale or offer to sell rigid steel conduit to any buyer or prospective buyer for the purpose or with the effect of aiding or assisting in maintaining uniform prices, terms, or conditions in the sale of such conduit.

9. Doing or causing any of the things forbidden in the preceding paragraphs of this order to be done through respondents, Charles Donley, Herbert S. Blake, Organization Service Corporation, or any other individual, corporation, or organization.

It is further ordered, That respondent, Charles Donley, an individual, his representatives, agents, and employees, do forthwith cease and desist from knowingly, advising, assisting, or cooperating with the aforesaid respondents, or any of them, in doing any of the things forbidden by paragraph numbered 3 above.

It is further ordered, That respondent, Herbert S. Blake, an individual, his representatives, agents, and employees, and respondent, Organization Service Corporation, a corporation, its officers, representatives, agents, and employees, do forthwith cease and desist from advising, aiding, assisting, or directing the aforesaid respondents in any manner in doing any of

the things forbidden by paragraphs numbered 1 to 8, inclusive, of this order.

It is further ordered, That respondent, The National Electrical Wholesalers Association, an unincorporated association, its officers and members, the officers and members of its conduit committee, and respondents, General Electric Supply Corporation, a corporation, E. B. Latham & Company, a corporation, Graybar Electric Company, Inc., a corporation, Revere Electric Supply Company, a corporation, Kiefer Electrical Supply Company, a corporation, Westinghouse Electric Supply Company, a corporation, Fife Electric Supply Company, Columbian Electrical Company, W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, F. D. Lawrence Electric Company, and The C. S. Mersick and Company, individually, and as such members, their respective officers, representatives, agents, and employees, do forthwith cease and desist from aiding, assisting, or cooperating in any manner with the respondents subject to the provisions of paragraphs numbered 1 to 8, inclusive, of this order, or any of them, in doing any of the things forbidden in said paragraphs.

It is further ordered, That each of the corporate respondents, Clayton Mark & Company, Cohoes Rolling Mill Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., General Electric Company, Laclede Steel Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit & Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, Spang Chalfant, Inc., Republic Steel Company, and M. B. Austin Company, their respective officers, representatives, agents, and employees, and respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, copartners, trading as Clifton Conduit Company, their representatives, agents, and employees, in or in connection with the offering for sale, sale, and distribution of rigid steel conduit in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from doing any of the following things for the purpose or with the effect of systematically matching delivered-price quotations with other of said respondents or producing the equivalent of such matched delivered prices through systematic discriminations in the mill nets received on sales to different purchasers:

(a) Quoting or selling rigid steel conduit at prices calculated or determined pursuant to, or in accordance with, the basing-point, delivered-price system.

(b) Quoting or selling rigid steel conduit at delivered prices calculated as, or systematically equivalent to, the sum of the price in effect at, plus a transportation charge factor from, any point other than the actual shipping point.

(c) Quoting or selling rigid steel conduit at delivered prices which systematically reflect the inclusion of a transportation factor greater or less than the actual cost of transportation from point of shipment to destination.

(d) Discriminating among purchasers by quoting or selling rigid steel conduit at prices which systematically differ in terms of mill nets according to the location of purchasers, and which mill nets, plus common carrier transportation charges to the respective locations of such purchasers, pro-

Order

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duce delivered costs identical with those to such purchasers from differently located respondents.

It is further ordered, That, for reasons appearing in the findings as to the facts, the complaint herein be, and the same hereby is, dismissed as to Central Tube Company, Garland Manufacturing Company, Laclede Tube Company (Missouri), Steel and Tubes, Inc., and F. C. Hodgkinson; that Count I of the complaint be, and the same hereby is, dismissed as to respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, copartners, trading as Clifton Conduit Company, and respondent, Spang Chalfant, Inc.; and that Count II of the complaint be, and the same hereby is, dismissed as to respondent General Electric Supply Corporation.

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.

Complaint

: IN THE MATTER OF

INDIAN RIVER FRUIT & VEGETABLE DISTRIBUTORS, INC.
AND FRANK C. SPADAROCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4730. Complaint, Mar. 16, 1942—Decision, June 6, 1944*

Where a corporation engaged in the packing of citrus fruits and in interstate sale and distribution thereof from its principal place of business at Vero Beach, Fla., in the heart of the Indian River district—citrus fruits of which are believed by many to be of superior flavor and quality—together with its president and general manager, who conducted said business in its name and in his own name—

Represented, through use of corporate name "Indian River Fruit & Vegetable Distributors, Inc.," and through use of words "Indian River" and the Indian head motif on the containers, on labels pasted thereon, and on the individual tissue wrappers, along with aforesaid corporate or trade name and in some cases words "Indian River Citrus Exclusively," that fruit in question was grown in that section of Florida known as the Indian River district, notwithstanding that a substantial part thereof was grown in other parts of Florida;

With effect of misleading and deceiving a substantial portion of the public and causing it to purchase from them substantial quantities of citrus fruits produced outside the Indian River district in the erroneous belief that such fruits were produced within said district:

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

Before *Mr. Miles J. Furnas*, trial examiner.

Mr. Robt. N. McMillen for the Commission.

Mr. A. Lloyd Layton, of Jacksonville, Fla., for respondents.

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 Indian River Fruit & Vegetable Distributors, Inc., a corporation, and Frank C. Spadaro, hereinafter 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, Indian River Fruit & Vegetable Distributors, Inc., hereinafter referred to as respondent corporation, is a corporation, organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business at Vero Beach, in said State. It is now, and for more than two years last past has been, engaged in the business of packing citrus fruits and shipping them from its said place of business to consignees for resale for its account, and to other customers, located in various States of the United States and the District of Columbia. It has maintained a course of trade in said fruits in said commerce.