

Syllabus

IN THE MATTER OF
MORTON SALT COMPANY

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

Docket 4319. Complaint, Sept. 18, 1940—Decision, July 28, 1944

- Where a corporation engaged in the production of salt and in the competitive interstate sale and distribution thereof from its various plants or warehouses to wholesalers or jobbers for resale to the retail trade, to large retail purchasers such as cooperative and corporate chain stores, and to customers purchasing in large quantities for use in their manufacturing processes such as meat packers, tanners and many other industries;
- In selling its blue label plain and iodized salt on a delivered price basis at \$1.60 per case of 24 packages in less than carload lots and \$1.50 per case for car lots, subject to additional discount of 10 cents per case for purchase of 5,000 cases or more in any consecutive 12-month period, and another discount of 5 cents, or a total of 15 cents, for similar purchase of 50,000 cases or more—
- (a) Discriminated in price between purchasers of like grade and quality through making available said carload differential and price to customers who joined in purchase of a car for delivery to them at a specific destination, from which they paid price of delivery to their respective warehouses or places of business, and through making them available also at certain of its warehouses at which it permitted purchases at said carload lot price in any desired quantity;
 - (b) Discriminated in price between purchasers as aforesaid, through making available said 5,000 case discount of 10 cents on combined purchases of separate wholesalers and wholesale groups, and to the corporate purchasing agent of nearly 20,000 member retailer grocer purchasers, no individual purchaser of which groups qualified;
 - (c) Discriminated in price between purchasers as aforesaid through said 15 cent discount on 50,000 case purchases, benefit of which it extended to four retail store chains, combined purchases of all of whose stores located throughout the United States were sufficient to qualify therefor, but for which purchases of no single branch or retail store qualified, which discount in many cases permitted such retail chain grocers to sell its salt to the consuming public at prices lower than those at which wholesalers could reasonably sell it to their retail customers, and among the competitors of which chain stores were retailers who purchased salt from it at the \$1.50 carload lot price, or 5,000 case quantity discount of 10 cents; and
- In selling other salt than its blue label grade at list price plus transportation charges from its plant serving the customer's location under its "unit discount" schedule, pursuant to which it allowed one unit or approximately 5 per cent off list on carload purchases, and an additional unit discount to customers purchasing 50,000 or more cases of table salt during a 12-month period;
- (d) Discriminated in price between purchasers of like grade and quality through extending said carload unit discounts to less-than-carload customers who combined their purchases to form a carload under the so-called "pool car arrangement"; and

- (e) Discriminated as aforesaid, through said 50,000 case unit discount schedule, and inclusion in the total for the purpose of reckoning (but not for discount) of its blue label as well as other salt;

With the result that—

- (1) Discounts allowed by it on said staple—in which a difference of 5 cents per case in the wholesale price may result in the loss of a sale to a customer, not only of the salt involved, but of other commodities as well, the order for which might be placed therewith—in some instances enabled the favored wholesalers to offer its table salt to retailers at prices equal to those paid by competing wholesalers or at prices less than such wholesalers could reasonably sell said salt to their retailer customers;
- (2) Customers who received the benefit of the various discriminatory prices had a substantial advantage in competition with other customers in the same trading area who were not thus favored, or were obliged to pay its full price;
- (3) Wholesalers who paid its full price or were denied the discounts allowed such favored customers, were compelled, in order to compete with the others, either to sell at competitive prices and in so doing reduce their possible profits by the amount of the discrimination against them or attempt to sell at higher prices with result of reduction in their volume of sales;
- (4) Customers paying the highest price were discriminated against with respect to all other customers, those paying the lowest price were given the benefit of the discrimination as against other customers, and the medium-sized wholesale grocer was discriminated against with respect to his larger competitors and given benefit of the discrimination as against the smaller competitors;
- (5) The discriminations based upon the 50,000 or more case purchases allowed to said large retail chain stores discriminated not only against the smaller or medium-sized chain stores, who could not purchase in such quantities, but also against small retailers who were compelled to purchase through wholesalers at prices in excess of the retail prices maintained by such competitive volume purchasers, and against retailer customers of wholesalers, prices of which exceeded those charged such large retail chain stores, and who, in turn, were forced to pay prices which prohibited their competing with said large retail chain stores; and
- (6) Said various arbitrarily fixed discounts and discriminatory prices—differentials of which were not shown as justified by reason of differences in the cost of manufacture, sale or delivery resulting from the different methods or quantities in which its table salt was sold or delivered to its various customers—might substantially lessen and injure competition between customers; and

Where said corporation, separately and apart from the aforesaid discounts—

- (f) Discriminated in price through special allowances or discounts to certain customers, referred to by it as “competitive adjustments” but not shown as made in good faith to meet competition, including one of 7½ cents per case allowed by it to a corporate wholesale grocery group operating 22 units or branches throughout Louisiana in competition with other wholesale grocers therein who did not receive said special 7½ cent discount, and including also an additional unit discount on table salt other than its blue label extended to another corporate wholesale group, notwithstanding failure of said group to qualify therefor by purchase of \$50,000 worth of salt during any consecutive 12-month period;

Effect of which discriminations in price might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they were denied, with tendency to create a monopoly in favored

Complaint

purchasers in the various localities in the United States in which they and their competitors were engaged in business:

Held, That aforesaid discriminations in price, under the circumstances above set forth, constituted violations of subsection (a) of Section 2 of the Clayton Act, or Act of Congress approved October 15, 1914, as amended by the Robinson-Patman Act, or act approved June 19, 1936.

As respects certain special allowances or so-called "competitive adjustments" extended to certain customers, which it was contended were arrived at to meet competition, the evidence was too vague and indefinite to show that the long continued discriminations concerned were made in good faith to meet an equally low price of a competitor.

Before *Mr. James A. Purcell*, trial examiner.

Mr. John T. Haslett for the Commission.

Stearns & McBride, of Chicago, Ill., for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), as amended by an Act approved June 19, 1936, entitled "An act to amend Section 2 of the act entitled 'An act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes" (the Robinson-Patman Act), the Federal Trade Commission having reason to believe that the respondent hereinafter described is violating and has been violating the provisions of said Clayton Act as amended hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Morton Salt Co., is a corporation, organized, existing and doing business under and by virtue of the laws of the State of Illinois and having its principal place of business at 208 West Washington Street, Chicago, Ill.

PAR. 2. Respondent corporation is now and has been engaged in the business of producing, manufacturing, offering for sale, selling and distributing salt in all parts of the United States. The respondent is one of the largest producers and distributors of salt in the United States and occupies a dominating position in said industry. Respondent sells its products to wholesalers, retailers, corporate chains, voluntary chains. Respondent sells and distributes its products in commerce between and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale causes such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment, and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across state lines between respondent's plants or factories and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid respondent is now and during the time herein mentioned has been in substantial competition with other corporations, individuals, partnerships and firms engaged in the business of selling and distributing salt in commerce between and among the various States of the United States and the District of Columbia.

PAR. 4. In the course and conduct of its business as aforesaid since June 19, 1936, respondent has been and is now discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged one with the other in the sale of said products within the United States.

The said discriminations in price are brought about by the following practices and policy pursued by the respondent, to wit:

(1) A discount amounting to approximately five per cent of the list price is allowed to all customers who purchase a carload of salt.

(2) In addition to the carload discount hereinbefore referred to in paragraph 1 hereof, a five per cent discount is allowed to customers whose purchases of salt during a twelve consecutive month period are equal to or in excess of fifty thousand dollars.

(3) To customers who purchase five thousand or more cases consisting of twenty-four packages to a case during a twelve consecutive month period of "free running" table salt and "iodized" salt, a discount of 10¢ per case is granted, and to customers who purchase fifty thousand or more cases of the above type salt, a discount of 15¢ per case is granted. Said discount is not in addition to, but in lieu of the discounts referred to in paragraphs 1 and 2 hereinbefore mentioned.

The discount referred to in paragraph 2 heretofore mentioned is allowed to customers of the respondent who do not purchase from the respondent fifty thousand dollars worth of salt during a twelve consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total fifty thousand dollars during said given period of time. In the industry this type of selling is known as "split business," that is, basing the price upon the requirements of a customer and not upon the actual quantity purchased from the respondent.

In addition to the discriminations effected by the aforementioned discounts respondent discriminates in price between different purchasers of its products, and such price discriminations result from respondent's selling said salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of said customer provided such total quantity or volume amounts to the required minimums during the twelve consecutive month period as set forth in paragraphs 2 and 3 hereinbefore mentioned and not upon the quantity or volume delivered by the respondent to the respective branches or outlets of such individual customer.

In the industry this type of selling is known as "combine selling," that is, basing the price upon the total quantity delivered to all the separate branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer.

PAR. 5. The effect of the discriminations in price generally and specifically mentioned in paragraph 4 herein has been and may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and has been and may be to tend to creat a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

PAR. 6. The foregoing acts and practices of said respondent are violations of subsection 2(a) of Section 1 of said Act of Congress, approved June 19, 1936, entitled "An Act to amend Section 2 of an act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes' approved October 15, 1914, as amended (U. S. C. Title 15, Sec. 13) and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission on September 18, 1940, issued and subsequently served its complaint upon the respondent, Morton Salt Co., a corporation, charging it with violating the provisions of subsection (a) of Section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint and the filing of respondent's answer thereto, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before a trial examiner of the Commission theretofore duly designated by it, and said testimony and other evidence were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint, answer thereto, testimony and other evidence, report of the trial examiner upon the evidence and exceptions filed thereto, briefs filed in support of and in opposition to the complaint, and oral argument of counsel; and the Commission, having duly considered the matter and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Morton Salt Co., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of Illinois, having its principal place of business at 310 South Michigan Avenue, Chicago, Ill. In addition to its main office, said respondent also maintains branch offices and warehouses in various of the

larger cities throughout the United States and also maintains plants for processing and manufacturing salt at Port Huron, Mich.; Manistee, Mich.; Hutchinson, Kans.; Kanopolis, Kans.; Grand Saline, Tex.; Saltair, Utah; and Newark, Calif.

PAR. 2. Since prior to June 19, 1936, respondent has been engaged in the production and manufacture of various kinds and grades of salt and in the sale and distribution of such products in commerce among and between the various States of the United States and in the District of Columbia. Respondent causes its products, when sold, to be transported from its various plants or warehouses to the purchasers thereof located in States other than the State in which such shipments originate. Respondent maintains, and at all times mentioned herein has maintained, a course of trade in said products in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of its business as aforesaid, respondent is now, and during the times herein mentioned has been, in substantial competition with other corporations and with individuals, partnerships, and firms engaged in the business of selling and distributing salt in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 4. The various types of salt processed, manufactured, and sold by the respondent may be divided into four basic classifications: granulated salt, produced from brine and evaporated in vacuum pans; grainer's salt, produced from brine and processed through open-pan evaporation; rock salt, which is mined; and solar salt, which is produced from solar evaporation in open ponds. Table salt may come from all four of these sources.

The principal brand of table salt processed and sold by the respondent is Morton's Free Running Salt, plain and iodized. This brand is the finest grade sold by the respondent and is processed from the granulated or vacuum-pan type of salt. This brand is sold in a round blue package that contains 26 ounces of salt and is generally known as "Blue Label" salt. When sold by the respondent its Blue Label salt is packed twenty-four packages to a case or carton.

Respondent sells its various grades of salt to three classes of customers: (1) wholesalers or jobbers, who in turn resell to the retail trade; (2) retailers who purchase in large quantities, such as cooperative and corporate chain stores; (3) consumers who purchase in large quantities for use in their manufacturing processes, such as meat packers, tanners, and many other industries.

PAR. 5. In the course and conduct of its business since June 19, 1936, the respondent has been, and is now, discriminating in price between different purchasers buying such products of like grade and quality by selling its products to some of its customers at lower prices than it sells its products of like grade and quality to other of its customers who are competitively engaged with each other in the sale of such products within the United States.

PAR. 6. In connection with the sale of its Blue Label plain and iodized salt, respondent followed the practice of allowing various discounts to wholesalers and retail purchasers. Respondent sold its Blue Label salt on a delivered-price basis at \$1.60 per case of 24 packages in less-than-carload lots. When sold in carload lots the delivered price was \$1.50 per case. In

addition, if a customer purchased 5,000 or more cases in any consecutive 12-month period, an additional discount of 10 cents per case was allowed by the respondent. If a customer purchased 50,000 or more cases in any consecutive 12-month period an additional 5-cent discount per case was allowed or a discount of 15 cents per case in lieu of the 5,000-case discount.

These quantity discounts were not deducted from the invoice price but, instead, it was the practice of the respondent to make quarterly, semi-annual, or other stated-period remittances or rebates to those customers whose purchases entitled them to the quantity discounts.

PAR. 7. In many instances the respondent both permitted and encouraged customers to purchase on a so-called pool-car arrangement, whereby a number of competing wholesalers or retailers joined in the purchase of a car for delivery at a specific destination. Participants in such pool-car arrangements would call at the destination point and pick up the salt consigned to them and pay cost of delivery from such destination point to their respective warehouses or places of business. Such customers were billed separately by the respondent at the carload price of \$1.50 per case.

In some localities respondent sold its Blue Label salt through brokers who arranged for customers to join in pool-car shipments. Respondent paid brokerage commission to such brokers and billed the individual customers, regardless of individual purchases, at the carload price of \$1.50 per case. As in the previous case, the customers paid delivery costs from destination point to their respective warehouses or places of business. Respondent also permitted customers to pick up its Blue Label salt in any case quantity desired at certain of its warehouses at the price of \$1.50 per case, customer paying cost of delivery to his warehouse or place of business.

PAR. 8. In allowing the discount of 10 cents per case on the purchase of 5,000 cases of Blue Label salt, the respondent did not require the purchase of this amount by each individual customer in order to qualify but, instead, permitted combined purchases in order to obtain this discount.

In some instances, the respondent permitted one wholesaler to place orders for Blue Label salt for a number of his competitors. Respondent considered these combined purchases in allowing the quantity discount for 5,000-case purchases and issued its remittances or rebates to such wholesaler for distribution to his competitors. In some instances the wholesaler remitted the entire discount to his competitors and in others retained 2 cents per case and remitted the balance. To those wholesalers who received the entire discount the net price was \$1.40 per case and to the others, \$1.42 per case. None of such wholesalers individually purchased 5,000 cases of Blue Label salt in any consecutive 12-month period.

The respondent also permitted the Thomas & Howard Cos., a group of separate corporations, all wholesale grocers, located in various cities in North and South Carolina, to combine their purchases to obtain the quantity discount on purchases of 5,000 cases of Blue Label salt. No individual Thomas & Howard Co. purchased 5,000 cases of Blue Label salt, but, based upon the combined purchases of all the companies, the respondent remitted the discount of 10 cents per case to the Thomas & Howard Co. at Columbia, S. C., for distribution to the other companies in proportion to their purchases. In like manner respondent paid the quantity discount on 5,000-case purchases to C. D. Kenny Co. for distribution to its various branches, although no individual branch purchased 5,000 cases.

The respondent also permitted the National Retailer-Owned Grocers, Inc., to combine the purchases of its members to obtain the quantity discount on 5,000-case purchases of Blue Label salt. This organization acts as purchasing agent for its membership of approximately 18,917 retail stores located in 42 States of the United States. These members in turn own about 116 wholesale warehouses, which act as wholesalers to such members. No individual wholesale warehouse or retail grocer purchased 5,000 cases of Blue Label salt from respondent, but, based upon combined purchases of all the member stores, the respondent remitted the quantity discount to the principal office of the National Retailer-Owned Grocers, Inc., for distribution to its members.

PAR. 9. The allowance of 15 cents per case made to purchasers of 50,000 or more cases of Blue Label salt was limited to four customers whose purchases were sufficient to qualify for this discount. These were American Stores Co. of Philadelphia, Pa.; National Tea Co. of Chicago, Ill.; Safeway Stores, Inc., of Oakland, Calif.; and Great Atlantic & Pacific Tea Co. of New York. These customers were all retail chain stores with branches and stores located in various cities throughout the United States. No branch or retail store purchased a sufficient quantity of respondent's Blue Label salt to qualify for said discount but, instead, the allowance was based upon the combined purchases of all stores and branches. Such discount in many cases permitted such retail chain groceries to sell respondent's Blue Label salt to the consuming public at prices less than wholesalers could reasonably sell said salt to their retail customers. There were other retailers in competition with the above-named retailer customers who purchased Blue Label salt from the respondent and who did not receive the quantity discount on purchases of 50,000 cases but who, instead, purchased said salt from the respondent at the carload price of \$1.50 or at the 5,000-case quantity discount.

PAR. 10. Salt sold by the respondent, other than the Blue Label salt, was not sold on a delivered-price basis as was the custom with the Blue Label salt. Instead, such salt was sold at list price plus freight or transportation charges from the plant nearest the customer or from the plant serving the area in which the customer was located and from which delivery was customarily made. On such salt other than Blue Label, the respondent also maintains a schedule of discounts known as the "unit discount." One unit amounts to approximately 5 per cent of the list or plant price. One unit, or approximately 5 per cent of list price, is allowed to a customer who purchases in carload lots. This discount is also allowed to customers whose individual purchases are less than a carload but who combine their purchases to form a carload on the so-called pool-car arrangement.

To those customers who purchase table salt during a 12-consecutive-month period in amounts equal to, or in excess of, \$50,000, the respondent allows an additional unit discount amounting to approximately 5 per cent of the list price. While this discount does not apply to respondent's Blue Label salt, the amount of Blue Label salt purchased during the 12-month period is included in arriving at the total purchase of \$50,000.

PAR. 11. The Commission finds that the discounts allowed by the respondent in the sale of its Blue Label salt, including price differentials on carload and less-than-carload lots, purchases under so-called pool-car

arrangements, and on purchases in 5,000- and 50,000-case quantities, as well as unit discounts allowed on carload lots and \$50,000 purchases of salt other than Blue Label, constituted discriminations in price between purchasers of commodities of like grade and quality.

Salt is a staple commodity with a medium turnover and is generally sold by wholesalers to their retail customers on a lower margin of profit than that received on other commodities generally. Consequently, the price at which the wholesaler offers his table salt is usually controlling, and a difference of 5 cents per case may result in the loss of a sale to a customer, not only of the salt involved but of other commodities as well, the order for which might be placed with the salt purchase.

In some instances the discounts allowed by the respondent to some of its wholesaler customers have enabled such wholesalers to offer respondent's table salt to retail dealers at prices equal to prices paid by competing wholesalers or at prices less than competing wholesalers could reasonably sell said salt to the retailer customers.

The Commission further finds that customers of the respondent who receive the benefit of the various discriminatory prices granted by the respondent have a substantial advantage in selling respondent's salt in competition with other customers of the respondent who do not receive the benefit of said discount or who are obliged to pay respondent's full price for said salt. In order to sell respondent's table salt in competition with customers of the respondent who receive the benefit of respondent's discrimination in price, wholesalers who pay respondent's full price or who are denied the discounts allowed such favored customers must either sell at competitive prices and in so doing reduce their possible profits which they might reasonably obtain by the amount of the discriminations against them, or attempt to sell at higher prices than the favored customers of respondent charge for the same product, with the result of inability to secure business and a reduction in the volume of their sales.

In each instance where the respondent has granted special and regular discounts to its customers, there were competing customers in the same trading area who were purchasing their requirements of Blue Label salt from the respondent at the carload price of \$1.50 per case or were paying full less-than-carload price.

By respondent's method of selling and the use of the quantity and special discounts hereinbefore described, customers paying the highest price are discriminated against with respect to all other customers, while the customers paying the lowest price are given the benefit of the discrimination as against other customers of the respondent. Furthermore, the medium-sized wholesale grocer is discriminated against with respect to his larger competitors and is given the benefit of the discrimination as against his smaller competitors.

The discriminations in price based upon purchase of 50,000 or more cases of Blue Label salt allowed to certain of the large retail chain stores constitute a discrimination in price not only against the smaller or medium-sized chain stores that cannot purchase Blue Label salt in such quantities from the respondent, but also constitute a discrimination against the small retail dealer who is in competition with such large chain stores but who is compelled to purchase Blue Label salt through wholesalers at prices in excess of the retail price maintained by such competitive volume pur-

chasers. Respondent, by selling its Blue Label salt to such large retail chain stores at prices below those charged for the same salt when sold to wholesalers, forces retailer customers of such wholesalers to pay prices which prohibit competition in price between such small retailers and the large retail chain stores.

The Commission further finds that the various discounts and discriminatory prices hereinbefore described have been arbitrarily fixed by the respondent and that the effect thereof may be substantially to lessen and injure competition between customers of the respondent. The price differentials so fixed and established by the respondent have not been shown to be justified by reason of differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which its table salt is sold or delivered to its various customers.

PAR. 12. Separate and apart from the discounts hereinbefore described respondent has made special allowances or discounts to certain customers. For example, the respondent has, for several years, made to the Consolidated Cos., Inc., of Plaquemine, La., a special allowance of $7\frac{1}{2}$ cents per case from the carload price of \$1.50 on its Blue Label salt. Consolidated Cos., Inc., is engaged in the wholesale grocery business and operates 22 units or branches throughout the State of Louisiana in competition with other wholesale grocers in Louisiana who purchase Blue Label salt from the respondent but who do not receive the special discount of $7\frac{1}{2}$ cents per case allowed by the respondent to Consolidated Companies, Inc.

An additional example is the allowance by the respondent of an additional unit discount on table salt other than Blue Label to the Thomas & Howard Cos., although said Thomas & Howard Cos. do not purchase \$50,000 worth of salt during any consecutive 12-month period to entitle them to the additional unit discount.

The respondent refers to these and other special allowances as "competitive adjustments" and contends that they were arrived at to meet competition. Based upon the record in this case the Commission finds that the respondent has not shown the existence of facts which might indicate or prove that these discriminations in price were made in good faith to meet an equally low price of a competitor. The evidence submitted by the respondent is too vague and indefinite to show that the long-continued discriminations herein described were made in good faith to meet an equally low price of a competitor.

PAR. 13. The Commission finds that the effect of the discriminations in price generally and specifically described herein may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory price is engaged and to injure, destroy, and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied, and may tend to create a monopoly in those purchasers receiving the benefit of said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

CONCLUSION

The aforesaid discriminations in price by the respondent, as herein found, constitute violations of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by an Act of Congress approved June 19, 1936 (Robinson-Patman Act).

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, answer of the respondent, testimony and other evidence in support of the allegations of said complaint and in opposition thereto taken before a trial examiner of the Commission theretofore duly designated by it, report of the trial examiner upon the evidence and exceptions filed thereto, briefs in support of the complaint and in opposition thereto, and oral argument of counsel; and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of subsection (a) of Section 2 of an Act of Congress entitled, "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), as amended by Act approved June 19, 1936 (Robinson-Patman Act).

It is ordered, That respondent, Morton Salt Co., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device in the sale of Morton's Free Running Table Salt, plain or iodized, or other grades of table salt in commerce as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating directly or indirectly in the price of such products of like grade and quality as among wholesale or retail dealers purchasing said salt when the differences in price are not justified by differences in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which such products are sold or delivered,

(a) By selling any of such products to some wholesalers thereof at prices different from the prices charged other wholesalers who in fact compete in the sale and distribution of such products.

(b) By selling any of such products to some retailers thereof at prices different from the prices charged other retailers who in fact compete in the sale and distribution of such products.

(c) By selling any of such products to any retailer at prices lower than prices charged wholesalers whose customers compete with such retailer.

For the purpose of comparison, the term "price" as used in this order takes into account discounts, allowances, and other terms and conditions of sale.

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

IN THE MATTER OF

WALLACE T. AUSTELLE AND JOHN W. FLINTOM DOING
BUSINESS AS AUSTELLE-FLINTOM COMPANY

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

Docket 5130. Complaint, Feb. 7, 1944—Decision, Aug. 12, 1944

Where two partners engaged in the purchase of canned fruits and vegetables, citrus juices, sugar, rice, beans, salt and other miscellaneous commodities for their own account, and in their resale to jobbers, wholesalers, retail chain stores, and other purchasers without the state direct from sellers;

Received and accepted, directly or indirectly from sellers in connection with such purchases of commodities for their own account, in interstate commerce as aforesaid, brokerage fees and commissions or allowances and discounts in lieu thereof in substantial amounts:

Held, That said receipt and acceptance of brokerage fees and commissions or allowances and discounts in lieu thereof, from sellers, under the circumstances set forth, was in violation of subsection (c) of Section 2 of the Clayton Act, as amended.

Mr. Edward S. Ragsdale for the Commission.

Felder & Rosen, of Orangeburg, S. C., for respondents.

COMPLAINT

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

PARAGRAPH 1. Respondents, Wallace T. Austelle and John W. Flintom, are partners, doing business under the name and style of Austelle-Flintom Company, having their principal office and place of business located in the Atlantic Coast Line Warehouse, on Dukes Avenue, in Orangeburg, S. C. Respondents are engaged in the business of purchasing canned fruits and vegetables, citrus juices, sugar, rice, beans, salt, and other miscellaneous commodities for their own account, and of reselling the same to jobbers, wholesalers, retail chain stores and other purchasers.

Since June 19, 1936, respondents have made many purchases of such commodities for their own account for resale as aforesaid from sellers located in States other than the State of South Carolina, pursuant to which purchases such commodities have been shipped and transported by sellers from the respective States in which they are located across State lines either to respondents or, pursuant to instructions and directions from respondents, to the respective purchasers to whom such commodities have been resold by respondents.