

Syllabus

IN THE MATTER OF

PURE CARBONIC, INC., AIR REDUCTION CO., INC., LIQUID CARBONIC CORP., MATHIESON ALKALI WORKS, INC., AND MICHIGAN ALKALI CO.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914, AND OF SUB-SEC. (a) OF SEC. 2 OF AN ACT APPROVED OCT. 15, 1914, AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5143. Complaint, Mar. 17, 1945¹—Decision, June 17, 1948

Where four corporations, namely, (1), P, engaged in the purchase and competitive interstate sale and distribution of (a) liquid carbon dioxide or gas, at wholesale and at retail, sold, mostly without delivery charge, in loaned, 20- or 50-pound, high pressure steel cylinders, to soft drink manufacturers, drug stores, and retail purveyors of carbonated beverages throughout the United States (and since 1933 the largest such producer and distributor therein); and of (b) solid carbon dioxide, or dry ice, sold in wholesale and retail quantities primarily to ice cream and frozen food manufacturers and others, engaged in the production and distribution of perishable foods; (2), L, the only other company in the carbon dioxide business, with Nation-wide distribution facilities for both cylinder gas and dry ice; (3), M, engaged in the production of gas and dry ice as byproducts of other chemical preparations, and in the sale of its entire output of gas to P, and of its dry ice to six concerns including P and L, and in the sale for an 8-year period prior thereto of its entire output other than gas through an exclusive agent who acted with its knowledge and acquiescence in acts set-out as those of said M during period involved; makers, since 1939, of about 73 percent of the total United States production of carbonic gas, and responsible, since 1933, for three-fourths to four-fifths of the annual sales of dry ice therein; and (4), A, owner of all the stock of P; in competition with one another and with others except as below set forth—

Pursuant to agreement, understanding, conspiracy, and planned common course of action, over a period of nearly 15 years, created in themselves a substantial degree of monopoly and control of the manufacture, sale, and distribution of both liquid and solid carbon dioxide by the concurrent execution of the acts, practices, and policies below set out, the success of each of which was almost wholly dependent upon the success of the others, and could have been successfully carried out only through the cooperation of all; and,

Where said P (or A) and L, as a part of said program and undertaking, etc.—

(1) Purchased outright, and in some instances, by agreement divided among themselves, the assets, business equipment, productive capacity, and distribution facilities of about 31 competitors engaged in the sale and distribution of dry ice and gas; and, in the case of a portion of such purchases, made it a condition that the officers or owners of the competing firms concerned would not thereafter engage in the production, sale, or distribution of said products for a specified length of time in a designated area;

¹ Amended.

Syllabus

44 F. T. C.

- (2) Supplemented the degree of control of production thus established through the purchase, under contract or agreement, of a substantial portion, or all, of the output of some 30 firms engaged in the manufacture of said products; thereby obtaining their requirements, or a fixed minimum quantity approximately equal thereto, in certain plants or areas;
- (3) Provided in a number of said purchase contracts or agreements that the sellers would not sell to competitors of themselves, the purchasers, solid carbon dioxide, or the liquid, for the purpose of manufacturing the solid therefrom;
- (4) Having established in themselves the power to control and regulate prices through the acquisition and maintenance of such a substantial degree of control by the purchase of the business and output of competing firms, made free and active use of their price-fixing powers, as shown by the high degree of price uniformity which prevailed on dry ice and gas over a period of 5 years despite the price differences existing between uniformly classified purchasers of different quantities of said products, and as clearly demonstrated by the action of P and L in simultaneously lowering their prices on dry ice until a local competitor was eliminated, and thereafter simultaneously increasing them; and in the case of the latter two, by their action, in the submission of numerous bids for the sale of dry ice to various Federal, State, and municipal agencies, of generally following the practice of quoting the prices shown by their respective price schedules in effect at the time and place for the submission of bids, or for delivery; and

Where said L and M, prior to 1941—

- (5) In order to protect their higher prices for gas and their investment in cylinders, refused to sell dry ice to users of converters, whereby said less expensive product is converted into the higher priced gas and made available for carbonation in the same manner as the cylinder product; and

Where P, beneficiary of a power to regulate and control sales of dry ice to converter users as a result of said refusal of L and M—

- (6) Exercised said power by also refusing to sell dry ice to converter users who did not lease converters from it, or by imposing conditions which made the prices of said product only slightly lower than those at which it sold gas, and above those charged to refrigeration customers for the former; and

Where said P and L, since 1941, in leasing converters under contract—

- (7) Required their respective customers to maintain for their inspection accurate records of the quantity and prices of dry ice used therein, whereby they were able to restrict their customers to the exclusive use of dry ice sold by them or, failing to do so, were kept informed as to the sources, quantity, and prices of dry ice purchased from competitors, and were thereby afforded invaluable assistance in maintaining their own prices and sales policies; and

Where said corporations, following the action of P in strengthening its already dominant position by purchasing the entire gas output of M, and thereby preventing any other distributor from selling said gas to consumers—

- (8) Refrained from competing with each other in the sale and distribution to consumers of the dry-ice output of M, through operation of a series of contracts entered into between M and P and between M and L whereby certain specified areas of the United States, not already reserved to the exclusive use of M's four other customers, were allocated to the exclusive use of P and L, respectively; and

Where said corporations, none of which in 1932 held any patents or patent applications governing the production of dry ice; as a result of negotiations entered into in 1934 with two independent firms who had licensed L and M under separate groups of patents, followed by (a) the acquisition by A, through one of its subsidiaries, of one of said patent holding firms; (b) sale of its stock to P, L, and M equally; (c) formation by the other independent firm and firm owned by corporations here concerned, as aforesaid, of a third, to hold all patents; (d) receipt by said new firm of exclusive licenses from both the others, so that it then held all known patents, patent rights, and patent applications for the production of said product; and (3) the granting by the latter—with a board of five directors, of whom M, L, and P each selected one—of sublicenses under all its patents and patent applications to each of said three companies for a consideration of \$2 per ton of all dry ice produced, while imposing an additional \$5,000 fee for any other prospective licensee—

- (9) Acquired, through a series of understandings as hereinabove indicated, control of all known patents covering the production of dry ice and imposed such burdensome conditions for licensees thereunder that for a period of nearly 5 years no other manufacturer obtained a license; and thereby hindered or prevented competitive manufacture of said product; and

Where P, A, and L, pursuant to a planned common course of action, understanding, combination, or conspiracy—

- (b) Cut prices of solid or liquid carbon dioxide to customers of competitors in certain areas below the prices charged the same class of customers in comparable areas;

Capacity, tendency, and effect of which combination and conspiracy, and acts and practices performed in connection therewith had been and were—

(1) To restrain and suppress competition in the sale and distribution of both liquid and solid carbon dioxide in, among and between the several States;

(2) To acquire for corporations concerned, by purchase, and in some instances divide among themselves, the assets, productive capacity, and distribution facilities of competitors;

(3) To control the manufacture, sale, and distribution of carbon dioxide by their agreement to purchase the entire output of independent manufacturers or their requirements in certain plants or areas on condition that said manufacturers do not sell to competitors liquid carbon dioxide or solid carbon dioxide for conversion into the liquid product;

(4) To deprive both private and governmental purchasers of liquid and solid carbon dioxide of the benefits of competition in price among them;

(5) To prevent sales of solid carbon dioxide to owners or lessees of converters or liquifiers for conversion into liquid carbon dioxide;

(6) To prevent the sale of solid carbon dioxide to bottlers of carbonated beverages or others who convert it into liquid carbon dioxide, except at higher prices than are charged customers who use it for refrigeration or industrial purposes;

(7) To allocate or reserve specified areas within the United States to their exclusive use in the sale and distribution of solid and liquid carbon dioxide;

(8) To control through joint ownership of patent rights and patent applications the manufacture, sale and distribution of solid carbon dioxide,

Complaint

44 F. T. C.

and to charge or threaten to charge exorbitant license and royalty fees for the use of said patents;

(9) To eliminate local competition, on the part of the said A, P, and L, by simultaneously cutting the price of liquid and solid carbon dioxide to customers of competitors in certain areas below those charged to the same class of customers in comparable areas where there is less competition; and

(10) To maintain and promote otherwise the purpose of their combination and conspiracy, and to hinder, lessen, and restrain competition in the purchase, sale, and distribution of said liquid and solid carbon dioxide:

Held, That such acts and practices were all to the prejudice of the public and of said concerns' competitors, and constituted unfair methods of competition in commerce.

In said proceeding, in which the Commission, pursuant to count I of the amended complaint, made findings of fact and set-out its conclusion with respect to the alleged violation of section 5, charged therein; and in which approved stipulations entered into between respective counsel provided that count II of said complaint—which charged violation of subsection 2 (a) of the Clayton Act, as amended by the Robinson-Patman Act, be withdrawn without prejudice to the right of the Commission to institute a further proceeding against each respondent at any time thereafter with respect to alleged violations of said act: No findings, in compliance with said provisions, were made pursuant to said charges.

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

Mr. Everett F. Haycraft and *Mr. Lewis F. Depro* for the Commission.

Shearman & Sterling & Wright, of New York City, for Pure Carbonic, Inc., and Air Reduction Co., Inc.

Satterlee, Warfield & Stephens, of New York City, for Liquid Carbonic Corp.

Mr. Richard H. Love, *Mr. J. Robert Carey*, *Mr. Michael F. Keogh*, *Mr. Leo N. McGwire*, and *Mr. H. Webster Stull*, of Washington, D. C., for Mathieson Alkali Works, Inc.

Lewis & Watkins, of Detroit, Mich., for Michigan Alkali Works, Inc.

AMENDED COMPLAINT¹

COUNT I

Pursuant to the provisions of the Federal Trade Commission Act and by virtue of the authority vested in it by said act, the Federal

¹ The Commission on July 18, 1946, issued an order dismissing amended complaint as to Mathieson Alkali Works, Inc., as follows:

This matter coming on to be heard by the Commission upon the motion of counsel for respondent, Mathieson Alkali Works, Inc., to dismiss the amended complaint herein, and the Commission having duly considered the matter and being now fully advised in the premises;

It is ordered, That the amended complaint herein be, and the same hereby is, dismissed as to respondent Mathieson Alkali Works, Inc., without prejudice to the right of the Commission to institute further proceedings in the matter.

Trade Commission, having reason to believe that Pure Carbonic, Inc., Air Reduction Co., Inc., Liquid Carbonic Corporation, Mathieson Alkali Works, Inc., and Michigan Alkali Co., hereinafter 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 amended complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Air Reduction Co., Inc., is a corporation organized under the laws of the State of New York in 1914 and is engaged, through subsidiary corporations, in the manufacture, among other products, of liquid carbon dioxide and solid carbon dioxide or dry ice, and in the sale of said products to soft-drink manufacturers and soda fountains and to ice cream manufacturers and purveyors of perishable foods for use in preserving and transporting ice cream and other perishable products.

In 1935 respondent Air Reduction Co., Inc., acquired control of respondent Pure Carbonic, Inc., and has since operated said corporation as a subsidiary.

PAR. 2. Respondent, Pure Carbonic, Inc., is a Delaware corporation, organized in September 1929, and is engaged in the manufacture, purchase, sale, and distribution of liquid carbon dioxide and solid carbon dioxide or dry ice. Since organization said respondent has acquired the assets of the following corporations engaged in the manufacture, sale, and distribution of either liquid carbon dioxide or solid carbon dioxide: Dri Ice, Inc., Carbonic Gas, Inc., of Cincinnati, Cincinnati, Ohio; Carbonic Gas, Inc. (Michigan), Detroit, Mich.; Natural Carbonic Gas Co. and Natural Carbonic Ice Co., Newark, N. J.; Carbo-Frost, Inc., Brooklyn, N. Y.; American Dryice Corp., New York, N. Y.; Nu-Ice Co., Los Angeles, Calif.; Crystal Carbonic Laboratory Crystal Carbonic Laboratory, Inc., Atlanta, Ga.; Alabama Carbon Dioxide Ice, Inc., Alabaster, Ala.; New York Carbonic Co. (Herman Hegt, Proprietor), New York, N. Y.; Braunstein Bros. Carbonic Sales Corp., New York, N. Y.; Harry H. Purvis and Charles L. Gulick, Brooklyn, N. Y.

Said respondent has since 1935 operated manufacturing plants owned either by it or its parent corporation, respondent, Air Reduction Co., Inc., or other subsidiary corporations located in numerous cities in several States at which it operates equipment for the manufacture of solid carbon dioxide or for the conversion of solid carbon dioxide into liquid carbon dioxide, sometimes referred to as liquid

Complaint

44 F. T. C.

carbonic gas. Some of these manufacturing plants were formerly operated by the corporations whose assets were acquired by either the respondent, Air Reduction Co., Inc., or respondent, Pure Carbonic, Inc., and are located in the following places: Alabaster, Ala.; Berkeley, Calif.; Birmingham, Ala. (discontinued May 1939); Charlotte, N. C.; Chicago, Ill.; Dallas, Tex.; Deepwater, N. J.; Jacksonville, Fla.; Memphis, Tenn.; Buffalo, N. Y.; Cincinnati, Ohio; Everett, Mass.; Harrisburg, Pa.; Indianapolis, Ind.; Kansas City, Mo.; Louisville, Ky.; Milwaukee, Wis.; Minneapolis, Minn.; Newark, N. J.; New Orleans, La.; St. Louis, Mo.; and Wilkes-Barre, Pa.

Respondent, Pure Carbonic, Inc., also purchases solid carbon dioxide or liquid carbon dioxide under agreement or contract from the following manufacturers: American Distilling Co., San Francisco, Calif.; California Carbonic Co., Los Angeles, Calif.; Carbide & Carbon Chemical Corp., New York, N. Y.; Carbo Chemical Co., Salt Lake City, Utah; Commercial Solvents Co., New York, N. Y.; Gas Ice Corp., Portland, Oreg.; Michigan Alkali Co., Wyandotte, Mich.; Pennsylvania Alcohol Corp., Philadelphia, Pa.; U. S. Industrial Chemicals, Inc., New York, N. Y.

Said respondent, Pure Carbonic, Inc., sells liquid carbon dioxide in high-pressure steel cylinders of either 20- or 50-pound capacity, loaned to the customer for that purpose at both wholesale and retail to soft-drink manufacturers, drug stores, and other retail purveyors of soft drinks located throughout the several States of the United States, such sales being made f. o. b. respondent's warehouse, customer paying freight on full cylinders but respondent paying return freight on empty cylinders.

Said respondent also sells solid carbon dioxide or dry ice in wholesale and retail quantities to ice-cream manufacturers, frosted food manufacturers, and other corporations, partnerships, and individuals engaged in the manufacturing and distributing of perishable foods as well as to retail stores engaged in purveying perishable foods at retail. Said solid carbon dioxide is distributed in cakes measuring approximately 10 by 10 by 10 inches, weighing approximately 50 pounds and wrapped in paper. Many bottlers as well as large retail distributors of soft drinks and other beverages maintain and operate equipment in their establishments known as converters which convert or liquefy solid carbon dioxide on the premises. For many years the American Dry Ice Corp., prior to the time its assets and business were purchased by respondents Pure Carbonic, Inc., and Air Reduction Co., Inc., manufactured and sold converters to soft-drink bottlers and other

beverage bottlers and distributors, and sold to the owners thereof solid carbon dioxide for use therein. Respondent, Pure Carbonic, Inc., after it began to operate the business formerly conducted by American Dry Ice Corp., continued to sell solid carbon dioxide to any owner of a converter which conformed to specifications of the unfired pressure vessel code of the American Society of Mechanical Engineers except in those instances wherein it follows the policy of selling solid carbon dioxide for use in converters on what is known as the full-service basis.

Said respondent, Pure Carbonic, Inc., in the course and conduct of its said business, for more than 3 years last past has been and now is engaged in interstate commerce inasmuch as it ships, either by private truck or common carrier, liquid and solid carbon dioxide from various places of manufacture and distribution located throughout the several States to purchasers thereof located in States other than place of manufacture and shipment and there has been and now is a constant recurring course of commerce in said products between and among the several States of the United States.

PAR. 3. Respondent, Liquid Carbonic Corp., is a Delaware corporation organized in 1926 to acquire the assets and business of Liquid Carbonic Co., an Illinois corporation organized in 1888. Since 1926 said respondent has acquired the business of numerous manufacturers of liquid and solid carbon dioxide, including the Bauer Carbonic Co., St. Louis, Mo.; General Carbonic Co., Buffalo, N. Y.; Keystone Carbonic Gas Co., Philadelphia, Pa.; Bishop & Babcock Co., Cleveland, Ohio; Saxet Carbonic Co., Houston, Tex.; National Carbonic Co., San Antonio, Tex.; Washington-Liquid Gas Co., Inc., Seattle, Wash., and J. E. Crosbie, Inc., Tulsa, Okla. In 1931 said respondent, Liquid Carbonic Corp., began the manufacture and sale of solid carbon dioxide or dry ice, and in 1938 it began the manufacture and sale of ice-cream cabinets for use in preserving ice cream and other perishable food products by the use of solid carbon dioxide or dry ice.

For more than 1 year last past, respondent, Liquid Carbonic Corp. has maintained and operated factories and other equipment for the production of liquid and solid carbon dioxide in numerous places throughout the several States of the United States, including the following: Albany, N. Y.; Atlanta, Ga.; Boston, Mass.; Buffalo, N. Y.; Chicago, Ill.; Cincinnati, Ohio; Cleveland, Ohio; Dallas, Tex.; Denver, Colo.; Detroit, Mich.; Houston, Tex.; Indianapolis, Ind.; Jacksonville, Fla.; Kansas City, Mo.; Los Angeles, Calif.; Memphis, Tenn.; Minneapolis, Minn.; New Orleans, La.; New York, N. Y.; Norfolk, Va.; Peoria, Ill.; Philadelphia, Pa.; Pittsburgh, Pa.; San

Complaint

44 F. T. C.

Antonio, Tex.; San Francisco, Calif.; Seattle, Wash.; St. Louis, Mo.; St. Paul, Minn.

Respondent, Liquid Carbonic Corp., during and since the year 1940 has purchased liquid or solid carbon dioxide under agreement or contract from the following organizations: J. E. Crosbie, Inc., Tulsa, Okla.; Speas Manufacturing Co., Kansas City, Mo.; Crystal Carbonic Laboratory, Atlanta, Ga.; Michigan Alkali Co., Wyandotte, Mich.; Ideal Dri Ice Manufacturing Co., Ada, Okla.; Carbo Chemical Co., Salt Lake City, Utah; Witt Ice & Gas Co., Los Angeles, Calif.; Pacific Silicate Co., Ltd., San Francisco, Calif.; Washington Liquid Gas Co., Inc., Seattle, Wash.; Commercial Solvents Corp., San Francisco, Calif.; Pure Carbonic, Inc., New York, N. Y. Said respondent, Liquid Carbonic Corp., in the course and conduct of its said business for more than 3 years last past has been and now is engaged in interstate commerce, inasmuch as it ships or causes to be shipped, either by private truck or common carrier, liquid and solid carbon dioxide from its various places of manufacture and distribution herein mentioned located throughout the several States to the purchasers thereof located in States other than place of manufacture and shipment, and there has been and now is a constant recurring course of commerce in said products between and among the several States of the United States.

PAR. 4. Respondent, Michigan Alkali Co., is a corporation organized under the laws of the State of Michigan with its principal office and place of business located in the city of Wyandotte, State of Michigan, and for more than 3 years last past has been and now is engaged in the manufacture, purchase, sale, and distribution of liquid carbon dioxide and solid carbon dioxide or dry ice to wholesale distributors of said products located in States other than the State of Michigan. Said respondent causes said products, when sold, to be shipped from its plant in Michigan to the purchasers thereof located in States other than the State of Michigan. Prior to October 1939, said respondent Michigan Alkali Co. sold liquid and solid carbon dioxide to its customers located in the States of New York and New Jersey through a distributor, Irving H. Taylor, located in the city of Philadelphia, State of Pennsylvania, in the States of Delaware and Pennsylvania through the Merchants' Chemical Co., a Pennsylvania corporation; and in the New England States through other distributors who sold at retail to distributors and at wholesale to jobbers who purchase in less than carload lots.

PAR. 5. Respondent, Mathieson Alkali Works, Inc., is a corporation organized under the laws of the State of Virginia, with its principal office and place of business located at 60 East Forty-second Street, New York, N. Y. It is engaged in the manufacture of numerous chemical products and byproducts including, among others, liquid and solid carbon dioxide, at its manufacturing plant located at Saltville, Va., and in the sale and distribution of said products for more than 3 years last past to consumers thereof located in States other than the State of Virginia. It causes said products, when sold, to be transported from its manufacturing plant in the State of Virginia to the purchasers thereof located in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Maryland, and in the District of Columbia.

PAR. 6. Said respondents occupy a dominant position in the sale and distribution of solid and liquid carbon dioxide for commercial use, the aggregate sales of said respondents being more than 90 percent of the total sale of solid and liquid carbon dioxide for commercial use in the United States. Said respondents were, at divers times prior to January 1, 1933, either directly or through distributing agents, in substantial competition one with another, or with their predecessors, in the sale and distribution of solid and liquid carbon dioxide in commerce between and among the various States of the United States and, but for the unlawful agreements, understandings, combinations and conspiracies hereinafter set forth, respondents would be now in substantial competition.

PAR. 7. On or about January 1, 1933, and thereafter from time to time, respondents entered into and carried out various planned or agreed common courses of action, understandings, agreements, combinations, and conspiracies for the purpose and with the effect of suppressing and eliminating competition in price and otherwise among and between themselves, and of monopolizing for themselves the production, sale, and distribution of liquid and solid carbon dioxide for commercial uses. Pursuant to and in order to effectuate and carry out said purposes and objectives, the respondents, from time to time, have cooperatively and concertedly performed one or more of the following acts and things:

1. Fixed and maintained the prices at which they would sell solid and liquid carbon dioxide to wholesale and retail customers and also the charges for performing various services in connection with the sale and delivery thereof.

2. Refrained from competing in price with each other in submitting bids on requirements of solid and liquid carbon dioxide and in selling

Complaint

44 F. T. C.

said products to Federal, State, and municipal departments or agencies.

3. Refrained from selling solid carbon dioxide to bottlers of beverages or owners of converters or liquefiers who used converters or liquefiers other than those sold, leased, maintained, or approved by said respondents.

4. Refrained from selling solid carbon dioxide to bottlers of beverages or other owners or lessees of converters or liquefiers who converted the said solid carbon dioxide into liquid carbon dioxide for carbonating beverages.

5. Discriminated in price in the sale of solid carbon dioxide to bottlers of beverages and other owners or lessees of converters or liquefiers who converted said solid carbon dioxide into liquid carbon dioxide for carbonating beverages, by charging said customers more than they charged their customers who used the said solid carbon dioxide for refrigeration or other industrial purposes.

6. Discriminated in price in the sale of solid carbon dioxide to wholesale and retail customers by charging the customers who convert said solid carbon dioxide into liquid carbon dioxide in or by means of converters or liquefiers not sold, leased, maintained, or approved by said respondents, more than they charged the customers who utilize converters or liquefiers sold, leased, maintained, or approved by said respondents.

7. Refrained from competing in certain territories in the sale of carbon dioxide; for example, respondent, Michigan Alkali Co., since on or about October 1, 1939, pursuant to agreement with respondent, Pure Carbonic, Inc., discontinued sale and distribution of solid carbon dioxide through distributors other than respondent, Pure Carbonic, Inc., to consumers located in the New England States and portions of the States of New York and Pennsylvania, and thereafter restricted its sales in said territory to the said Pure Carbonic, Inc.

8. Caused the organization and obtained control of a patent holding corporation to acquire, own, and control certain important process patents covering the manufacture of solid carbon dioxide; and directly or through the said patent holding corporation hindered and prevented competing manufacturers of solid carbon dioxide from entering or continuing in the manufacture and sale of said product by—

(a) Threatening the manufacturers of machinery and equipment used in the manufacture of solid carbon dioxide, with patent infringement suits not in good faith, but for the purpose or with the effect of harassing or intimidating said manufacturers who sold or attempted

to sell their machinery and equipment to manufacturers of carbon dioxide;

(b) Charging or threatening to charge competing manufacturers of solid carbon dioxide exorbitant license and royalty fees for use of said patents unless said manufacturers would sell all or a substantial portion of their output to said respondents or one or more of them; and threatening said competing manufacturers with patent infringement suits not in good faith, thereby causing said competing manufacturers to either refrain from engaging in the manufacture of said carbon dioxide or to sell their plants and equipment or output to the said respondents or one or more of them.

9. Adopted and pursued the policy of cutting prices of liquid and solid carbon dioxide to wholesale and retail customers of competitors in certain areas below prices charged in other areas where there is less competition, for the purpose and with the effect of taking business away from said competitors and driving said competitors out of business in certain market areas.

10. Adopted and pursued the policy of harrassing, hindering, and interfering with jobbers and wholesalers of solid carbon dioxide in the sale of said product to bottlers and others who converted the same into liquid carbon dioxide for carbonating beverages, by divers means and methods, including the purchase of plant and equipment or output of manufacturers supplying such jobbers and wholesalers, cutting prices on liquid gas to the customers of said wholesalers and retailers below the prices usually charged such customers, and by operating "bogus" independent jobbers and wholesalers in the sale of liquid carbonic gas to such customers at extremely low prices.

11. Adopted and pursued the policy of threatening bottlers of beverages and other owners or lessees of converters or liquefiers used to convert solid carbon dioxide to liquid carbon dioxide for carbonating beverages with patent infringement suits not in good faith but for the purpose of harassing or intimidating said consumers of solid carbon dioxide to discontinue the use of converters or liquefiers and to purchase liquid carbon dioxide from respondents.

12. Adopted and pursued the policy of entering into and carrying out long-term agreements of one year or more with independent manufacturers of carbonic gas in solid and liquid form wherein it is provided that said manufacturers, respectively, will not sell to competitors of respondents, respectively, solid carbon dioxide or liquid carbon dioxide for the purpose of manufacturing solid carbon dioxide, and

whereby the respondents, respectively, agreed to purchase from the said manufacturers, respectively, either their respective requirements in certain plants or a fixed minimum quantity approximately equal to said requirements.

13. Engaged in other unfair, coercive, and oppressive practices for the purpose or with the effect of suppressing competition or restraining trade in the sale or distribution of solid or liquid carbon dioxide.

PAR. 8. The acts and practices of said respondents, as herein alleged, are all to the prejudice of the public and have a tendency to and have actually hindered and prevented price competition between and among respondents in the sale of solid and liquid carbon dioxide in commerce within the intent and meaning of the Federal Trade Commission Act; have placed in respondents power to control and enhance prices of said products; have from time to time increased the prices of said products paid by some of the purchasers thereof; have caused a shortage and a scarcity in the quantity of solid and liquid carbon dioxide produced in the United States and have tended to create in the respondents a monopoly in the sale of solid and liquid carbon dioxide in such commerce; have unreasonably restricted competition in such commerce in said products and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

COUNT II

The Federal Trade Commission, having reason to believe that Pure Carbonic, Inc., Air Reduction Co., Inc., Liquid Carbonic Corp., Mathieson Alkali Works, Inc., and Michigan Alkali Co., corporations, hereinafter called respondents, have violated and are now violating the provisions of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. title 15, sec. 13), hereby issues its amended complaint, stating its charges with respect thereto as follows:

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

PAR. 2. For its charges under this paragraph of this count said Commission relies upon the matters and things set-out in paragraph 2 of count I of this amended complaint to the same extent and as though the allegations of said paragraph 2 of said count I were set-out in full herein, and said paragraph 2 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 3. For its charges under this paragraph of this count said Commission relies upon the matters and things set-out in paragraph 3 of count I of this amended complaint to the same extent and as though the allegations of said paragraph 3 of said count I were set-out in full herein, and said paragraph 3 of said count I is incorporated herein by reference and made a part of the allegations of this count.

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

PAR. 5. For its charges under this paragraph of this count said Commission relies upon the matters and things set-out in paragraph 5 of count I of this amended complaint to the same extent and as though the allegations of said paragraph 5 of said count I were set-out in full herein, and said paragraph 5 of said count I is incorporated herein by reference and made a part of the allegations of this count.

PAR. 6. In the course of their said respective businesses described in paragraphs 1 to 5, both inclusive, of count I of this amended complaint, said respondents have been for more than 3 years last past and are now discriminating in price between different purchasers buying liquid and solid carbon dioxide for resale or consumption, by selling their said products to some of their customers at lower prices than they sell said products of like grade and quality to others of their customers, many of which customers are competitively engaged one with another in the resale of said products within the United States. The said respondents during said period of time have engaged in one or more of the following discriminatory practices and methods of determining the prices at which they sell their said products to their said customers:

1. In the sale of solid carbon dioxide respondents charge customers who convert said solid carbon dioxide into liquid carbon dioxide for carbonating beverages, substantially more than they charge customers who use the said solid carbon dioxide for refrigeration purposes or who convert said solid carbon dioxide into liquid carbon dioxide for other industrial purposes.

Complaint

44 F. T. C.

1. In the sale of solid carbon dioxide respondents charge customers who convert solid carbon dioxide into liquid carbon dioxide for beverage purposes in or by means of converters or liquefiers which are not sold, leased, maintained, or approved by said respondents, substantially more than they charged customers who utilize converters or liquefiers sold, leased, maintained, or approved by said respondents.

2. Respondents classify their customers according to the quantity purchased over a given period of time, usually 1 year, and sell to the customers purchasing the larger quantities at varying discriminatory prices, the most favored customers being sold at discriminatory prices ranging respectively from approximately 20 percent to as high as 60 percent less than the highest price charged any customer in the same location.

3. Respondents arbitrarily charge some customers substantially less than others in the same or different trade territory for the purpose and with the effect of taking business away from competitors and driving said competitors out of business in certain trade territories.

PAR. 7. Said respondents occupy a dominant position in the sale and distribution of liquid and solid carbon dioxide for commercial uses, the aggregate sales of respondents, Pure Carbonic, Inc., and Liquid Carbonic Corp., being more than 50 percent of the total sales of liquid and solid carbon dioxide for commercial uses in the United States. Said respondents have been and now are in substantial competition with other small manufacturers and distributors of liquid and solid carbon dioxide located throughout the several States of the United States.

PAR. 8. The effect of the said discriminations in price hereinbefore mentioned has been or may be substantially to lessen competition in the line of commerce in which said respondents are engaged and to injure, destroy, and prevent competition between the respondents and their competitors, and to injure, destroy and prevent competition between the customers of said respondents in the sale or resale and distribution of liquid and solid carbon dioxide and has been and may be to tend to create a monopoly in said line of commerce in the various trade areas of the United States in which the said respondents and their competitors are engaged in the sale and distribution of said products.

PAR. 9. The foregoing acts and practices of respondents are in violation of subsection 2 (a) of section 1, of the 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 the Federal Trade Commission Act and to an act of Congress entitled, "An act to supplement existing laws against unlawful restraints, 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 each of said acts, the Federal Trade Commission on March 17, 1945, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them in count I thereof with the use of unfair methods of competition in commerce in violation of the provisions of the Federal Trade Commission Act, and in count II thereof 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 respondents' answers 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. Before the termination of the introduction of said testimony and other evidence, W. T. Kelley, chief counsel for the Commission, and counsel for the respondents, Pure Carbonic, Inc., Air Reduction Co., Inc., The Liquid Carbonic Co., and Michigan Alkali Co. entered into stipulations of facts which were accepted and approved by, and filed with, the Commission. Each of these stipulations provided that count II of the amended complaint be withdrawn as to these respondents without prejudice to the right of the Commission to institute a further proceeding against each of them at any time thereafter with respect to alleged violations of the Robinson-Patman Act. Said stipulations provided that the statement of facts therein might be made a part of the record herein and might be taken as the facts in this proceeding in lieu of testimony and other evidence in support of, and in opposition to, count I of the complaint. They further provided that the Commission might proceed upon the pleadings and such statements of fact to make its findings as to the facts (including inferences which might be drawn from the stipulated facts) and its conclusion based thereon and enter its order disposing of this proceeding.

Thereafter, this proceeding regularly came on for final hearing before the Commission upon the complaint, the answers thereto, stipulations of facts, and recommended decision of the trial examiner (no briefs having been filed and no oral argument having been requested);

Findings

44 F. T. C.

and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent, Mathieson Alkali Works, Inc., a corporation, organized under the laws of the State of Virginia, with its office and principal place of business located at 60 East Forty-second Street, New York, N. Y., on July 11, 1946, moved to dismiss the amended complaint, and on July 18, 1946, the motion was granted without prejudice, in view of which no finding will be made with respect thereto.

PAR. 2. Respondent, Air Reduction Co., Inc. (sometimes hereinafter referred to as Air), is a corporation organized under the laws of the State of New York in 1915. Since on or about July 30, 1936, it has owned all the capital stock of the respondent Pure Carbonic, Inc., and through such stock ownership has controlled and directed the acts, practices, and policies of this respondent. From January 1, 1933, Air owned and controlled a company known as Pure Carbonic Co. of America, which was dissolved in 1936 and certain of its assets acquired by respondent Pure Carbonic, Inc.

PAR. 3. Respondent, Pure Carbonic, Inc. (sometimes hereinafter referred to as Pure), is a corporation organized in 1929 under the laws of the State of Delaware. It is engaged in the manufacture, purchase, sale, and distribution of liquid and solid carbon dioxide, commonly known and hereinafter referred to as gas and dry ice, respectively.

PAR. 4. Respondent, The Liquid Carbonic Corp. (sometimes hereinafter referred to as Liquid), is a corporation organized in 1926 under the laws of the State of Delaware as a successor to Liquid Carbonic Co., an Illinois corporation organized in 1888. Said respondent is engaged, among other things, in the manufacture, purchase, sale, and distribution of gas and dry ice.

PAR. 5. (a) Respondent, Michigan Alkali Co. (sometimes hereinafter referred to as Michigan), is a corporation organized under the laws of the State of Michigan in 1890, with its office and principal place of business located at Wyandotte, Mich. In December 1942 it was consolidated with the J. B. Ford Co., an affiliate, and its name changed to Wyandotte Chemicals Corp. Since December 1942 the business of the respondent, Michigan, has been carried on under the

designation Michigan Alkali Division of Wyandotte Chemicals Corp. Since January 1, 1933, and for several years prior thereto, it has been engaged in the production and sale of gas and dry ice, which are by-products of its other chemical manufacturing operations. It has never engaged generally in the distribution of gas but has sold its entire output to the respondent, Pure, with Pure furnishing empty cylinders at Michigan's plant in Wyandotte to be filled by the latter and shipped on orders from respondent Pure.

(b) From about 1932 to January 1, 1940, respondent, Michigan, sold its products, except gas, under an agreement with Irving H. Taylor as exclusive sales agent for Michigan's entire output, including dry ice. The said Irving H. Taylor was entitled under the agreement with respondent, Michigan, in carrying on the business as an exclusive sales agent, to use the name Michigan Alkali Co. as a trade name. From June 1932 until November 1939, Irving H. Taylor, trading as Michigan Alkali Co. in New York City and Philadelphia, distributed dry ice produced by respondent Michigan. The prices Taylor paid Michigan for such dry ice were those received by Taylor from his customers, less selling expenses and a guaranteed profit. The said Taylor also distributed a part of Michigan's dry ice in Philadelphia using the name Merchants Chemical Co. On November 1, 1939, Taylor discontinued the distribution of Michigan's dry ice in the New York and Philadelphia areas, and respondent Pure took over such distribution under contract with Michigan. The sales-agency arrangement with Taylor and his right to use the name Michigan Alkali Co. were terminated as of January 1, 1940. Taylor organized in or about 1937, and from time to time thereafter, a number of corporations known as Merchant Chemical companies, one each being organized in the States of Illinois, Wisconsin, Minnesota, Missouri, Ohio, Pennsylvania, and New York. These various Merchants Chemical companies were at all times controlled by the said Irving H. Taylor. The products of the respondent Michigan were sold by him as exclusive sales agent for respondent Michigan to the several Merchants Chemical companies in the due course of business and were resold by the several Merchants Chemical companies to their own trade.

(c) The things stated herein as having been done by Irving H. Taylor, trading as Michigan Alkali Co., were done by him with the knowledge and acquiescence of respondent Michigan or one or more of its executives or officers and are herein considered the acts of the respondent Michigan.

(d) Since October 31, 1939, the only regular customer of respondent, Michigan, for dry ice have been respondents, Pure and Liquid;

Findings

44 F. T. C.

E. & F. King & Co., Boston; Dean Chemicals, Inc., Detroit; Merchants Chemical Co., Chicago; and Merchants Chemical Co., Milwaukee. All sales by respondent, Michigan, since that date have been in carload lots f. o. b. Wyandotte, Mich.

PAR. 6. (a) Respondents, Pure and Liquid, and respondent, Michigan, through its exclusive sales agent, respondent, Pure, have, since about January 1, 1933, and prior thereto, sold gas in high-pressure steel cylinders of either 20- or 50-pound capacity, loaned to customers for the purpose of confining and transporting the contents. Said respondents sell gas at both wholesale and retail to soft-drink manufacturers, drug stores, and retail purveyors of carbonated beverages located throughout several States of the United States. The great majority of cylinder gas sold by said respondents is transported by truck free of any delivery charges. In free-delivery zones, if a customer picks up cylinders at respondents' warehouses he is granted no reduction in price. Outside of the free-delivery zones in most cases said respondents sell and ship gas in cylinders, with the customer paying the freight on full cylinders and respondents paying the return freight on empty cylinders. In other instances outside the free-delivery zones, said respondents sell gas in cylinders on which the customer pays freight both ways.

(b) Respondents, Pure and Liquid, and respondent, Michigan, through its sales agents, including respondents, Pure and Liquid, sell and distribute dry ice in wholesale and retail quantities primarily to ice-cream and frozen-food manufacturers and to others engaged in the production and distribution of perishable foods. Such dry ice is distributed in 50-pound packages, and the majority of it so sold is delivered by respondents' trucks, free of any transportation charge, to the customer's premises in the free-delivery zones. In such areas, said respondents do not allow any reduction in price to customers who pick up ice at respondents' plants or warehouses. Sales outside the free-delivery zones are made by all respondents f. o. b. their respective plants or warehouses.

PAR. 7. Each of the respondents, Air, Pure, Liquid, and Michigan, in the course and conduct of its said business, for more than 15 years last past has been, and is now, engaged in interstate commerce, inasmuch as each ships or causes to be shipped, either by private truck or common carrier, gas and dry ice from various points of manufacture and distribution located throughout the several States to the points of location of purchasers thereof located in States other than the State of manufacture and shipment; and there has been, and now is, a constant, recurring course of commerce in said products between

and among the several States of the United States. Each of these respondents is in competition with the other and with other producers and distributors of dry ice and gas to the extent that such competition has not been lessened or restrained by the acts and practices herein described.

PAR. 8. (a) Respondent, Pure, or respondent, Air, has acquired, either directly or indirectly, the assets of the following companies, which formerly engaged in the manufacture and/or distribution of gas or dry ice: The American Dry Ice Corp.; Nu-Ice Co.; Carbo-Frost, Inc.; Crystal Carbonic Laboratory; Crystal Carbonic Laboratory, Inc.; Carbonic Gas, Inc., Cincinnati, Ohio; Carbonic Gas, Inc., Detroit, Mich.; Natural Carbonic Gas Co.; Natural Carbonic Ice Co.; Alabama Carbon Dioxide Ice, Inc.; New York Carbonic Co.; Braunstein Bros.; and Carbonic Sales Corp. Former owners and officials of Carbo-Frost, Inc., agreed to withdraw from the dry-ice business on the date of its purchase. Since August 1926 respondent, Liquid, has acquired, directly or indirectly, the assets and business of the following manufacturers and/or distributors of gas or dry ice: The Bauer Carbonic Co.; Kentucky Carbonic Co.; General Carbonic Co.; Tennessee Carbonic Co., Inc.; Keystone Carbonic Gas Co.; Western Carbonic Gas Co.; The Bishop and Babcock Manufacturing Co., and The Bishop and Babcock Sales Co.; Zero Ice Corp.; Carbonic Gas & Service Corp.; Western Carbonic Co., and Western Carbonic & Chemical Co.; Saxet Carbonic Co.; National Carbonic Co.; Washington Liquid Gas Co., Inc.; J. E. Crosbie, Inc.; Merchants Chemical Co. (Kansas City and Tulsa area); Pacific Silicate Co., Ltd.; and certain assets, a Los Angeles plant, and all equipment of the Dry Ice Corp. of America. Owners or former officials of the Zero Ice Corp., Saxet Carbonic Co., National Carbonic Co., J. E. Crosbie, Inc., and Washington Liquid Gas Co., Inc., agreed to refrain from the manufacture, distribution, and sale of dry ice or gas for certain specified periods within designated areas.

(b) Respondents, Pure and Liquid, have each operated plants for the conversion of gas into dry ice in the following cities: Atlanta, Ga.; Cambridge, Mass.; Chicago, Ill.; Cincinnati and Cleveland, Ohio; Jacksonville, Fla.; Kansas City and St. Louis, Mo.; Minneapolis, Minn.; and New Orleans, La. Additionally, Liquid operates such plants in Denver, Colo.; Seattle, Wash.; Memphis, Tenn.; and Pittsburgh, Pa.; while Pure also operates plants in Des Moines, Iowa; Albany and Buffalo, N. Y.; Charlotte, N. C.; Wilkes-Barre and Harrisburg, Pa.; Indianapolis, Ind.; Miami, Fla.; Louisville, Ky.; Milwaukee, Wis.; and Newark, N. J. Liquid also operates 14 additional

Findings

44 F. T. C.

gas plants, located in various cities throughout the United States, while Pure operates additional gas plants in 7 cities. Dry-ice plants are operated by Pure at Deep Water, N. J.; Berkeley, Calif.; and Alabaster, Ala., and by Liquid at Los Angeles, Calif.; Albany and Long Island City, N. Y.; and Philadelphia, Pa.

(c) Respondent, Pure, purchases and has purchased dry ice or gas under agreement or contract from the following producers: American Distilling Co., San Francisco; Calif. Carbonic Co., Los Angeles; Carbide & Chemical Corp., Niagara Falls; Carbo Chemical Co., Salt Lake City; Commercial Solvents Co., New York; Gas-Ice Corp., Portland; Michigan Alkali Co., Wyandotte; Pennsylvania Alcohol Corp., Philadelphia; U. S. Industrial Chemicals, New York; Delancey Chemical Corp., Philadelphia; and respondent, The Liquid Carbonic Corp. The Pennsylvania Alcohol Corp., American Distilling Co., Gas-Ice Corp., and Carbide and Chemicals Co. agreed to refrain from selling carbon dioxide to others. Respondent, Liquid, purchases or has purchased gas or dry ice from the following manufacturers: Michigan Alkali Co., Wyandotte; Pure Carbonic, Inc., New York; Mathieson Alkali Works, Saltville, Va.; Ideal Dri-Ice Manufacturing Co., Ada, Okla.; Parker-Browne Co., Fort Worth; Witt Ice & Gas Co., Los Angeles; Nu-Ice Co., Los Angeles; National Dri Ice Corp., Los Angeles; Carbon Dioxide & Chemical Co., Price, Utah; Carbo Chemical Co., Salt Lake City; Gas-Ice Corp., Seattle; J. E. Crosbie, Inc., Tulsa; Speas Manufacturing Co., Kansas City; Crystal Carbonic Laboratory, Atlanta; Pacific Silicate Co., Ltd., San Francisco; Washington Liquid Gas Co., Inc., Seattle; Commercial Solvents Corp., San Francisco; American Solvents Chemical Co., San Francisco; Hiram Walker Distilling Co., Peoria, Ill.; and The Prima Co., Chicago. The purchase agreements with The Prima Co., American Solvents Chemical Co., Ideal Dri-Ice Manufacturing Co., and Carbon Dioxide & Chemical Co. provided that these firms would not sell carbon dioxide to others. Both respondents, Pure and Liquid, in making purchases from the above firms either obtained their requirements in certain plants or areas or a fixed minimum quantity approximately equal to said requirements.

(d) Respondent, Michigan, has had for some years past the largest assembly of dry-ice presses in one plant location in the United States. At present, it has 18 such presses, with an aggregate capacity of 240 tons per day. From 1936 to 1940, its annual production of dry ice ranged from nearly 62,000,000 to 70,000,000 pounds. In 1940 its production was nearly 69,000,000 pounds. The combined production of

dry ice by respondents, Liquid, Michigan, and Pure, for the year 1940 was equivalent to approximately two-thirds of the total United States production, and since January 1, 1933, the aggregate sales of dry ice by these respondents have ranged from approximately three-fourths to four-fifths of the annual sales of such products in the United States.

(e) Since January 1, 1933, respondent, Liquid, has been the largest producer and distributor in the United States of carbonic gas in cylinders. Since respondent, Michigan, does not have a direct distribution department and its entire production is purchased by respondent, Pure, respondents, Pure and Liquid, are the only companies in the carbon-dioxide business having nation-wide distribution facilities for both cylinder gas and dry ice. In 1939 the respondents, Pure, Michigan, and Liquid, manufactured approximately 66,500,000 pounds, or 73 percent, of the total United States production of carbonic gas.

PAR. 9. In some instances, respondents purchased the assets and business of competitors and, pursuant to agreement, divided such business assets among themselves, two specific instances of which follow:

(a) About August 6, 1936, Chemical Gases, Inc., sold all its assets and equipment, including 6,000 cylinders obtained from the Burdette Oxygen Co., to respondent, Liquid, subject to the right of Liquid to use 1,000 such cylinders under a pre-existing lease agreement. Pursuant to agreement, respondents, Air and Liquid, divided equally between themselves the cylinders, caps, and valves acquired from Chemical Gases, Inc., and it discontinued operations.

(b) (1) Prior to April 1933, Delancey Chemical Corp. (sometimes hereinafter referred to as Delancey), a subsidiary of Publicker Commercial Alcohol Co., was engaged in the production of gas and dry ice at its plant in Philadelphia and in the sale and distribution thereof to wholesale accounts, including ice-cream manufacturers and bottlers, in and around Philadelphia and Pittsburgh, Pa.; New York, N. Y.; Chicago, Ill.; Baltimore, Md.; Washington, D. C.; and other cities in Connecticut, Massachusetts, and upper New York State. Its price ranged from 3 cents to 7 cents per pound for gas and from 2 cents to 2¾ cents per pound for dry ice. On April 7, 1933, respondent, Pure, entered into a contract with Delancey to purchase a large annual volume of its gas and dry ice and also to purchase for \$100,000 all delivery equipment, including 17 auto trucks, 3,500 50-pound cylinders and 150 20-pound cylinders, 4,550 valves, 5 liquefiers, 6 insulated refriger-

eration cars, and 20 shipping containers. The contract provided that respondent, Pure, would assume all obligations under outstanding contracts and agreements with customers of Delancey for the sale and delivery of gas and dry ice and that during the life of the contract neither Delancey nor its parent company would sell or offer to sell any dry ice or gas to others than respondent, Pure, in excess of an average of 100 pounds daily. On April 27, 1933, respondent, Pure, sold one-half of the cylinders, valves, and liquefiers it had purchased from Delancey to respondent, Liquid, for \$25,437.50 and one-third of the auto trucks for \$14,775. One-third of said trucks were sold to the American Dry Ice Corp. for the same amount. On the same day one-sixth of the Delancey trucks were sold to Irving H. Taylor for the account of respondent, Michigan, while Pure retained for its own use one-half of the Delancey cylinders, valves, and liquefiers and one-sixth of the trucks. The foregoing disposition of the assets of Delancey was made pursuant to mutual agreement and understanding between and among the American Dry Ice Corp. and the respondents, Pure and Liquid, and Irving H. Taylor, as agent for respondent, Michigan. Said agreements further provided that respondent, Liquid, the American Dry Ice Corp., and Irving H. Taylor would each purchase part of the total dry ice obtained by respondent, Pure, from Delancey. Accordingly, beginning in May 1933 respondent, Pure, sold approximately one-half of the Delancey output of dry ice to respondent, Liquid, and one-sixth to Irving H. Taylor, which was delivered from the Delancey plant in Philadelphia direct to the warehouse of Liquid in Philadelphia and the warehouses of Irving H. Taylor in New York and Philadelphia. The said Taylor continued to take delivery of approximately one-sixth of the Delancey output of dry ice each year from 1933 until October 31, 1939, while respondent, Liquid, continued to purchase annually about one-half of its output until 1940, since which time its proportion has decreased to approximately one-fourth.

(2) The contract of April 7, 1933, provided that Pure would supply carbon dioxide to various customers of Delancey for the duration of such contracts at firm prices which had been agreed upon between said customers and Delancey. Pure refused to renew said contracts after their expiration dates, due primarily to the fact that its prevailing prices were in excess of those applicable to sales under the Delancey contracts. Its salesmen were instructed to limit the purchases of said contract customers to their immediate requirement, particularly near the end of the contract period, and to work vigorously for the business of such customers when the contracts expired and to obtain their business only at the regular schedule of prices. Among the Delancey

contract customers was the Wisconsin Carbonic Gas Co., which was entitled, under the agreement between Delancey and respondent, Pure, to be supplied by the latter for the duration of the contract. In April 1933 Irving H. Taylor took over the contract of Wisconsin Carbonic Gas Co., which was thereafter served dry ice by Merchants Chemical Co. of Chicago, which bought its supply of said dry ice from respondent, Michigan. On March 14, 1934, L. C. Chamberlin, an employee of Irving H. Taylor, addressed a letter to Wisconsin Carbonic Gas Co., one paragraph of which reads as follows:

We would very much appreciate your refraining from carrying on further negotiations with a view toward supplying your Chicago customers with dry ice for filling cylinders.

PAR. 10. (a) Respondents, Liquid and Pure, classify gas customers according to their volume of purchases, the large buyers being classified as wholesale, purchasers of smaller quantities as chain or large volume retail, and those buying in the smallest quantities as retail. Consumers in the dry-ice industry are also classified by these respondents according to their volume of purchases, the small occasional buyers being in the retail group, those in the next bracket being designated basic wholesale, and in the next, volume wholesale. The largest volume purchasers are classified as volume wholesale special or largest volume wholesale.

(b) For the period from January 1, 1937, to December 31, 1943, the prices quoted and charged by both Liquid and Pure show a substantial degree of uniformity for both gas and dry ice. Prices quoted by both these respondents on gas in nineteen cities, and on dry ice in sixteen cities, to the same volume and customer class at the same times and places reveal the following average percentage of price uniformity:

Gas to buyers of—	Percent
Small retail quantities.....	84
Large volume retail quantities.....	96
Wholesale volume.....	97
Dry ice to buyers of—	
Small retail quantities.....	100
Basic wholesale quantities.....	99
Large wholesale quantities.....	98
Largest wholesale quantities.....	99

While maintaining the above degrees of uniformity in each city, gas prices have shown a substantial degree of disparity in different cities. A price of 9 cents per pound in 50-pound cylinders has prevailed to purchasers in small retail quantities in Pittsburgh, Pa., while at the same time in other cities it has ranged from 10 to as high as 15 cents per pound. In Cincinnati, Ohio, the price of gas has been 5 cents per pound

in 50-pound cylinders to buyers in wholesale volume, while at the same time ranging from $5\frac{1}{2}$ cents to 8 cents per pound in other cities. The dry-ice price to purchasers in small retail quantities has remained uniform at 5 cents per pound in all cities from January 1, 1937, to December 31, 1943. To buyers in basic wholesale quantities the price has been uniform at 3 cents per pound except in Los Angeles, where it dropped to a low of 2 cents, and in Kansas City, where it reached a low of $2\frac{1}{2}$ cents per pound. The price of dry ice to buyers of large wholesale quantities has generally remained at $2\frac{1}{2}$ cents per pound except in Boston, Chicago, New York, and Philadelphia, where it has been $2\frac{1}{4}$ cents; in San Francisco, where it has fluctuated between $2\frac{3}{4}$ cents and $2\frac{1}{4}$ cents per pound; in Kansas City, where $2\frac{1}{2}$ cents and $2\frac{1}{4}$ cents have prevailed; and in Los Angeles, where the price has ranged from a high of $2\frac{1}{2}$ cents to a low of $1\frac{1}{2}$ cents per pound. The variation of dry-ice prices in each city generally reflects the results of simultaneous price changes by the two respondents, rather than any price differences existing between them.

(c) Irving H. Taylor habitually maintained in his New York office as complete information as possible concerning the prices of his competitors, as well as those of his customers and their competitors. He encouraged his customers to use his office as a clearinghouse for information as to prices. In 1934 and 1935 some of his customers were required to sell at prices designated by him. A Detroit customer, Pittman & Dean Co., was required to lower prices to national accounts, and a Milwaukee customer, Wisconsin Carbonic Gas Co., was instructed to refrain from quoting lower than $3\frac{1}{4}$ cents per pound for dry ice for converter use.

(d) Respondents, Pure and Liquid, submitted numerous bids for the sale of dry ice in response to requests by various agencies of Federal, State, and city governments. They generally followed the practice of quoting the prices shown by their respective price schedules in effect at the time and place where such bids were submitted or where delivery was to be made.

PAR. 11. (a) Respondents, Pure and Liquid, at times, by mutual agreement, cut their prices for the purpose of eliminating local competition. In the latter part of 1935 Louis B. Williams, trading as Williams Supply Co., was engaged in the business of selling and distributing dry ice in and around Los Angeles, Calif. Beginning in December 1935 this company acted as a selling agent on a commission basis for the Pacific Imperial Dry Ice Co., which had natural carbon-dioxide wells and a dry-ice plant at Niland, Calif. Said Williams sold and distributed the bulk of the output of this plant at prices established

by Pacific Imperial. His principal customers consisted of ice-cream companies, packing houses, food-concentration plants, and bottlers of carbonated beverages who owned converters. During 1936 and 1937 Williams was in competition in the sale and distribution of dry ice with respondent Liquid's wholly owned subsidiary The Liquid Carbonic Pacific Corp., Ltd., The Witt Ice & Gas Co., The Nu-Ice Co. (controlled by respondent Air), and National Dri-Ice Corp. Competition with The Witt Co. was for converter business only, with the said Witt Co. and the National Dri-Ice Corp. having natural carbonic gas wells.

(b) The Williams Supply Co. first began to sell dry ice at \$50 per ton, but in April or May 1936 it reduced its price to \$40 per ton to large volume buyers and to \$37.50 per ton to the largest volume buyers. Sales of ice at these prices during 1936 resulted in a loss, which was attributed by Williams to insufficient volume of supply. In 1937 Williams began to make a profit, and in May 1937 upon obtaining another source of supply from Price, Utah, the Williams Supply Co. began to realize its largest profit. During the summer of 1937 it obtained about 3,000,000 pounds of dry ice from Price, Utah. On September 14, 1937, respondents, Liquid and Pure, through their subsidiaries, each reduced the price of dry ice to large-volume purchasers from \$40 to \$30 per ton and quoted this price to the principal customers of Williams Supply Co., which was unable to meet this low price since it was buying dry ice at \$27.50 per ton. Williams reduced his price to one or more customers to \$30 per ton in an effort to retain their business and attempted to persuade his suppliers to reduce their price to him, which they refused to do. Such profit as his company had realized during the first 8 months of 1937 was lost during the last 4 months, and on December 31, 1937, he withdrew from the business of selling and distributing dry ice. Respondents, Liquid and Pure, continued to sell dry ice to large-volume wholesale customers in Los Angeles at \$30 per ton until July 14, 1938, on which day they increased their prices to \$40 per ton. From April 1, 1937, to November 23, 1937, Pure was selling dry ice to large-volume wholesale purchasers in San Diego at \$55 per ton, while Liquid was selling this product in San Francisco at \$55 per ton from April 1 to October 13, 1937, and at \$50 until November 23, 1937.

PAR. 12. (a) Among the bottlers and large retail distributors of carbonated beverages are some who maintain and operate on their premises, equipment known as converters or liquefiers, which convert dry ice into gas. Such converters are made of steel and have a dry-ice capacity of 50 to 150 pounds. They operate by taking a charge of dry ice, which sublimates from the solid to the liquid and gaseous states,

after which it is then drawn off and piped to the carbonator to be used in the bottling of soft drinks.

(b) In view of the great pressure which develops from the sublimation of dry ice within a converter, it is necessary that it be properly constructed for safety reasons. Prior to January 1, 1933, some of the manufacturers of carbonic-gas cylinders also began to produce converters and constructed them by the only specifications existing at that time, which had been formulated by the Interstate Commerce Commission for compressed-gas cylinders.

(c) Prior to the use of converters, the principal means of obtaining carbonation was from cylinder gas, the unit price of which has always been considerably higher than the unit price of dry ice. Although the cost of producing a given quantity of gas is substantially the same as the cost of an equal quantity of dry ice, the selling cost of gas is greater than that of dry ice because of the necessity for having cylinders and filling, maintaining, and transporting them. Through the use of converters and the availability of dry ice at prices comparable to those paid by the ice-cream industry, bottlers of carbonated beverages could obtain their requirements of carbonic gas and benefit by a savings in cost, notwithstanding the cost of converters.

(d) For some time prior to August 1936, respondent, Pure, leased converters to some bottlers and sold dry ice for use therein. It imposed a charge of 2 cents per pound over and above the price of dry ice for servicing said converters. In some instances where bottlers used converters which were not leased from Pure, it refused to sell them dry ice or agreed to sell at prices only slightly lower than those at which it sold cylinder gas and above those charged refrigeration customers for said dry ice.

(e) Respondent, Liquid, from 1931 until the spring of 1941, consistently refused to sell dry ice to converter users where the gas derived therefrom was to be used in carbonated beverages. Liquid maintained this policy even to the extent of threatening to refuse to sell dry ice to refrigeration customers if they in turn resold it to bottlers.

(f) In 1934 and 1935 in the New York and Chicago areas Irving H. Taylor, as exclusive agent for respondent, Michigan, refused to sell dry ice to bottlers of carbonated beverages, and such refusals were known to, and acquiesced in by, respondent Michigan. In 1934 the said Taylor refused to allow one of his jobbers to sell dry ice to bottlers of carbonated beverages in the Chicago area because of an arrangement with respondent, Pure, whereby the latter used respondent, Michigan's, dry ice in all converters in that area. The refusal was expressed in the form of a letter dated March 14, 1934. The

letterhead, bearing the name of the Michigan Alkali Co. and showing the general sales office as being in New York City, was signed by Lewis C. Chamberlin as manager of the Solid Carbon Dioxide Division of the Michigan Alkali Co. Chamberlin was also an employee of Irving H. Taylor, doing business as Michigan Alkali Co. The said Chamberlin, in a letter dated April 5, 1935, written from the office of Irving H. Taylor, doing business as Michigan Alkali Co. at New York, N. Y., and signed by Chamberlin as manager of Solid Carbon Dioxide Division of Michigan Alkali Co., addressed to Wisconsin Carbonic Gas Co., referred to the converter policy of Irving H. Taylor as follows:

As a result, we feel that it is inadvisable to make any changes in the Chicago ice picture of Merchants Chemical Co.

We are not providing protection for any preferred customers as you state, but are maintaining a policy on liquefiers that we adopted some time ago; namely, that we do not care to service this type of device. Merchants Chemical Co. is carrying out this policy and as they are sole distributor in Chicago, they will continue to do so.

(g) About August 31, 1936, the American Society of Mechanical Engineers issued addenda entitled, "Unfired Pressure Vessel Code to the A. S. M. E. Boiler Construction Code." Such code, containing rules governing construction requirements for pressure vessels in general, was formulated through the efforts of various members of the industry appointed by the A. S. M. E. to draft such rules. Accordingly, the boiler code committee of the A. S. M. E. appointed a sub-committee, which formulated rules for construction of pressure vessels, including converters. One of the members of this committee was A. J. Granata, employed by Pure Carbonic, Inc. Upon adoption of the aforementioned code, respondent, Pure, sold dry ice to any owner of a converter which bore the A. S. M. E. stamp of approval, except in those instances where it followed the policy of selling dry ice for use in converters on what is known as the full-service basis, by which customers were required to accept complete converter servicing and to obtain their dry-ice requirements exclusively from respondent, Pure. In some instances during 1939, this respondent demanded that the customer agree to the full-service plan before it would agree to lease and install converters. The charge for such service was added to the unit price of dry ice, and in many instances made the cost of ice and service equal to, or only slightly lower than, the cost of cylinder gas to such customers. This requirement ceased in April 1940.

(h) In 1938 respondent, Pure, when leasing converters to customers who already had such equipment but which did not bear the A. S.

Findings

44 F. T. C.

M. E. stamp, required that the customer's business be of such volume as to warrant a lease agreement. Pure also required that the customer turn in his non-A. S. M. E. converters in exchange for credit, against which the rental charge for converters leased by Pure was to be applied. All converters which respondent, Pure, received on such a trade-in basis, as well as its own, were scrapped. The rental charge imposed by Pure amounted to \$1.50 per month for each converter, and the amount of credit allowed on each non-A. S. M. E. converter turned in was usually \$75, which could be used only through the periodic charging off of the rental expense of an A. S. M. E. converter. Pure did not permit dry ice purchases to be applied against such credits.

(i) At the beginning of the use of liquefiers, respondent, Pure, did not solicit lease arrangements unless forced to do so by competitive conditions. Since 1938 this respondent has solicited liquefier leases subject to the limitation that no solicitation was generally made unless a prospective customer would use at least ten thousand pounds of dry ice having a sales value of approximately \$300, per year. In the event that a prospective purchaser solicited a liquefier lease from respondent, Pure, the same general limitation has been observed, although limited exceptions have been made where the prospective purchaser's plant met reasonable standards of safety and sanitation. The usual form of the present agreement used by respondent, Pure, in leasing liquefiers contains the following provision:

The lessee shall keep complete and accurate records of the quantity of solid carbon dioxide purchased for deposit or use by the lessee in Liquidors for conversion into liquid and/or gas and the price payable therefor, which records shall be open to the inspection of the lessor.

This provision was a requirement of the license formerly in effect by Carbo-Frost, Inc., and respondent, Pure, never examined any records under this requirement. However, in several instances in 1938 it was made known to the customer that respondent Pure would lease liquefiers only upon condition that said customer would use this respondent's solid carbon dioxide in them to the exclusion of any other product and that should respondent, Pure, find that the customer had failed to adhere to this understanding, the lease would be canceled. No leases were canceled under this agreement.

(j) For each of the years 1937 through 1940 the percentages of dry ice sold to bottlers by respondent, Pure, in relation to its total sales of such product were 7 percent, 7 percent, 12 percent, and 14 percent, respectively. Its sales of dry ice to converter users in 1935 amounted to 5,635,538 pounds and rose in volume until in 1944 its sales amounted to 52,566,968 pounds.

1029

Findings

(k) In the spring of 1941 respondent, Liquid, changed its policy of refusing to sell dry ice for carbonated-beverage purposes, and in the same year began to sell in Chicago in quantities of less than 1 percent of its total dry ice sales in that area. The following is a complete record of the percentages of ice sold for bottling purposes in relation to the total ice sales of branches during the month or year indicated:

Liquid branch	Month of October 1941	Year ended Sept. 30, 1942	Year ended Sept. 30, 1943	Year ended Sept. 30, 1944
	Percent 12	Percent 28	Percent 38	Percent 40
Atlanta, Ga.				
Boston, Mass.				
Chicago, Ill. (including Minneapolis, Minn., branch prior to May 1, 1942)	Under 1	7	15	16
Cincinnati, Ohio				15
Cleveland, Ohio (including Buffalo, N. Y., and Pittsburgh, Pa., branches prior to May 1, 1942)			12	5
Dallas, Tex.		Under 1	7	9
Detroit, Mich.		13	7	7
Kansas City, Mo. (including Denver, Colo., branch prior to May 1, 1942)	12	27	39	41
Los Angeles, Calif. (including San Francisco, Calif., branch in October 1941)	6	18	32	41
New York, N. Y.				
Philadelphia, Pa.		Under 1	Under 1	Under 1
Seattle, Wash.	17	43	54	60
St. Louis, Mo. (including New Orleans, La., branch prior to May 1, 1942)			17	3

¹ Sales of ice for bottling purposes made during part of year only.

(l) During the latter part of the period 1931 to 1941, in which respondent, Liquid, refrained from selling dry ice for carbonated-beverage purposes, the average selling price for cylinder gas sold to bottlers decreased from 7.03 cents per pound in 1937, to 5.73 cents per pound in 1940. This was caused to some extent by the increased use of liquefiers in the carbonated-beverage field. During this period, this respondent also granted low prices for cylinder gas to some large bottlers of carbonated beverage and narrowed the differential between its price for dry ice and that for cylinder gas by lowering the price of the latter proportionately more than it lowered the price of the former.

(m) Since respondent, Liquid, began in 1941 to sell dry ice for converters, it has required only that such converters meet the specifications of the A. S. M. E. unfired pressure vessel code or that they otherwise be manufactured in accordance with adequate safety requirements. It leases such converters to bottling customers under a form of lease agreement which is similar in some respect to that used by respondent Pure. Paragraph 10 of said leases contains the following language:

Findings

44 F. T. C.

Customer (lessee) agrees that it will keep complete and accurate records of the quantity of solid carbon dioxide purchased for deposit or use by customer (lessee) in converter units for conversion into liquid and/or gas, and the price payable therefor, which records shall be open to inspection by Liquid (lessor) at reasonable intervals.

It also included in paragraph 6 of its lease agreements the following :

Customer (lessee) agrees that it will, at its own expense, replace and install all parts and fittings that may be required in connection with the operation of the Equipment. Customer (lessee) agrees that it will purchase all such parts and fittings from Liquid (lessor).

The respondent, Liquid, imposed a \$1.50 per month rental charge for each converter under its lease agreements.

(n) Since January 1933 respondent, Liquid, has always had an investment of several million dollars in steel cylinders used in the sale and delivery of gas. Respondent, Pure, has also had a substantial investment in such cylinders, as indicated by its gas sales.

PAR. 13. The execution of the policies outlined in paragraph 12 above by respondents, Pure, Liquid, and Michigan, has, in a number of instances, prevented both distributors of dry ice and bottlers and retailers of carbonated beverages from obtaining a supply of dry ice for use in converters. The details of two specific instances are as follows:

(a) Prior to 1933 P. C. McAbee became engaged in the business of selling and leasing converters to drug stores and other retail sellers of carbonated beverages, as well as to bottlers. In many localities where McAbee had sold or leased converters, the principal, if not the only, suppliers of dry ice were respondents, Liquid, Pure, and Mathieson Alkali Works, Inc., and/or Irving H. Taylor, doing business in New York under the name of the Michigan Alkali Co. Among others, the said Irving H. Taylor refused to sell ice to McAbee's customers during 1933. As a result of such refusals, in 1933 McAbee and two other plaintiffs, one of them a converter manufacturer whom McAbee had represented as agent, brought suit in the United States District Court for the Southern District of New York against Irving H. Taylor, doing business as Michigan Alkali Co., among others, seeking to recover damages in the sum of \$1,000,000 under section 4 of the Clayton Act, alleging restraint of trade in violation of the Sherman Act. The said action was entitled "Paul C. McAbee, Plaintiff v. Pure Carbonic Company of America, Liquid Carbonic Corporation, Mathieson Alkali Works, Inc., American Dry Ice Corporation, Dry Ice Corporation of America, Delancey Chemical Corporation, Irving H. Taylor trading under the name of Michigan Alkali Company, Alden R. Lud-

low, and Harry W. Smead, Defendants." In July 1934 said Irving H. Taylor, doing business as Michigan Alkali Co., settled said action by making a payment of \$5,000 to the plaintiffs and entering into a 5-year contract to supply McAbee's customers at prevailing wholesale prices. In May 1936 respondents, Liquid, Pure, and Mathieson Alkali Works, Inc., also settled the case by paying the plaintiffs the sum of \$18,062.50, and \$6,375, respectively, against receipt of general releases from each of the plaintiffs. While the 5-year contract with Irving H. Taylor remained in force, McAbee experienced no difficulty in obtaining dry ice for his customers. This contract expired in 1939, and since that period McAbee's customers have obtained and are obtaining their dry-ice requirements without any difficulty.

(b) (1) In 1936 Bernard C. Lowe began selling dry-ice converters on a commission basis in Des Moines, Iowa, to drug stores and others, including one or more bottling concerns. Drug stores in that area were then using cylinder gas furnished by either respondent, Liquid, or respondent, Pure, at prices ranging from 13 cents to 20 cents per pound, depending upon the size of the cylinders, while bottlers were paying a price of 8 cents per pound for gas supplied from the same respondents. In June 1936 said Lowe and one Robert W. Cameron formed a partnership under the name of Z-Ro Dry Ice Sales Co. Lowe and Cameron continued in business as partners until about June 1938, when they transferred the partnership assets to Solid Carbonic Corp., in which they each took a half interest. The said Solid Carbonic Corp. continued the business of Z-Ro Dry Ice Sales Co.

(2) Prior to the formation of the partnership in 1936, Lowe and Cameron ascertained that the Des Moines warehouses of Liquid and Pure would not sell dry ice for conversion into gas to be used in carbonated beverages. Thereupon, they made an arrangement to obtain a supply of dry ice from a distributor in St. Louis named Walker, who was obtaining his supply from the Ideal Dri Ice Manufacturing Co. at Ada, Okla. On the strength of this arrangement, Lowe and Cameron continued to sell converters and in connection with such sales guaranteed that the purchasers would be able to obtain dry ice. In December 1936 respondent, Liquid, contracted to take the entire dry-ice output of the Ideal Dri Ice Manufacturing Co., and after January 1, 1937, as a result, Walker was unable to continue to supply dry ice to Lowe and Cameron, who in turn were unable to supply it to their customers.

(3) Prior to the summer of 1936 the 7-Up Bottling Co., of Des Moines, Iowa, was using cylinder gas purchased from respondent,

Liquid, and/or respondent, Pure, at a price of 8 cents per pound. During the summer of 1936 Lowe and Cameron secured the business of 7-Up and installed converters and serviced them with dry ice at a price of somewhat less than 5 cents per pound. In 1938 respondent, Liquid, succeeded in obtaining the business of 7-Up Bottling Co., by furnishing a supply of carbonic gas in cylinders equivalent to the investment by 7-Up in converters, which were acquired by Liquid in exchange therefor. This respondent supplied cylinder gas to 7-Up until later in the year 1938, when Lowe and Cameron, having obtained a supply of dry ice from Price, Utah, were successful in reacquiring the business and began to furnish dry ice for use in converters obtained elsewhere by that bottler.

(4) During the early part of 1937, Lowe and Cameron obtained dry ice for their converter customers in various ways. First, they bought a shipment of dry ice from Irving H. Taylor's Merchants Chemical Co., in Kansas City, which company was obtaining its supply from respondent, Michigan. The price charged for this dry ice was 5 cents per pound, which was the retail price and was identical with the retail price of respondents, Liquid and Pure, prevailing in that area. For this reason, Lowe and Cameron were unable to make any profit and purchased no more dry ice from that source. They then prevailed upon friends who regularly purchased dry ice for refrigeration from the warehouses of respondents, Liquid and Pure, in Des Moines to increase such purchases and turn over part of the dry ice so acquired to them at prices which Liquid and Pure charged refrigeration customers; that is, the prevailing wholesale price. When these two respondents learned of this practice they informed their refrigeration customers that they would be unable to obtain dry ice unless they discontinued reselling it to Lowe and Cameron.

(5) In the summer of 1937 Lowe and Cameron made an arrangement with respondent, Pure, to purchase from it at Des Moines sufficient dry ice to service their converter customers' accounts. At that time they offered to sell their business to respondent, Pure, for \$7,500, which Pure was unwilling to pay. The arrangement between Lowe and Cameron and respondent, Pure, continued from the summer of 1937 to about March 1938, and the prices charged by respondent, Pure, for its dry ice were in accordance with the price schedule then in effect; namely, 3 cents per pound until the annual volume of purchases had increased to 1,000,000 pounds, at which point the price was to be 2½ cents per pound. These two prices of 2 cents and 2½ cents per pound were known as basic wholesale and large volume wholesale,

respectively, and were quoted and charged refrigeration customers in the same area at the same time by respondent, Liquid. Despite this arrangement with respondent, Pure, Lowe, and Cameron, were unsuccessful in their efforts to obtain a firm contract for the purchase of dry ice at prices sufficiently low to enable them to sell at a profit. They purchased several shipments of dry ice from firms or individuals in Minneapolis and Austin, Minn., who used dry ice for refrigeration. This source of supply was also unsatisfactory to Lowe and Cameron because of the expense and trouble.

(6) In November 1937 Lowe and Cameron negotiated to purchase dry ice from the plant of the Carbon Dioxide & Chemical Co., Price, Utah. Beginning with March 1938 they purchased such dry ice for a price of \$20 per ton f. o. b. Wellington, Utah. In December 1937 the Carbon Dioxide & Chemical Co., at the request of Lowe and Cameron, applied for a reduction of freight rates on carload lots of dry ice from Wellington, Utah, to Des Moines, Iowa, and other Midwestern cities. Respondents, Liquid and Pure, opposed this application, which was finally granted in March 1939, at which time the rate to Des Moines was reduced from 79 cents to 65 cents per hundredweight. Previously, the rates to Omaha and Kansas City had been reduced to the same extent. Lowe and Cameron were unable to handle carlot shipments from Price, Utah, and in the winter of 1937 they made an arrangement with a warehouse firm in Omaha, Nebr., known as Meinershagen & McCoy to split carload shipments of dry ice from Price, Utah. The advantage thus derived ceased in October 1938, when the Omaha firm discontinued operations and Ralph Meinershagen entered the employ of respondent, Liquid. In August 1939 Lowe and Cameron began purchasing dry ice in carload lots from a producer in Mosquero, N. Mex., at \$20 per ton f. o. b. Mosquero, on which the freight to Des Moines, Iowa, was 49 cents per hundredweight.

(7) In September 1940 Lowe and Cameron caused their company, Solid Carbonic Corp., to bring an action in the United States District Court for the District of Iowa, Central Division, against respondents, Liquid, Pure, and Air Reduction Co., and also against Irving H. Taylor and the Merchants Chemical Co., by which they sought \$300,000 damages under section 4 of the Clayton Act on the ground that respondents withheld the sale of dry ice and thereby restrained trade in alleged violation of the Sherman Act. This suit was settled in July 1941 for \$30,000, of which respondent, Liquid, paid the sum of \$12,000 and respondent, Pure, the remaining \$18,000. The assets and business of the Solid Carbonic Corp., were acquired at the same time

by respondent, Pure, for the sum of \$8,000, which was included in the \$18,000 paid by this respondent. Among the assets so acquired were cylinders, trucks, lease on premises, and a contract with Carbonic Chemicals Corp. in New Mexico for the purchase of dry ice. Cameron withdrew from the carbon-dioxide business, and Lowe entered the employ of respondent, Pure, in Des Moines.

PAR. 14. (a) Since January 1, 1933, respondent, Michigan, has from time to time designated certain of its purchasers of dry ice, including respondents, Liquid and Pure, as its exclusive distributors in certain areas of the United States of ice in less than carload lots. In such instances, respondent, Michigan, referred all inquiries and orders for dry ice, including carlot orders, originating in such areas to either respondent, Pure, or respondent, Liquid, whichever had been designated as exclusive agent for the particular area in question.

(b) Prior to 1933 and from time to time thereafter, respondent, Liquid, has distributed large annual volumes of ice purchased from respondent, Michigan, in the areas including Albany and Buffalo, N. Y.; southwestern Ohio; and St. Louis and Kansas City, Mo. Respondent, Pure, entered into a written agreement with respondent, Michigan, on October 20, 1939, which provided that—

During the continuance of this agreement, Michigan will not, either directly or indirectly, sell carbon dioxide in any commercial form in, or for resale in, the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Maryland, Delaware, that portion of the State of New York south of and including Putnam and Orange Counties, and that portion of the Commonwealth of Pennsylvania east of the eastern boundaries of the Counties of Franklin, Huntington, Center, Clinton, and Potter, other than to Pure and to Michigan's distributors of its solid carbon dioxide in the territory above defined (except the distributors hereinbefore mentioned with whom Michigan has made arrangements, as aforesaid, to discontinue the sale of its solid carbon dioxide for resale through such distributors in the territory above defined) who, at the date of this Agreement, are purchasing solid carbon dioxide from Michigan in carload lots f. o. b. Michigan's plant at Wyandotte, Michigan.

In addition to the distribution of large annual volumes of its dry-ice production through respondents, Liquid and Pure, respondent, Michigan, sells its entire production of gas to respondent, Pure, which sells and distributes it to retail and wholesale customers.

(c) In August 1935 The Witt Ice & Gas Co., selling gas and dry ice in the southwestern United States and on the Pacific coast, wrote and telegraphed to Michigan Alkali Co., New York, asking for prices on dry ice in carload lots, f. o. b. Wyandotte, Mich. Lewis C. Chamberlin, an employee of Irving H. Taylor at the above address, notified The Witt Co. that at the time the entire production of respondent, Michigan's, plant was taken up and would be so taken up until Sep-

tember 15 of that year. On September 11 Witt again wrote for quotations and was informed by said Chamberlin that respondent, Michigan's, dry ice was being widely distributed but that respondent Michigan was not interested in distribution in some parts of Texas and on the Pacific coast. Chamberlin quoted a price of \$30 per ton in carload lots f. o. b. Wyandotte but informed Witt that in selling dry ice to him in carload lots it would be understood that such ice would not be reshipped to any territory in which Michigan already had distribution.

(d) In March 1940 at the St. Louis office of respondent, Michigan, a prospective dry-ice jobber in Normandy, Mo., inquired as to the prices of dry ice in 5-ton lots and stated that he might be interested in carload lots in the future. This office of respondent, Michigan, referred him to respondent, Liquid, which was the agent of respondent, Michigan, in the distribution of the latter's dry ice in the St. Louis territory. The prospective customer stated that he did not desire to deal with respondent, Liquid. The matter was then referred to the New York office, which replied to the St. Louis office that it was respondent, Michigan's, policy to ship only f. o. b. Wyandotte to agents and that it would be impracticable in any case to ship in small lots even to agents. No further inquiry was received from this source by respondent, Michigan, and the matter was disposed of in a subsequent memorandum from the New York office to the St. Louis office in which it was indicated that it was impracticable to ship in small lots to St. Louis and that it was the practice and policy of respondent Michigan to ship only in carload lots f. o. b. Wyandotte.

PAR. 15. (a) In 1931 a number of letters patent, patent rights, and patent applications relating to methods and processes for the production of dry ice were owned by the Dry Ice Corp. of America. On July 1, 1931, respondent, Liquid, entered into an agreement with said Dry Ice Corp. of America wherein it was provided, among other things, that the Dry Ice Corp. of America grant a license to respondent, Liquid, to manufacture and sell dry ice under said patents, patent rights, and patent applications upon the payment of a royalty of \$1 per ton on all dry ice sold by Liquid until January 2, 1939. Prior to 1931 respondent, Liquid, had an arrangement with the Dry Ice Corp. of America whereby the latter erected machinery and equipment for the production of dry ice in 16 gas plants of said respondent. This arrangement was terminated about July 1, 1931, and the respondent, Liquid, took over all such equipment of the Dry Ice Corp. located in said respondent's plants, as well as that located in the plant of the Dry Ice Corp. at Los Angeles, while remaining a licensee of said

Findings

44 F. T. C.

Dry Ice Corp. of America. In December 1933 American Dry Ice Corp., successor to said Dry Ice Corp. of America, transferred all its letters patent, patent rights, and patent applications to the Adico Development Corp. (sometimes hereinafter referred to as Adico) in exchange for the entire capital stock of one hundred shares.

(b) In 1929 the International Carbonic Engineering Co. (sometimes hereinafter referred to as Engineering) was organized and thereafter acquired various letters patent, patent rights, and applications relating to the methods used in the production of dry ice. Prior to 1932 Engineering granted licenses to manufacture dry ice under its patents and patent rights to respondent Michigan and to Mathieson Alkali Works, Inc. Engineering held the United States rights under a Swiss patent known as the Carba Process Patent, involving a method of solidifying carbon dioxide. It was under the Carba patent rights that Engineering granted an exclusive license to respondent, Michigan, within the States of Michigan, Ohio, Indiana, Illinois, and Wisconsin, and a nonexclusive license in States not exclusively licensed to others. On May 28, 1928, Harry W. Cole and Malcolm W. McLaren filed in the United States Patent Office an application for letters patent on a so-called snow press, used in the manufacture of dry ice. At that time Cole and McLaren, as well as one George M. Pettee, were employees of General Carbonic Co., whose assets and business were acquired by respondent, Liquid, on October 1, 1928, at which time Cole, McLaren, and Pettee became employees of said respondent. McLaren and Pettee are still employees of Liquid, but Cole resigned in 1931. In August 1932 Engineering obtained the Cole and McLaren patent application from Carbonic Engineering Corp., all of the stock of which was held by Cole and McLaren, in exchange for which it gave one-fourth of its common stock to a holding company known as Metropolitan Carbonic Corp., which was at the time owned two-thirds by Cole and one-third by McLaren. In October 1932 Cole was elected a member of the board of directors of Engineering. In 1934 Cole transferred one-half of his stock interest in Metropolitan Carbonic Corp. to one George M. Pettee, who was an employee of respondent, Liquid. The stock of Metropolitan Carbonic Corp. was then in the hands of Cole, McLaren, and Pettee equally and has continued to be so held to the present time. The Metropolitan Carbonic Corp. has also continued to hold one-fourth of the outstanding common stock of Engineering.

(c) In 1934 patents and patent applications owned by the said Adico were in interference in the United States Patent Office with those owned by Engineering, including the Cole and McLaren application, and it was the subject of controversy as to whether or not the

patent rights of Adico, under which respondent, Liquid, and others had been licensed, had priority over the patent rights of Engineering, under which respondent, Michigan and Mathieson Alkali Works, Inc., had been licensed.

(d) Negotiations among officials and representatives of Engineering and the American Dry Ice Corp. and the respondents, Liquid, Air Reduction, Pure, and Michigan, concerning the formation of a company to hold dry-ice patents owned or controlled by Adico and Engineering began many months prior to May 1934. Respondent, Air, acquired the assets of the American Dry Ice Corp., including the capital stock of Adico, on April 6, 1934, such assets being acquired by Dry Ice, Inc., all of whose stock was owned by the Pure Carbonic Corp. of America, a wholly owned subsidiary of respondent Air. Upon the acquisition of the aforementioned assets, respondent, Air, through Pure, sold one-third of the total shares of Adico's stock to respondent, Liquid, for \$173,166.66 and also sold one-third to respondent, Michigan, for the same amount. Pure retained one-third of the total shares of Adico's stock.

(e) On May 4, 1934, Engineering and Adico entered into an agreement which provided for the organization of a company to be known as International Carbonic, Inc. (sometimes hereinafter referred to as International), with a capitalization of 10,000 shares of stock, 40 percent of which would be issued to Engineering and 60 percent to Adico. The agreement provided for an exclusive license to be granted by both Engineering and Adico under various patents and applications owned or subsequently acquired by the two companies to the new holding company, which in turn would make sublicense agreements with the then licensees of Engineering and Adico at a royalty rate of not less than \$2 per ton, and that said parties would promptly cooperate in an effort to settle and determine, on a basis of priority of invention, interferences between their then pending applications in the Patent Office. This agreement was carried out, and International was organized on June 12, 1934. On July 1, 1934, Engineering granted an exclusive license to International under all patents and applications owned by Engineering, subject to the rights of Mathieson Alkali Works, Inc., under a prior agreement with Engineering. International issued 4,000 shares of its stock to Engineering and agreed to pay to the latter 60 cents per ton royalty. On July 1, 1934, Adico entered into an agreement with International granting the latter an exclusive license under all Adico patents and patent applications, in consideration of which International issued 6,000 shares of its capital stock to Adico and agreed to

Findings

44 F. T. C.

pay royalties at the rate of 90 cents per ton. On September 21, 1934, the board of directors of Adico distributed 6,000 shares of International stock as a dividend so that the then stockholders of Adico; namely, respondents, Liquid, Pure, and Michigan, each received 2,000 shares. On the same day, each of these respondents was granted a nonexclusive sublicense to operate under the patents and patent applications held by International, and all interferences between patents and patent applications owned by Engineering and Adico were disposed of on December 24, 1935, at which time the Cole and McLaren patent issued, after having been through 11 interferences in the Patent Office.

(f) From the date of its organization until early in 1939 the board of directors of International consisted of five members, two being chosen by International, with respondents, Liquid, Pure, and Michigan, each selecting one of the three remaining directors. Irving H. Taylor represented respondent, Michigan, and also served as vice president and later as president of International. This board of directors of International passed upon the granting of licenses to manufacturers of dry ice, and in at least two instances during that period prospective licensees other than the three respondents were advised by International that they would have to pay a fee of \$5,000 in addition to the royalty rate of \$2 per ton in order to obtain a license. During a period of 5 years, International issued no licenses to any prospective or actual processors of dry ice other than the three respondents, Liquid, Pure, and Michigan. The rate of royalty paid by each of the respondent licensees to International from July 1934 until January 1939 was \$2 per ton, 90 cents of which was paid to Adico and 60 cents to Engineering, with the remaining 50 cents being retained by International for expenses including research and patent infringement.

(g) On January 11, 1939, respondents, Liquid, Pure, and Michigan, offered to sell their stock in Adico and International. This offer was accepted by Engineering on January 12, and each of respondents, Pure, Liquid, and Michigan, sold 2,000 shares of the capital stock of International and $33\frac{1}{3}$ shares of the capital stock of Adico to Engineering in exchange for a promissory note of \$10,226.23. At the same time, new license agreements were entered into between International as the licensor and respondents, Pure, Liquid, and Michigan, as licensees which granted to each of said respondents a nonexclusive license to use the patents and patent applications held by International. These license agreements provided for a reduction in the royalty rate from \$2 to \$1.25 per ton, which was to be further reduced to \$1 per ton at the end of 5 years and to 85 cents per ton at the expiration of

the next 5 years. At a meeting of the board of directors of International on January 18, 1939, representatives of respondents, Pure, Liquid, and Michigan, resigned, and directors were elected from Engineering to fill their places, and since that date no one connected with these three respondents has been a director or officer of International and no one employed by Pure has been connected with Engineering. Respondent, Michigan, has held, either directly or indirectly, 1,500 shares of the outstanding capital stock of Engineering from May 1933 to the present time. It has always executed proxies in blank for such stock and returned them to Engineering's management. Respondent Liquid, since February 1939, has not been represented on the board of directors of Engineering. The Metropolitan Carbonic Corp., owned equally by Harry W. Cole, Malcolm W. McLaren, and George M. Pettee, the two last named being employees of respondent, Liquid, has continued to hold one-fourth of the total common stock of Engineering. On May 1, 1939, International was merged into Adico and continued under the name of International Carbonic, Inc. On September 30, 1944, International was dissolved, and all its assets were transferred and assigned to Engineering, which assumed the obligations, including those imposed by an amended license agreement dated October 1, 1944, at which time the royalty rate was reduced to 65 cents per ton and was to be further reduced to 55 cents in 1949.

PAR. 16. On March 16, 1929, respondents, Liquid and Air, caused the organization of a corporation named Compania de Carbonico Liquido de Cuba, S. A., under the laws of the Republic of Cuba for the purpose of engaging in the production, distribution, and sale of carbon dioxide in Cuba. Since the date of organization, each of said respondents has owned one-half of the outstanding stock of this corporation, and each has elected one-half of the total number of its directors. In May 1940 the Cuban corporation purchased from Engineering, for a price of \$5,000, all of the Cuban patents owned by Engineering and/or its then subsidiary, International, relating to machinery, articles, methods, and processes for the production, handling, and/or use of dry ice.

PAR. 17. (a) Over a period of nearly 15 years the respondents, Air, Pure, Liquid, and Michigan, have been able to and have created in themselves a substantial degree of monopoly and control of the manufacture, sale, and distribution of both liquid and solid carbon dioxide by the concurrent execution of the acts, practices, and policies hereinbefore set-out, the success of each of which was almost wholly dependent upon the success of the other, and could have been and were successfully carried out only through the cooperation of all respond-

ents, each with the other, pursuant to agreement, understanding, conspiracy, and planned common course of action among them. These respondents purchased outright, and in some instances by agreement divided among themselves, the assets, business, equipment, productive capacity, and distribution facilities of approximately 31 competitors engaged in the sale and distribution of dry ice and gas. A portion of such purchases were made upon condition that the officers or owners of said competing firms would not thereafter engage in the production, sale, or distribution of said products for a specified length of time in a designated area. The degree of control of production thus established has been supplemented by respondents, Air, Pure, and Liquid, through the purchase, under contract or agreement, of a substantial portion, or all, of the output of some 30 firms engaged in the manufacture of dry ice or gas. These respondents in making such purchases either obtained their requirements in certain plants or areas or a fixed minimum quantity approximately equal to said requirements, and a number of said purchase contracts or agreements provided that the sellers would not sell carbon dioxide to others. Such a substantial degree of control of production having been acquired and maintained by the purchase of the business of competing firms and the purchase of the output of others established in these respondents the power to control and regulate prices. This power has been actively and freely used by agreement as is shown by the high degree of price uniformity which has prevailed on dry ice and gas over a period of 5 years despite the price differences existing between uniformly classified purchasers of different quantities of dry ice or gas and the substantial difference in price prevailing between different sales areas. The effectiveness of the price-fixing powers of respondents was clearly demonstrated in one instance by respondents Pure and Liquid when they both simultaneously lowered their prices on dry ice until the local competitor was eliminated and thereafter simultaneously increased them.

(b) Through the use of converters or liquefiers the less-expensive dry ice may be and is converted into gas and used for carbonation purposes in the same manner as cylinder gas. In order to protect the higher prices of gas it was essential to these respondents they either prevent altogether the sale of dry ice for conversion into gas or sell it at prices comparable thereto and above those charged customers for other uses. Protection of their investments in cylinders from depreciation and preventing their obsolescence through nonuse supplied another compelling reason for thus restricting the sale of dry ice. The refusal of respondents, Liquid and Michigan,

to sell dry ice to converter users prior to 1941 placed in the hands of respondent, Pure, the power to regulate and control such sales. Respondent, Pure, exercised this power either by also refusing to sell dry ice to converter users who did not lease converters from it or by imposing conditions of sale which made the prices of dry ice only slightly lower than those at which it sold gas and above those charged refrigeration customers for said dry ice. Since 1941 respondents, Pure and Liquid, in leasing converters under contract, have required their respective customers to maintain for their inspection accurate records of the quantity and prices of dry ice used therein. Since each has records of its own sales of dry ice, such requirement can serve no useful purpose so far as sales by them are concerned. It does, however, permit them to restrict their customers to the exclusive use of dry ice sold by them or in the event of the failure of their effort to do so, supplies them with complete information as to the sources, quantity, and prices of dry ice purchased from competitors by lessees of their converters, either of which is of invaluable assistance to them in maintaining their own prices and sales policies. The policies and prices of each respondent with respect to the sales of dry ice for conversion into gas were known to the others and could have been, and were in fact, maintained only by mutual cooperation and concert of action between and among them.

(c) Respondent, Pure, strengthened its already dominant position in controlling the sale and distribution of gas by purchasing the entire gas output of respondent Michigan and thereby preventing any other distributor or potential distributor from selling said gas to consumers. Respondents have refrained from competing with each other in the sale and distribution to consumers of the dry-ice output of respondent, Michigan, through the operation of a series of contracts which have been entered into between Michigan and Pure and between Michigan and Liquid whereby certain specified areas of the United States not already reserved to the exclusive use of Michigan's four other customers were allocated to the exclusive use of respondents, Pure and Liquid, respectively. Such agreements have prevented other distributors or potential distributors from purchasing and distributing to consumers dry ice produced by respondent, Michigan, and have prevented consumers from purchasing said dry ice except from respondents, Pure and Liquid, in the respective territory granted to each of them.

(d) In 1932 none of the respondents held any patents or patent applications governing the production of dry ice, but respondents, Liquid and Michigan, were each licensed under a separate group of

patents held by two firms who were independent of each other. Early in 1934 officers representing each of the respondents and each of the patent-holding firms entered into negotiations looking to the formation of a company to hold all said patents and patent applications. Thereafter, respondent, Air, through one of its subsidiaries, acquired one of the independent patent-holding firms and then proceeded to sell its stock to respondents, Pure, Liquid, and Michigan, equally. Less than a month later the other independent patent-holding firm and that owned by respondents, as aforesaid, pursuant to agreement formed a third company to hold all patents. When the new firm was formed, it received exclusive licenses from both the others so that it then held all known patents, patent rights, and patent applications for the production of dry ice. Its board of directors, which passed upon the granting of licenses, consisted of five persons, of whom respondents, Michigan, Liquid, and Pure, each selected one. About 2 months after its formation it granted sublicenses under all its patents and patent applications to each of these three respondents for a consideration of \$2 per ton on all dry ice produced, while imposing an additional \$5,000 fee for any other prospective licensee. Thus, through a series of agreements and understandings, these respondents acquired direct or indirect control of all known patents covering the production of dry ice and imposed such burdensome conditions for licensees thereunder that for a period of nearly 5 years no other manufacturer obtained a license.

PAR. 18. Pursuant to count I of the amended complaint herein, the Commission concludes from the evidence, and therefore finds, that the respondents named therein, with the exception of Mathieson Alkali Works, Inc., have maintained a combination and conspiracy in the manner aforesaid and that the capacity, tendency, and effect thereof and the acts and practices performed thereunder and in connection therewith by said respondents as set out herein have been, and are to hinder, lessen, restrain, and suppress competition in the sale and distribution of both liquid and solid carbon dioxide in, among, and between the several States of the United States; to acquire by purchase, and in some instances divide among themselves, the assets, productive capacity, and distribution facilities of competitors engaged in the manufacture, sale, and distribution of solid and liquid carbon dioxide; to control the manufacture, sale, and distribution of solid and liquid carbon dioxide by agreeing to purchase the entire output of independent manufacturers or a substantial portion thereof, or by obtaining from said manufacturers their requirements in certain plants or areas or a fixed minimum quantity approximately equal to said requirements,

1029

Order

upon condition that said independent manufacturers respectively will not sell to competitors of respondents liquid carbon dioxide or solid carbon dioxide for the purpose of manufacturing liquid carbon dioxide therefrom; to deprive both private and governmental purchasers of liquid and solid carbon dioxide of the benefits of competition in price among respondents; to prevent sales of solid carbon dioxide to owners or lessees of converters or liquefiers who convert said solid carbon dioxide into liquid carbon dioxide; to prevent the sale of solid carbon dioxide to bottlers of carbonated beverages or other owners or lessees of converters of liquefiers who convert said solid carbon dioxide into liquid carbon dioxide except at higher prices than are charged customers who use said solid carbon dioxide for refrigeration or industrial purposes; to allocate and reserve certain territory and specified areas within the States of the United States and the District of Columbia to the exclusive use of respondents in the sale and distribution of solid and liquid carbon dioxide; to control, through direct or indirect joint ownership of patent rights and patent applications, the manufacture, sale, and distribution of solid carbon dioxide and to charge or threaten to charge manufacturers or prospective manufacturers of solid carbon dioxide exorbitant license and royalty fees for the use of said patents; and on the part of Air, Pure, and Liquid to eliminate local competition by simultaneously cutting the price of liquid and solid carbon dioxide to customers of competitors in certain areas below those charged to the same class of customer in comparable areas where there is less competition; and otherwise to maintain and promote the purpose of the combination and conspiracy of respondents to hinder, lessen, and restrain competition in the purchase, sale, and distribution of liquid and solid carbon dioxide.

CONCLUSION

The aforesaid acts and practices of the respondents are all to the prejudice of the public and of respondents' competitors and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act. In compliance with the provisions of the stipulations hereinbefore mentioned, no findings have been made pursuant to the charges in count II of the complaint.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answers thereto, stipulations of facts, and recommended decision of the trial examiner (no

briefs having been filed and oral argument not having been requested) ; and the Commission having made its findings as to the facts and its conclusion that respondents have violated the provisions of the Federal Trade Commission Act :

I. *It is ordered*, That Pure Carbonic, Inc., a corporation; Air Reduction Co., Inc., a corporation; The Liquid Carbonic Corp., a corporation; and Michigan Alkali Co., a corporation (now Wyandotte Chemicals Corp.), their respective officers, representatives, agents, and employees, in connection with the purchasing, offering for sale, sale, and distribution of solid or liquid carbon dioxide in commerce as "commerce" is defined by the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between and among any two or more of said respondents or between one or more of said respondents and others not parties hereto to do or perform, either directly or indirectly, any of the following acts or practices :

1. Purchasing the productive or distributive facilities or other assets of competitors, or control thereof.

2. Entering into or carrying out purchase agreements with manufacturers of solid and/or liquid carbon dioxide whereby any one or more of said respondents agrees to purchase the entire output of any of said manufacturers or a substantial portion thereof.

3. Contracting to purchase or purchasing liquid and/or solid carbon dioxide from competing producers upon condition that said producers will not sell to competitors of any of said respondents solid carbon dioxide or liquid carbon dioxide for the purpose of manufacturing solid carbon dioxide therefrom.

4. Establishing, fixing, or maintaining prices, terms, conditions of sale, or charges for services in connection with the sale of solid or liquid carbon dioxide, or adhering to any prices, terms, conditions of sale, or service charges so fixed or maintained.

5. Preventing the sale of, or refusing to sell, solid carbon dioxide to owners or lessees of converters or liquefiers for conversion into liquid carbon dioxide.

6. Offering to sell or selling solid carbon dioxide to owners or lessees of converters or liquefiers at prices in excess of those offered or charged purchasers of comparable quantities for other uses.

7. Allocating, reserving, or limiting certain territorial areas to the exclusive use of any one or more of them in the sale and distribution of solid or liquid carbon dioxide.

8. Owning or controlling stock or other share capital of any corporation which owns or controls patent rights or patent application relating to the manufacture of solid carbon dioxide, or in any other manner controlling such patents, patent rights, or patent applications whereby competing manufacturers or prospective manufacturers of solid carbon dioxide are hindered or prevented from continuing in or entering into the manufacture of said product.

11. *It is further ordered*, That the respondents, Pure Carbonic, Inc., Air Reduction Co., Inc., and The Liquid Carbonic Corp., pursuant to a planned common course of action, understanding, agreement, combination, or conspiracy between and among them, or between one or more of them and others, cease and desist from :

Cutting prices of solid or liquid carbon dioxide to customers of competitors in certain areas below the prices charged the same class of customers in comparable areas.

III. *It is further ordered*, For the reasons appearing in the findings as to the facts and conclusion in this proceeding, that the charges in Count II of the complaint herein be and the same are hereby withdrawn without prejudice to the right of the Commission to institute a further proceeding against each of these respondent at any time with respect to alleged violations of the Robinson-Patman Act.

IV. *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 it.

