

IN THE MATTER OF
INTERNATIONAL SALT COMPANY AND EASTERN SALT
COMPANY

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

Docket 4307. Complaint, June 5, 1943¹—Decision, Aug. 22, 1952

Any appreciable difference in the wholesale or the retail price of table salt of the same brand, grade and quality has a tendency to divert sales.

Where one of the largest salt producers in the United States and its wholly owned subsidiary, engaged in the competitive interstate sale and distribution of their evaporated salt under various trade names including "Sterling", "Columbia", and "Purity", to purchasers competitively engaged with one another in the resale thereof at wholesale, at retail, and at wholesale to retailers competing with certain of said purchasers—

- (a) Discriminated in price by selling their table salt at lower net prices to purchasers classified as having purchased \$50,000 worth in a twelve consecutive month period, irrespective of the source thereof, through the practice of granting such favored purchasers a "unit discount" equal to about 4 to 5 per cent of the published price on each item; and
- (b) Discriminated in price in their northern sales territory, prior to January 15, 1940, through granting to purchasers who bought in single order quantities of 100 cases or more a unit discount of the same value as that above described, and thereafter through establishing higher posted prices for quantities of less than 100 cases, which made up the amount of the unit discount previously granted on 100 case purchases;

With the result that each of their customers who did not receive the advantage of buying at their lowest prices through the application of their 5 cent per case unit discount, and who were in competition with the customers who received such discriminations, necessarily either resold the salt at a higher price than that of said favored competitors or received a lower gross margin on their sales; and with tendency to cause purchasers who did not receive respondents' lowest net price to resell their salt at higher prices than did purchasers who received respondents' lowest prices;

Effect of which discriminations in price, neither shown as made in good faith to meet an equally low price of a competitor, nor justified by due allowance for differences in cost, etc., under the statute, might be substantially to lessen competition in the line of commerce concerned, and to injure, destroy and prevent competition between purchasers who received the benefit of said discriminatory prices and discounts and those to whom they were denied:

Held, That such acts and practices of respondents in selling their table salt to certain purchasers at lower net prices than to others who competed in its resale, as above set forth, constituted violations of Subsec. (a) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act; and—

¹ Second amended.

Where said producer, in selling table salt to certain customers through its "Local Feature Service Agreements", which required the furnishing of certain advertising and display services by the customer and the payment to him of a specified amount by said respondent and which were negotiated individually, depending upon the judgment of respondent's officials, in each case, and involved many different factors, including type and quantity of advertising contemplated, type of store display offered, shelf position, quality, character, personnel, location and cleanliness of store, among others—

- (c) Entered into such agreements upon an individual basis with each customer, upon the customer's request, as above set forth, without making any effort to inform its other customers, including competitors of those thus favored, of the existence of such agreements, and without making available to them any payments whatever for advertising or display services in lieu of payments made under such agreements:

Held, That such acts and practices of said respondent International in making payments to certain of its customers as compensation for advertising and display services under its "Local Feature Service Agreements", without making such payments available on proportionally equal terms to their competitors, constituted violations of Subsec. (d) of Sec. 2 of the Clayton Act as amended by the Robinson-Patman Act.

As respects respondents' contention that their practice of granting a unit discount to purchasers classified as \$50,000 purchasers, while not granting it to competing purchasers of table salt of like grade and quality was justified, since made in good faith to meet equally low prices of competitors;

It appearing that respondents in September 1936, after receiving bulletins of competitors stating that they were granting one unit discount to certain purchasers classified as buying at least \$50,000 worth of table salt in a twelve consecutive month period, granted identical discount to the purchasers named in said bulletin and continued the practice until June, 1948, when it was abandoned; that prior to said time, however, they had granted discounts on the basis of the total annual requirements of a purchaser, regardless of from whom they were purchased; that the price differences which resulted from the granting of such discounts to some but not all of respondents' customers were not the consequence of a departure from a nondiscriminatory pricing scale which was made to meet lower prices of competitive sellers, but represented only the continued application of the discriminatory pricing standards previously adopted by them and used since November 1935; and that, despite the fact that the illegal nature of the discount was brought to their attention by the Commission's original complaint in 1940, there was no evidence that they made any attempt to eliminate or lessen the amount of such discrimination until 1948:

The Commission concluded that in such circumstances respondents could not be said to have acted in "good faith" within the meaning of Sec. 2 (b) of the statute involved and, after careful consideration of all the facts, was of the opinion and found, that respondents had not shown their discriminatory prices accorded to recipients of such discounts were lower prices made in good faith to meet an equally low price of a competitor.

With respect to respondents' contention that their discriminatory lower prices on single order purchases of table salt in quantities of 100 cases or more made only due allowance for differences in the cost of manufacture, sale or

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delivery resulting from the differing methods or quantities in which such salt was sold or delivered:

The Commission found that said price discrimination had not been thus justified since, even accepting respondents' attempted cost justification through combining all sales costs in the area concerned and dividing it by the total number of sales, with a resulting figure which would justify sales in single order quantities of 100 cases, with a discount of five cents per case, as compared with the cost of sales in single order quantities of fifty-five cases or less, it appeared that respondents refused to sell salt in quantities which would permit a minimum sale of less than seventy-four cases, and also that the record failed to provide a basis for respondents' basic assumption that the sales cost was the same for all orders.

With respect to respondents' further contention that the \$50,000 purchaser discount was similarly justified: the Commission was likewise of the opinion that said price discrimination had not been shown as justified by such costs since the analysis presented by respondents of the cost of selling to A & P as compared with the costs of selling to all other purchasers, regardless of their volumes of purchase, methods of purchasing, or price at which purchased, was incapable of establishing the differences in costs of sales as between their purchasers who received said quantity discount and those who did not, and also because the allocation of certain of the costs in said analysis was made without sufficient record basis.

As respects respondents' contention that they had discontinued the practice of granting a discount to purchasers classified as buying \$50,000 worth of table salt in a twelve consecutive month period, as a result of the decision in *Federal Trade Commission v. Morton Salt Company*, 334 U. S. 37, in 1948, and that consequently there was no public interest in the issuance of an order prohibiting the practice: it appeared that respondents did not contend that they had abandoned the practice of granting a lower price to purchasers in their northern sales territory who purchased in single order quantities of 100 or more cases; that said practice involved the same amount of price discrimination and had the same effect on competition that had been held illegal; and, such being the case, the Commission was of the opinion that an order was required in the matter to impress upon the respondents the necessity of stopping all of their discriminatory pricing practices.

As regards the "Store Display and Sales Service Agreements" entered into by respondent International at various periods, with retail stores selling its "Sterling" brand of table salt to the consuming public, which called for the payment by it of about ten cents for every case of salt purchased during a specified period by the store in consideration of the store's furnishing certain specified display services in connection with the offer of said salt during said period: it appeared that it was said respondent's policy to enter into such agreements with every retail outlet of its table salt products in the United States, whether purchasing "Sterling" table salt from it directly or indirectly, and that respondent made every reasonable effort to carry out such policy and to make the payments under said plan available on proportionally equal terms to all the retail outlets of its said salt; and the Commission did not find respondent's activities in connection with payments made under such agreements to have been illegal.

Before *Mr. John P. Bramhall*, hearing examiner.

Mr. James I. Rooney for the Commission.

Mr. George S. Ward, of Washington, D. C., and *Putney, Twombly, Hall & Skidmore*, of New York City, for respondents.

AMENDED COMPLAINT

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

COUNT I

PARAGRAPH 1. International Salt Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, having its principal office and place of business located in the Scranton Life Insurance Company Building, Scranton, Pennsylvania.

Eastern Salt Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, having its principal office and place of business located at 150 Causeway Street, Boston, Massachusetts.

Respondent Eastern Salt Company is a wholly-owned subsidiary of respondent International Salt Company and is under the direct and immediate control of, and its policies are directed by, said respondent International Salt Company.

PAR. 2. Respondent International Salt Company, and its wholly-owned subsidiary, Eastern Salt Company, are now and have been engaged in the business of offering for sale, selling and distributing salt in various States of the United States. The respondent International Salt Company is one of the largest producers and distributors of salt in the United States. The respondent International Salt Company also distributes its product through its wholly-owned subsidiary, respondent Eastern Salt Company. Respondent International Salt Company sells its products directly and through such subsidiary to wholesalers, retailers, corporate wholesale chains, corporate retail chains, voluntary and cooperative chains, and individual commercial purchasers. Respondents International Salt Company and Eastern Salt Company sell and distribute their products in commerce between

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and among the various States of the United States and in the District of Columbia and preliminary to or as a result of such sale cause such products to be shipped and transported from the places of origin of the shipment to the purchasers thereof who are located in States of the United States and in the District of Columbia other than the State of origin of the shipment, and there is and has been at all times herein mentioned a continuous current of trade in commerce in said products across State lines between respondents' plants, factories, or warehouses and the purchasers of such products. Said products are sold and distributed for use, consumption and resale within the various States of the United States and in the District of Columbia.

PAR. 3. In the course and conduct of their business, as aforesaid, respondents have been and are now engaged in substantial competition in commerce with other corporations, individuals, partnerships and firms who for many years prior hereto have been and are now engaged in processing, selling, and distributing salt in commerce across State lines to purchasers thereof located in the various States of the United States.

Many of the respondents' customers are competitively engaged with each other and with the customers of the respondents' competitors in the resale of said products within the several trade areas in which the respondents' said customers respectively offer for sale and sell the said products purchased from respondents.

PAR. 4. In the course and conduct of their business, as aforesaid, since June 19, 1936, respondents have been and are now discriminating in price between different purchasers buying such products of like grade and quality by selling their products to some of their customers at higher prices than they sell products of like grade and quality to other of their customers who are competitively engaged one with the other in the resale of said products within the United States.

The respondents have effectuated their discriminations in price heretofore alleged by various and sundry means and methods, among which are the following:

(1) The respondents grant to some of their customers who are competitively engaged in the sale of salt of like grade and quality with other of respondents' customers a "unit discount" amounting to approximately 5¢ per case on table salt where a single order is placed for 100 cases or more of table salt.

(2) The respondents grant to some of their customers who are competitively engaged in the sale of salt of like grade and quality with other of respondents' customers in addition to the "unit discount" referred to in Paragraph (1) hereof, "multiple unit discounts" of various amounts on all grades of salt purchased during a 12 consecu-

tive month period where such purchases are equal to or in excess of \$50,000.

The "multiple unit discounts" referred to in Paragraph (2) hereof mentioned are allowed to some, but not all, customers of the respondents who do not purchase from the respondents \$50,000 worth of salt during a 12 consecutive month period, provided, however, the total purchases of salt from all sources made by said customer total \$50,000 during said given period of time.

In the industry, this type of selling is known as "split business," that is, basing the price upon the total requirements of a customer and not upon the actual quantity purchased from any particular source.

In addition to the discriminations effected by the aforementioned "multiple unit discounts" respondents discriminate in price between different purchasers of their products and such price discriminations result from the respondents' selling salt to an individual customer where the delivery thereof is made to several branches or outlets of said individual customer at prices based upon the total quantity or volume delivered to all of the separate branches or outlets of the said customer, provided such total quantity or volume amounts to the required minimums during the 12 consecutive month period as set forth in Paragraph (2) hereinbefore mentioned and not upon the quantity or volume delivered by the respondents to the respective branches or outlets of some individual customers.

In the industry, this type of selling is known as "combined selling," that is, basing the price upon the total quantity delivered to all the separate branches or outlets of an individual customer and not upon the quantity delivered to the respective branches or outlets of said customer. Some customers of the respondents operating several branches whose combined purchases are less than the total quantity or volume amounts required during the 12 consecutive month period as set forth in Paragraph (2) hereinbefore mentioned receive "multiple unit discount" in addition to the "unit discounts" as set forth in Paragraph (1) hereof and are competitively engaged with other of respondents' customers who purchase in like quantity or volume and who receive no discounts whatsoever.

PAR. 5. The effect of the discriminations in price generally alleged and of those specifically set forth in Paragraph Four hereof has been and may be substantially to lessen competition in the line of commerce in which the purchasers receiving the benefits of such discriminatory prices are engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and those to whom they are denied and has been and may be to tend to create a monopoly in those purchasers receiving the benefit of

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said discriminatory prices in said line of commerce in the various localities or trade areas in the United States in which said favored customers and their competitors are engaged in business.

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

COUNT II

PARAGRAPH 1. Paragraphs One, Two, and Three of Count I are hereby adopted and made part of this count as fully as if herein set out verbatim.

PAR. 2. In the course and conduct of their business in commerce, respondents, since June 19, 1936, have secretly given free salt products or paid and contracted to pay to some of their customers certain definite sums of money as compensation and in consideration for advertising, display, and distribution services, and facilities furnished by such customers in connection with the sale and offering for sale of table salt, while concealing such gifts and payments from competing customers and not making such gifts and payments available on proportionally equal terms or on any terms to customers competing in the distribution of salt. Such gifts and payments are in addition to the price discriminations referred to in Count I.

Among the general practices thus pursued by the respondents in granting allowances or compensation to their favored customers, as alleged in Count II hereof, are the following:

(1) The respondents have paid to some favored customers the sum of \$50 per month as an advertising and display allowance while respondents did not and do not make such payments available on proportionally equal terms to all competing customers or on any terms to customers competing in the sale and distribution of such products.

(2) The respondents have paid compensation to some retail chain store customers in connection with the sale of respondents' table salt, the sum of \$2.50 for each display of "2 pound round cans of plain or iodized Sterling Salt in quantities between 10 and 15 cases in each" of such customer's retail outlets. The respondents have not and do not make such display allowances available on proportionally equal terms to all competing customers or on any terms to customers competing in the sale and distribution of such products.

PAR. 3. The respondents have not made known to their customers, except their favored customers that they grant and allow any compen-

sation or free salt products for advertising, display, and distribution services.

PAR. 4. The above acts and practices of respondents are in violation of subsection (d) of section 2 of the Clayton Act as amended by the Robinson-Patman Act, approved June 19, 1936 (U. S. C. Title 15, Section 13).

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid Act, the Federal Trade Commission, on September 9, 1940, issued and subsequently served its original complaint in this proceeding upon the respondents named in the caption hereof, together with two other named corporations, charging each of them with violation of the provisions of subsection (a) of section 2 of the aforesaid Clayton Act, as amended. On April 2, 1942, the Commission issued and subsequently served its first amended complaint charging the same respondents as named in the original complaint with violation of the provisions of subsections (a) and (d) of section 2 of the aforesaid Clayton Act, as amended. After the issuance of the first amended complaint and the filing of respondents' answers thereto, testimony and other evidence in support of the allegations of said complaint were taken before a hearing examiner of the Commission duly designated by it. Thereafter, on June 5, 1943, the Commission issued and subsequently served its second amended complaint upon the respondents named in the caption hereof, charging each of them with violation of the provisions of subsections (a) and (d) of section 2 of the aforesaid Clayton Act, as amended. After the filing of respondents' answers to the second amended complaint, testimony and other evidence in support of and in opposition to the allegations of said complaint were introduced before the hearing examiner of the Commission previously designated by it. All of the testimony and other evidence introduced before said hearing examiner were duly recorded and filed in the office of the Commission. Thereafter, this proceeding regularly came on for final hearing before the Commission upon the second amended complaint, the answers thereto, testimony and other evidence, the recommended decision of the hearing examiner and respondents' exceptions thereto, and briefs and oral argument of counsel; and the Commission, having duly considered

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the matter and having entered its order disposing of the exceptions to the hearing examiner's recommended decision and being now fully advised in the premises, makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent International Salt Company is a corporation organized and existing under and by virtue of the laws of the State of New Jersey, with its office and principal place of business in the Scranton Life Insurance Building, Scranton, Pennsylvania.

Respondent Eastern Salt Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with its office and principal place of business at 150 Causeway Street, Boston, Massachusetts. Respondent Eastern Salt Company is a wholly owned subsidiary of respondent International Salt Company by whom its sales policies, at all times material herein, have been controlled and directed.

PAR. 2. Respondent International Salt Company, one of the largest salt producers in the United States, has been engaged in the manufacture, sale and distribution of salt, including table salt, since April 1, 1940. Prior to that date said business was carried on by this respondent's wholly owned subsidiaries. Respondent International Salt Company and its said subsidiaries have sold their salt products in the eastern and southern States of the United States.

Since prior to June 19, 1936, respondent Eastern Salt Company has been engaged in the sale and distribution of salt products, including table salt, purchased largely from its parent corporation, respondent International Salt Company. Its sales territory is limited to the States of New Hampshire and Massachusetts.

Respondents transport or cause said salt products, when sold, to be transported to the purchasers thereof at their respective locations in States other than the States in which the shipments originate.

Respondents maintain, and during the periods of time they have been engaged in the business of selling and distributing salt, as aforesaid, they have maintained, a course of trade in said products in commerce among and between the various States of the United States.

PAR. 3. In the course and conduct of their business as aforesaid, respondents are now, and during the periods of time they have been engaged in the business of selling and distributing salt as aforesaid, they have been, in substantial competition with other corporations engaged in the business of selling and distributing salt in commerce among and between the various States of the United States.

PAR. 4. Respondent International Salt Company packages evaporated table salt under various trade names, including "Sterling," "Columbia" and "Purity." All of the evaporated table salt sold under each of said brand names is of like grade and quality.

PAR. 5. Respondent Eastern Salt Company since September 15, 1936, and respondent International Salt Company since April 1, 1940, in the course and conduct of their respective businesses as above described, have both discriminated in price between their respective purchasers buying table salt of like grade and quality by selling said table salt to some of their purchasers at higher prices than they sold their products of like grade and quality to other of their purchasers. Certain of said other purchasers were competitively engaged with certain of said favored purchasers in the resale of said table salt at wholesale. Others were competitively engaged with certain of said favored purchasers in the resale of said table salt at retail. Others sold said table salt at wholesale to retailers who were engaged in competition with certain of said favored purchasers in the resale of said table salt to the consuming public.

PAR. 6. The general practices pursued by respondents in so discriminating in price have consisted of (1) selling at lower net prices to purchasers classified as having purchased \$50,000 worth of table salt in a twelve consecutive month period, and (2) selling at lower net prices to purchasers buying carton table salt in single order quantities of 100 cases or more.

The first of these pricing practices was engaged in by respondent Eastern Salt Company from September 17, 1936, until June 1948 and by respondent International Salt Company from April 1, 1940, until June 1948. The second of these pricing practices has been engaged in by respondent Eastern Salt Company at all times since September 15, 1936, and by respondent International Salt Company at all times since April 1, 1940. Prior to April 1, 1940, respondent International Salt Company was not actively engaged in the sale of salt products, these activities having then been carried on by its wholly owned subsidiaries, including International Salt Company, Inc., which engaged in the above referred to pricing practices from September 17, 1936, until it was dissolved on April 1, 1940.

Respondents discriminated in price during said periods of time in favor of their purchasers classified as having purchased \$50,000 or more of table salt in a twelve consecutive month period by granting to each of them a price discount called a "unit discount." A "unit discount" consisted of a specified amount in cents per case of table salt, which amount varied from item to item but which equalled approximately 4 to 5 percent of the published price on each item. The

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purchasers receiving the discount were accounts which had purchased \$50,000 worth of table salt in a twelve consecutive month period from all sources. This classification was not restricted to those accounts which had purchased table salt in this quantity from respondents alone.

The discrimination in price in favor of purchasers buying in single order quantities of 100 cases or more was made from September 15, 1936, until January 15, 1940, by granting to such purchasers one "unit discount." This unit discount was of the same value as the unit discount previously described. Since January 15, 1940, this discrimination has been made by establishing higher published prices for quantities of less than 100 cases. The difference in price between orders of 100 cases or more and those for lesser quantities, in effect since January 15, 1940, has been equal in amount to the unit discount previously granted on purchases of 100 cases or more. This pricing practice has at all times been limited to respondents' northern sales territory which consists of the New England States, Ohio, New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia and two counties in Virginia. In the southern sales territory, sales have been regularly made at prices equal to the 100 cases quantity price in the northern sales territory regardless of the quantity purchased.

PAR. 7. Respondent Eastern Salt Company has granted the unit discount for purchasers classified as buying \$50,000 or more of table salt in a consecutive twelve month period to only one of its purchasers, First National Stores, Inc., of Somerville, Massachusetts. This corporation, which operates approximately 1800 retail grocery stores in the New England area, purchased in carload quantities and, therefore, received this respondent's lowest net price. For example, in April 1942, this respondent sold to First National Stores, Inc., "Sterling" brand table salt in one and one-half pound cartons at a net delivered price of \$1.03 per case and "Purity" brand table salt in one and one-half pound cartons at a net delivered price of ninety-three cents per case. These prices were one unit discount of five cents per case lower than the lowest price at which this respondent sold the same brand of salt in the same cartons to its other purchasers. These other purchasers included smaller retail chain stores which were in direct competition with First National Stores, Inc., in the resale of said brands of table salt to the consuming public. These other purchasers also included wholesalers whose retail customers were in competition with First National Stores, Inc., in the resale of said brands of table salt to the consuming public.

PAR. 8. Respondent International Salt Company has granted the unit discount to purchasers classified as buying \$50,000 or more of table salt in a consecutive twelve month period to certain chain retail

grocery stores, wholesalers and cooperative wholesale buying organizations through which affiliated members, wholesale and retail, purchase grocery products. The favored chain retail grocery purchasers were The Great Atlantic & Pacific Tea Company, Sanitary Grocery Co., Inc. (Safeway Stores, Inc.), American Stores, Inc., Kroger Grocery and Baking Company, Dixie Home Stores, First National Stores, Inc., Creasy Corporation, and Colonial Stores, Inc. The favored wholesale purchasers were the Thomas & Howard Company and C. D. Kenny Co. The favored cooperative wholesale buying organizations were the National Retailer-Owned Groceries, Inc., and the Wholesale Grocery Sales Company.

As a result of the discount allowed the above-named purchasers on the \$50,000 purchase basis, the prices paid by said purchasers to respondent International Salt Company on their purchases of table salt in quantities of 100 cases or more has been one unit discount less than the lowest price available to any of this respondent's other customers in the same competitive area. For example, in 1942, this respondent sold to The Great Atlantic & Pacific Tea Company "Sterling" brand table salt in one and one-half pound cartons at a net delivered price of \$1.03 per case, while the lowest price at which it sold the same brand of table salt in one and one-half pound cartons to purchasers other than those above named was \$1.08 per case. Certain of said other purchasers were in competition with one or more of said favored purchasers in the resale of said respondent's table salt of the same brand, grade and quality at wholesale. Others were in competition with one or more of said favored chain retail grocery purchasers in its resale at retail to the consuming public. And others sold at wholesale to retail grocers who were in competition with one or more of said favored chain retail grocery purchasers in the resale of said table salt to the consuming public.

The record shows that many of the above-named purchasers who received the \$50,000 purchaser discount on their purchases of table salt did not purchase in that quantity from either of the respondents herein during any consecutive twelve month period. For example, the dollar purchases of table salt from respondents of the following listed purchasers, each of whom received said discount in 1940 and 1941, totaled as follows:

	1940	1941
Wholesale Grocery Sales Company.....	\$18,714	\$14,479
C. D. Kenny Co.....	2,947	1,670
Creasy Corporation.....	9	490
American Stores, Inc.....	1,290	1,631
Sanitary Grocery Co., Inc. (Safeway Stores, Inc.).....	11,909	11,878
National Retailer-Owned Groceries, Inc.....	22,900	29,160

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PAR. 9. The Commission finds that the price differences allowed by respondents in the sale of their table salt of the same brand, including the price differential on purchases of 100 cases or more and the unit discount allowed to the accounts classified as \$50,000 purchasers, constituted discriminations in price between purchasers of commodities of like grade and quality.

Each of respondents' customers not receiving the advantage of buying at respondents' lowest prices, who were in competition in the resale of said table salt at retail or at wholesale with respondents' customers receiving the benefit of said discriminations in price, necessarily either resold its table salt at a higher price than said favored competitors or received a lower gross margin on its sales of said salt.

PAR. 10. As an example of the competitive pricing situation in the retail field among purchasers buying table salt from respondents at different prices, the record shows that The Great Atlantic & Pacific Tea Company and Thomas Roulston, Inc., sold respondents' table salt through their chain retail grocery stores in the Long Island-Brooklyn, New York, area in competition with each other. Both purchased and resold respondents' "Sterling" brand one and one-half pound cartons of table salt. During 1940 and 1941, the former bought said salt from respondent International Salt Company at its lowest net price of \$1.03 per case of thirty-six cartons and resold it through its self-service stores in this area at three cartons for ten cents and through its regular stores at two cartons for nine cents. During the same period of time the latter, which was not classified as a \$50,000 purchaser, purchased said salt from said respondent at \$1.08 per case and resold it through its stores at five cents per carton, except for short intervals in which it received advertising allowances from said respondent, during which intervals it lowered its resale price to four and one-half cents per carton.

If Thomas Roulston, Inc., had met the A & P self-service stores' price of three cartons for ten cents, the five cent price discrimination would have allowed A & P a gross margin on its sales of table salt 41 percent larger than the margin of Thomas Roulston, Inc., on its sales of salt of the same brand.

PAR. 11. As an example of the competitive pricing situation in the wholesale field by purchasers buying from respondents at different prices, Talmadge Bros., Inc., of Athens, Georgia, not classified as a \$50,000 purchaser, during 1941 and 1942 purchased from respondent International Salt Company "Sterling" brand table salt in one and one-half pound cartons at \$1.08 per case of thirty-six cartons, which it resold to retailers at \$1.25 per case. Talmadge Bros., Inc., was at that time in competition with the Timberlake Grocery Company, a member

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of the Thomas & Howard Company group which was classified as a \$50,000 purchaser, which company purchased the same item from said respondent at a net price of \$1.03 per case and resold it to retailers at \$1.20 per case during this same period.

Both of these companies, therefore, received an identical gross margin of seventeen cents per case. If Talmadge Bros., Inc., had met the Timberlake Grocery Company's price of \$1.20 per case, the five cent price discrimination would have allowed the Timberlake Grocery Company a 41 percent larger gross margin on its sales of said table salt than that of Talmadge Bros., Inc., on its sales of salt of the same brand.

PAR. 12. In a similar manner each retailer who purchased respondents' table salt from one of respondents' wholesale purchasers not receiving the lowest price was necessarily placed at a disadvantage in its attempts to sell said table salt in competition with respondents' retail purchasers receiving the lowest price. Said retailer either sold said table salt at a higher price than said favored retail competitors or the gross margin between its wholesaler's purchase price and its resale price to the consuming public was less than the gross margin of said favored retail competitors'.

For example, The Great Atlantic & Pacific Tea Company in 1941 purchased one and one-half pound "Sterling" cartons of table salt from respondent International Salt Company at its lowest net price of \$1.03 per case of thirty-six cartons. In the New York City area A & P resold these cartons of salt through its self-service super markets at three cartons for ten cents. This equalled \$1.20 per case and allowed A & P a gross margin of seventeen cents per case. During the same period of time, respondents' wholesale purchasers in this area who did not receive the discount for \$50,000 purchasers paid \$1.13 per case for the same salt on orders under 100 cases, or paid \$1.08 per case on larger orders. To have met A & P's price of three cartons for ten cents, which gave A & P a gross margin of seventeen cents per case, the gross margin of the non-favored wholesale purchaser and that of his retail customer combined would be reduced to either twelve cents or seven cents per case depending upon the quantity purchased in each order. Thus, the five cent per case price discrimination would have allowed A & P a 41 percent larger gross margin and the ten cent per case price discrimination would have allowed A & P a 142 percent larger gross margin than would have been received by competing retailers and the wholesaler combined on said table salt sold to the consuming public at the same price as A & P.

PAR. 13. The Commission finds that because of the narrow margin between the purchase price and the resale price of respondents' table

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salt retained by respondents' wholesale and retail purchasers who buy at respondents' lowest prices, a price difference equivalent to one unit discount (difference between \$1.03 and \$1.08 per case of thirty-six cartons of one and one-half pound "Sterling" brand table salt) constituted a substantial difference in the price of respondents' table salt of the same brand, grade and quality. The purchase price of respondents' table salt was an important factor considered by respondents' purchasers in determining their respective resale prices of said table salt. Respondents' discriminations in price, therefore, had a tendency to cause respondents' purchasers not receiving respondents' lowest net price, both wholesalers and retailers, to resell respondents' table salt of the same brand, grade and quality at higher prices than those at which those purchasers receiving respondents' lowest prices resold at wholesale and retail.

Any appreciable difference in the wholesale or the retail price of table salt of the same brand, grade and quality has a tendency to divert sales. The Commission, therefore, finds that the effect of respondents' discriminations in price (i. e., the unit discount for accounts classified as \$50,000 purchasers and the unit discount or lower prices for purchasers buying in single order quantities of 100 cases or more) may be substantially to lessen competition in the line of commerce in which the purchaser receiving the benefit of said discriminatory prices is engaged and to injure, destroy and prevent competition between those purchasers receiving the benefit of said discriminatory prices and discounts and those to whom they are denied.

PAR. 14. Respondents contend that their practice of granting a unit discount to purchasers classified as \$50,000 purchasers while not granting it to competing purchasers of table salt of like grade and quality was legally justified, as this discount was made in good faith to meet equally low prices of competitors. The record shows that prior to the time on which respondent International Salt Company assumed direct operation of the sale of its salt products, its wholly owned operating subsidiary, International Salt Company, Inc., granted annual quantity discounts to certain of its purchasers. As early as November 29, 1935, it allowed two unit discounts to those of its customers in the Louisiana field whose purchases of salt for resale equalled \$250,000 or more per year, regardless of the company from which such salt was purchased. Also, in the New York field, from prior to May 11, 1936, until at least July 24, 1936, this subsidiary granted a 3 percent discount to buyers who had purchased \$150,000 worth of salt during the calendar year. On September 17, 1936, having received bulletins of competitors stating they were granting one

unit discount to certain purchasers classified as buying at least \$50,000 worth of table salt in a twelve consecutive month period, said subsidiary and respondent Eastern Salt Company adopted the same practice and granted an identical discount to the purchasers named by their competitors' bulletins. The practice of granting this discount was continued without change until June 1948, at which time it was abandoned. Thus, while respondents on September 17, 1936, apparently altered the amount of and the requirements for receiving this quantity discount to conform with what they understood to be the pricing practices of their competitors, this fact is of no particular importance, since the practice of granting discounts on the basis of the total annual requirements of a purchaser regardless of from whom they were purchased was employed by respondents or their wholly owned subsidiaries prior to that date. Contrary to respondents' contention, the price differences resulting from the granting of these discounts to some but not all of the respondents' competing customers were not the consequence of departures from a non-discriminatory pricing scale which were made to meet lower prices of competitive sellers, but represented only the continued application of the discriminatory pricing standard previously adopted by respondents and used by them since November 1935. Moreover, despite the fact that the illegal nature of this discount was brought to the attention of respondents by the Commission's complaint in 1940, there is no evidence that respondents made any attempt to eliminate or lessen the amount of this discrimination until 1948. Respondents, in such circumstances, cannot be said to have acted "in good faith" within the meaning of section 2 (b) of the statute.

After careful consideration of all of the facts, the Commission is of the opinion, and finds, that respondents have not shown that their discriminatory prices accorded the recipients of this discount were lower prices made in good faith to meet an equally low price of a competitor.

PAR. 15. Respondents further contend that both the \$50,000 purchaser discount and the lower price on single order purchases of table salt in quantities of 100 cases or more made only due allowance for differences in the cost of manufacture, sale, or delivery of said salt resulting from the differing methods or quantities in which such salt were sold or delivered.

In connection with their attempts to show a cost justification for the differences in price between single order purchases of 100 cases of carton table salt and purchases in smaller quantities, respondents have not attempted to show any difference between the cost of handling a large order and that of handling a small order. They have instead

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combined all sales costs in the area in which this price discrimination was in effect during the period January 1, 1944, through July 31, 1944, and divided it by the total number of sales made in this area during the same period. In this manner they secured the figure of \$5.62 which is considered by respondents to be the cost of making one sale regardless of size and regardless of who the purchaser may be. Under this theory, the sale of 100 cases in two orders would cost two times as much as selling the same quantity in one order. Under this theory, also, sales in single order quantities of 100 cases would result in a saving of five cents per case or more as compared with the cost of sales in single order quantities of fifty-five cases or less. Thus, under respondents' own theory, a five cent per case higher price would be fully cost justified only on purchases of fifty-five cases or less. Even assuming it would be proper for respondents to maintain this price difference if their sales in single order quantities under 100 cases averaged fifty-five cases or less per order, the record shows that this is not the fact. Since August 27, 1941, and during the period of time and in the sales area covered by this cost study, respondents refused to sell table salt in quantities of less than two tons which equalled a minimum sale of seventy-four cases of "Sterling" thirty-six one and one-half pound cartons of table salt. Respondents' average sale of table salt in lots of less than 100 cases, therefore, must have been in excess of this minimum. Thus, respondents' attempted justification by comparing the cost of selling in 100 case quantities with the cost of selling in fifty-five or less case quantities is not adequate to justify respondents' actual discriminatory pricing practices. Furthermore, inasmuch as the record does not provide a basis supporting respondents' basic assumption that the sales cost is the same for all orders, respondents' comparative analysis of their cost of selling in 100 case quantities or less is not supported by the evidence.

As evidence of cost justification of the differences in price resulting from granting a unit discount to those customers classified as \$50,000 purchasers, respondents have presented an analysis of the cost of selling table salt in 1942 to The Great Atlantic & Pacific Tea Company as compared with the cost of selling table salt to all of their other purchasers combined. By combining the costs of selling to all purchasers other than A & P regardless of the customers' volumes of purchases, methods of purchasing or whether purchasing at respondents' highest or lowest price, respondents have made an analysis which is incapable of establishing the differences in costs of sales as between respondents' purchasers who received this quantity discount and those who did not. Furthermore, the allocation of certain of the costs in said analysis was made without sufficient record basis. For example, the allocation

of merchandising expenses was made on the assumption that the cost of each call by a salesman was of equal duration regardless of the purchaser. There is no record basis for such an assumption. Also, respondents' contention that the comparative cost of selling each of their purchasers receiving their lowest prices was the same as that of selling A & P is not established by this record.

The Commission finds, therefore, that respondents' price discriminations consisting of their discounts to accounts classified as \$50,000 purchasers of table salt and their lower net prices to purchasers buying in single order quantities of 100 cases or more of table salt have not been shown to have been justified by reason of differences in the cost of manufacture, sale or delivery resulting from differing methods or quantities in which respondents' table salt was sold or delivered to their various purchasers.

PAR. 16. Respondents further contend that inasmuch as they have discontinued the practice of granting a discount to purchasers classified as buying \$50,000 worth of table salt in a twelve consecutive month period as a result of the decision of the Supreme Court of the United States in *Federal Trade Commission v. Morton Salt Company*, 334 U. S. 37 (1948), there is no public interest in an order being issued herein prohibiting this practice. However, respondents have made no contention that they have abandoned their practice of granting a lower price to purchasers in their northern sales territory who purchase in single order quantities of 100 or more cases of table salt. The amount of this price discrimination is exactly the same as the amount of the \$50,000 purchaser discount. Its effect on competition is the same. This practice of discriminating in price in favor of 100 case purchasers was also held to be illegal in said Morton Salt Company case. The Commission, therefore, is of the opinion that an order is required in this matter to impress upon these respondents the necessity of stopping altogether their discriminatory pricing practices.

PAR. 17. In the course of its business of selling table salt in commerce, respondent International Salt Company paid money to certain of its customers as compensation and in consideration for advertising and display services furnished by such customers in connection with their sale and offering for sale to the consuming public of table salt manufactured and sold by said respondent. In connection therewith, said respondent entered into "Local Feature Service Agreements" with certain of its said customers for certain specified limited periods of time. These agreements, which required the furnishing of certain advertising and display services by the customer and the payment of a specified amount by said respondent, were entered into by said respondent upon an individual basis with each such customer upon

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the request of the customer. Said respondent did not enter into, offer or make any effort to inform its other customers of the existence of, such agreements and did not make available to such other customers any payments whatever for advertising or display services in lieu of payments made under such agreements. Certain of said customers who were not offered or informed of the existence of such agreements and to whom no payments in lieu thereof were made available were in competition with certain of the customers receiving payments from this respondent under the agreements above described, in the resale of said respondent's table salt to the consuming public.

In determining whether or not to enter into a "Local Feature Service Agreement" with a customer and whether the amount to be paid for such service was agreeable to it, said respondent considered many different factors, including the type and quantity of advertising contemplated, the type of store displays offered, shelf position of product offered, quality of store, character of store personnel, location of store, cleanliness of store and many other factors. No specific terms for such contracts were set out, however, and the determination of whether such an agreement would be entered into with a customer was made in each case upon the judgment of said respondent's officials and after negotiation with an individual customer.

Thus, the payments made by respondent International Salt Company in accordance with its "Local Feature Service Agreements" to certain of its customers in consideration for advertising and display services and facilities furnished by said customers in connection with the offering for sale and sale of table salt manufactured and sold by said respondent were not made available on proportionally equal terms to many of its other customers competing in the distribution of such table salt with said favored customers.

PAR. 18. Respondent Eastern Salt Company did not make any payments for advertising or display services to its customers. However, respondent International Salt Company, of which it is a wholly owned subsidiary, made such payments available to certain of the customers of Eastern Salt Company upon the same basis as it did to its own customers.

PAR. 19. Respondent International Salt Company at various periods of time has also entered into "Store Display and Sales Service Agreements" with retail stores selling its "Sterling" brand of table salt to the consuming public. These agreements called for the payment by said respondent of approximately ten cents for every case of "Sterling" table salt purchased during a specified period of time by said store in consideration of its furnishing certain specified display services in connection with the offering for sale of said table salt during said

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period. It was said respondent's policy to enter into these agreements with every retail outlet of its table salt products in the United States, whether the purchasers were purchasing "Sterling" table salt from it directly or indirectly. Respondent made every reasonable effort to carry out this policy and to make the payments under this plan available on proportionally equal terms to all of the retail outlets of said table salt. The Commission does not find the respondent's activities in connection with payments made under these agreements to have been illegal.

CONCLUSION

1. The acts and practices of respondents International Salt Company and Eastern Salt Company in selling their table salt to certain purchasers thereof at lower net prices than to other purchasers competing with said favored purchasers in the resale of said salt, as herein found, constituted violations of subsection (a) 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 an Act of Congress approved June 19, 1936 (the Robinson-Patman Act).

2. The acts and practices of respondent International Salt Company in making payments to certain of its customers as compensation or in consideration for advertising and display services furnished by such customers in connection with the sale and offering for sale of said respondent's table salt, under its "Local Feature Service Agreements," without making such payments available on proportionally equal terms to all of its other customers competing with said favored customers in the resale of said salt, as herein found, constituted violations of subsection (d) of section 2 of the aforesaid Clayton Act, as amended.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon an amended complaint of the Commission, the respondent's answers thereto, testimony and other evidence in support of and in opposition to the allegations of said amended complaint introduced before a hearing examiner of the Commission theretofore duly designated by it, the hearing examiner's recommended decision and exceptions thereto, and briefs and oral argument of counsel, and the Commission having made its findings as to the facts and its conclusion that the respondents have violated the provisions of subsection (a) of section 2, and that respondent International Salt Company has violated subsection (d) of section 2, of the Act of Congress entitled "An Act to supplement existing laws against unlawful restraints and

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monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an Act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That respondent International Salt Company, a corporation, and respondent Eastern Salt Company, a corporation, and their respective officers, representatives, agents, and employees, directly or through any corporate or other device, in the sale of table salt in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from discriminating, directly or indirectly, in the price of such products of like grade and quality:

1. By selling such table salt to any wholesaler thereof at prices different from the prices charged any other wholesaler who in fact competes with said wholesaler in the sale or distribution of such table salt.
2. By selling such table salt to any retailer thereof at prices different from the prices charged any other retailer who in fact competes with said retailer in the sale or distribution of such table salt.
3. By selling such table salt to any retailer thereof at prices lower than prices charged any wholesaler whose customers compete with such retailer in the sale or distribution of such table salt.

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

It is further ordered, That respondent International Salt Company, a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the sale of table salt in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

1. Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer for advertising or display services or facilities furnished by or through such customer in connection with the sale or offering for sale of said table salt, unless such payment or consideration is made available on proportionally equal terms to all of its other customers competing with said favored customer in the resale of such table salt.
2. Paying or allowing, or contracting to pay or allow, anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, processing, sale, or offering for sale of said table salt, unless such payment or consideration is available on proportionally equal terms to all of its other customers competing with said favored customer in the sale or distribution of such table salt.

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

Commissioner Carretta not participating for the reason that oral argument on the merits was heard prior to his appointment to the Commission.

IN THE MATTER OF
MINK TRADERS ASSOCIATION, INC., ET AL.

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

Docket 5844. Complaint, Jan. 26, 1951—Decision, Aug. 28, 1952

Where a membership corporation and its seventy-member mink fur dealers, manufacturers of mink fur products, and retailers located in New York City, who, normally in competition with each other and with others, represented a substantial part of the mink fur trade in said city and the country at large;

Following the organization of said association in September 1948, for the purposes, among others, of improving trade conditions, reforming and eliminating abuses relative thereto, and establishing lawful uniform rules, regulations and practices in the mink division of the fur industry; and the adoption of a program which included the reduction of the number of auction sales, the selling of mink in larger lots, the cancellation of the early December sales, cessation of the selling of mutation mink in the raw state, and the discontinuance of "private treaty" sales by the auction companies; through joint meetings with the auction companies in the United States and Canada, letters, other communications and meetings, and withdrawals from certain auction sales—

- (a) Cooperatively, concertedly, and collectively devised, dictated and composed methods, terms and conditions as to which those engaged in the mink fur industry, including the ranchers, breeders' associations and auction companies, were to market and distribute their mink pelts with respect to matters embraced in the aforesaid program; and
- (b) Persuaded, threatened, and coerced, and through the use of boycott and threats thereof, compelled those engaged in said industry, to comply with and abide by such terms and conditions;

With the result that members of the industry other than those included in the association membership, and particularly the breeders and the auction houses, were compelled and coerced to a certain extent to change methods of doing business which they had found to their advantage; nonmember buyers of mutation pelts at the New York auction houses and nonmember small fur dealers who dealt therein were prejudiced in various ways; the free play of competition by and among the breeders and the auction companies on the one hand and the members of respondent association and other buyers of mink pelts on the other hand was hampered, suppressed and hindered; and the business of nonmember competitors, who were deprived of their rights to buy in quantities most suitable for their needs and, potentially, of the opportunity to buy dressed mutation mink pelts from the breeders at the auction houses, was interfered with;

Capacity, tendency, and effect of which agreement, understanding and combination, and the methods, acts and practices, and things done and performed by respondents in pursuance thereof, were to unreasonably lessen, suppress and restrain competition and trade in the sale and distribution of mink fur pelts: