

Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

IN THE MATTER OF
SOUTHWESTERN SUGAR & MOLASSES COMPANY ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 7461. Complaint, Apr. 1, 1959—Decision, Aug. 26, 1960

Consent order requiring a corporation in New York City, several of its subsidiaries and affiliates, and other leading concerns dealing in "blackstrap" molasses, to cease concerted price fixing in the industry, effected by use of a basing-point pricing system and other price-fixing formulae, refusing sales to non-cooperating truckers and other competitor-customers, dividing territories into exclusive trading zones and accounts among themselves, confining bids on available supplies to a designated one of their number, coercing competitor-customers to maintain their fixed prices and include their established freight charges in all delivered charges and threatening boycott of non-cooperators; requiring certain of said respondents to cease maintaining "Midwestern Terminals"—jointly operated terminals at inland river points ostensibly formed for legitimate purposes—as a device for

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maintaining such fixed prices and joining with said New York City parent corporation in "joint account" relationships for the same purpose; and requiring said parent corporation to cease conspiring to prevent the purchase of "blackstrap" molasses in Mexico by a competitor.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondents named in the caption hereof, and hereinafter more particularly designated and described, have violated and are now violating Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45) and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges as follows:

COUNT I

PARAGRAPH 1. Respondent Southwestern Sugar & Molasses Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 115 Broadway, New York, N.Y. Respondent operates a direct branch in Houston, Texas; and respondents Abraham I. Kaplan, Peter Berdeshevsky, and Lutz H. Frieler are president, vice-president, and secretary-treasurer, respectively, and Stanley J. Posner is an employee, of said respondent corporation.

Respondent Molasses Products Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Louisiana with its principal office and place of business at 801 Queen & Crescent Building, New Orleans, La. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company; and respondents Abraham I. Kaplan and Peter Berdeshevsky are president and vice-president, respectively, of said corporate respondent Molasses Products Company.

Respondent Standard Molasses Company is a corporation organized, existing and doing business under the laws of the State of Texas, with its principal office and place of business at 115 Broadway, New York, N.Y. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company, and operates a distributing station in Beaumont, Texas; and respondents Abraham I. Kaplan and Peter Berdeshevsky are president and vice president, respectively, of said corporate respondent Standard Molasses Company.

Respondent Imperial Molasses Company, Ltd. is a Canadian corporation with its principal place of business at the Board of Trade Building, Montreal, Canada, and doing business in the United States. Respondent is a subsidiary of respondent Southwestern Sugar &

Molasses Company; and respondents Abraham I. Kaplan and Peter Berdeshevsky are vice president and secretary-treasurer, respectively, of said corporate respondent Imperial Molasses Company, Ltd. The domestic address of said corporate respondent and its officers is the same as that of respondent Southwestern Sugar & Molasses Company.

Respondent Industrial Molasses Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at 321 Ft. Lee Road (Leonia Building) Leonia, N.J. Respondent is a business affiliate of respondent Southwestern Sugar & Molasses Company, and is known in the industry as a "satellite" of that company; and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., John P. Maynard, are president, vice president and vice president, respectively, of said corporate respondent Industrial Molasses Company.

Respondent Czarnikow Rionda Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 106 Wall Street, New York, N.Y.; and respondents George A. Braga, Joseph B. Clifford, and E. J. Kramer are president, assistant secretary and manager, molasses department, respectively, of the respondent corporation.

Respondent Molasses Trading Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 503 Jones Building, Corpus Christi, Tex. Respondent is a subsidiary of respondents Czarnikow Rionda Company and J. H. Leftwich & Company; and respondents J. H. Leftwich, F. M. Hicks, Jr., E. J. Kramer, Harold Fink, and R. L. McCauley, are president, vice president, assistant vice president, comptroller, and sales manager, respectively, of the said corporate respondent Molasses Trading Company.

Respondent J. H. Leftwich & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama with its principal office and place of business on the Alabama State Docks, P. O. Box 78, Mobile, Ala.; and respondents J. H. Leftwich and Frank M. Hicks, Jr., are president and vice president, respectively, of said respondent corporation.

Respondent National Molasses Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Oreland, Pa. Respondent is a business affiliate of respondent Southwestern Sugar & Molasses Company and is known in the industry as a "satellite" of that company; and respondents Joshua Epstein,

Samuel G. Fischer, Joseph M. Rubenstone, and Sidney M. Cohen, are president, vice president, vice president and secretary-treasurer, respectively, of said respondent corporation.

Respondent Campania de Mies de Mexico, S.A. is a Mexican Corporation with its principal place of business at Balderas 36, Mexico 1 D.F. Respondent is a subsidiary of respondent Southwestern Sugar & Molasses Company and ships molasses into the United States from various points in Mexico; and respondents Abraham I. Kaplan and Peter Berdeshevsky are the principal officers and stockholders of said corporate respondent Campania de Mies de Mexico, S.A. The domestic address of said corporate respondent and its officers is the same as that of the corporate respondent Southwestern Sugar & Molasses Company.

Respondent New Mexico Timber Company is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico with its principal office and place of business at Albuquerque, N.Mex.; and respondent Thomas Gallagher is the principal officer of said respondent corporation.

The individual respondents named herein formulate, direct, and control the policies, acts, and practices of the respective corporate respondents of which they are officers or employees.

PAR. 2. All herein-named respondents are now and have been for several years last past engaged in one or more phases of the domestic and "offshore" purchase, storage, distribution, and/or sale of the commodity "blackstrap" molasses and are among the principal companies engaged in such business in the United States. Respondent Southwestern Sugar & Molasses Company is a leading importer and distributor of molasses in the United States, with sales of \$20,000,000 in the year 1955.

PAR. 3. "Blackstrap" molasses is a byproduct of the manufacture of cane sugar. After the cane juice has been processed, and as much sugar as economically possible has been removed, the remaining liquid ("final molasses") is "blackstrap". Because of its sugar, vitamin, and mineral contents and, normally, because it is the least expensive carbohydrate available, "blackstrap" logically functions as an excellent livestock feed ingredient, although it has additional uses. "Blackstrap" molasses accounts for 70 to 80 percent of the total available supply of industrial molasses and, as a result, is the most important form. It is a custom in the molasses trade to consider a gallon of molasses to weigh nominally 11.7 pounds and 171 gallons equal one short ton.

In the regular and usual course and conduct of their business, respondents cause, and for the past several years have caused their

commodity "blackstrap" molasses, when purchased and sold, to be transported from places in the States of Louisiana and Texas, among others, to purchasers and sellers thereof located in various other States of the United States.

PAR. 4. Respondents maintain, and at all times mentioned herein have maintained, a substantial course of trade in "blackstrap" molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, among and between the various States of the United States. Respondents' volume of business in "blackstrap" molasses in said commerce is and has been substantial.

PAR. 5. Respondents at all times mentioned herein have been and are now in substantial competition with one another and with other corporations, firms, and individuals engaged in the sale of "blackstrap" molasses in commerce between and among the various States of the United States, except to the extent that such competition has been restrained, lessened, or eliminated by the unlawful acts and practices hereinafter alleged.

PAR. 6. The corporate respondents Southwestern Sugar & Molasses Company (hereinafter also referred to as Southwestern), Czarnikow Rionda Company, J. H. Leftwich & Company, Inc., New Mexico Timber Company, Molasses Trading Company, Molasses Products Company, and Standard Molasses Company, acting through their officers and employees herein named as respondents, and others, from time to time, and covering prolonged periods, beginning in 1955 or before, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses in commerce; and otherwise to further the leading and dominant position of the corporate respondents in the sale and distribution of the aforesaid product, in commerce.

PAR. 7. Pursuant to and in furtherance of said understanding, agreement, combination, conspiracy, and planned common course of action respondents have engaged in and carried out by various methods and means the following acts and practices, among others:

(1) Agreed to fix and maintain, and have fixed, maintained, and made effective, identical delivered price quotations of "blackstrap" molasses in certain areas of the United States to distributors and users thereof and to other purchasers thereof by means of a basing-point pricing system and by other pricing methods and systems;

(2) Adopted and continued in effect by agreement, understanding, and concerted action among themselves and others, price fixing formulae whereby identical delivered price quotations for the sale of "blackstrap" molasses are fixed and maintained;

(3) Agreed to preclude, and have precluded, the sale of "blackstrap" molasses to independent truckers (competitor-customers of said respondents) who do not adhere to the established price quotation formulae;

(4) Agreed to divide, and have divided, designated territories and accounts into exclusive trading zones and accounts between and among themselves to avoid competition and to aid in maintaining the established price structure;

(5) Agreed to exclude, and have excluded, from competition, via any available means, any competitor-customer acting contrary and in opposition to the pricing of said corporate respondents; and

(6) Agreed to refrain, and have refrained, from offering bids on available supplies of "blackstrap" molasses except by one of said respondents as a designated participant, thereby precluding any open and competitive bidding between and among themselves for such supplies.

PAR. 8. In addition to the acts and practices alleged in paragraph 7, the therein named respondents in concert acted to persuade, induce, coerce, intimidate, compel, cause, or otherwise influence, or attempt to influence, and have persuaded, coerced, intimidated, compelled, caused, and influenced certain competitor-customers;

(1) To adopt, maintain, and not sell below prices fixed by the respondents in concert; and

(2) To base and include in all delivered prices, freight charges established by respondents acting in concert, from designated points to destinations irrespective of the actual point of origin of such shipments or means and costs of transportation.

PAR. 9. The aforesaid acts, practices, methods, agreements, and understandings of respondents as hereinbefore alleged are to the prejudice of the public; have a dangerous tendency and capacity to hinder, lessen, restrain, and eliminate competition between and among respondents and others, in the sale and distribution of domestic and "offshore" "blackstrap" molasses in commerce, and actually have hindered, lessened, restrained, and eliminated such competition, and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 10. Paragraphs 1 through 5 of Count I are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 11. The corporate respondents Industrial Molasses Company (hereinafter referred to as Industrial), National Molasses Company (hereinafter referred to as National), and corporate respondent Southwestern acting as such, or through its subsidiaries, respondents Molasses Products Company and Imperial Molasses Company, Ltd., all acting through their officers and employees herein named as respondents, among others, from time to time, and covering prolonged periods, beginning in 1955 or before, entered into, maintained, and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses, in commerce.

PAR. 12. Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents have engaged in, performed, and carried out by various methods and means, the following acts and practices, among others:

(1) Joined in the formation of "Midwestern Terminals" for the ostensible purpose of jointly operating molasses terminals at inland river points but actually have been and now are using said joint operation as a device through, in connection with, and by which said respondents:

(a) Agreed to fix and maintain, and have fixed and maintained, certain established prices, and further agreed not to sell below said established prices;

(b) Agreed to establish and base, and have established and based, all delivered prices on rail freight charges from designated points to destinations irrespective of the actual point of origin of such shipments or means and cost of transportation;

(c) Agreed to divide, and have divided, certain designated territories and accounts into exclusive trading areas and accounts between and among themselves, to eliminate and avoid competition and aid in maintaining the established price structure;

(d) Agreed to preclude, and have precluded, the sale of "blackstrap" molasses to competitor-customers of "Midwestern Terminals";

(e) Attempted to induce competitors and independent truckers into maintaining the price structure established by said respondents.

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2. In addition to, and in furtherance of, the above alleged acts and practices of respondents, respondents National and Industrial each joined separately and individually with respondent Southwestern in "joint account" relationships in order to further carry out the acts and practices herein described in paragraph 12, subsections (a) through (e), inclusive.

PAR. 13. Paragraph 9 of Count I is hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

COUNT III

PAR. 14. Paragraphs 1 through 5 are hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

PAR. 15. The corporate respondents Southwestern and Compania de Mies de Mexico, S.A., acting through their officers and employees herein named as respondents, among others, from time to time and covering prolonged periods beginning in 1955 or before, entered into, maintained and effectuated an understanding, agreement, combination, and conspiracy to pursue, and they have pursued, a planned common course of action between and among themselves to adopt and adhere to certain practices and policies to restrain, lessen, and eliminate competition between and among themselves and with others in the purchase, distribution, and sale of "blackstrap" molasses, in commerce.

PAR. 16. Pursuant to, and in furtherance of, said understanding, agreement, combination, conspiracy, and planned common course of action, respondents have engaged in, performed, and carried out by various methods and means, the following acts and practices, among others:

Precluded the purchase of "blackstrap" molasses in Mexico (a regular "offshore" source of said product for the United States domestic market) by a domestic competitor of respondent Southwestern.

PAR. 17. Paragraph 9 of Count I is hereby incorporated by reference and made a part of the charge as fully and with the same effect as though here again set forth verbatim.

Mr. James S. Kelaher and *Mr. Eugene Kaplan* supporting the complaint.

Berlack, Israels & Liberman, of New York, N.Y., for corporate respondents Southwestern Sugar, Molasses Products, Standard Molasses, Imperial Molasses, New Mexico Timber, and Compania De Mies De Mexico (appearing specially for latter respondent), and

certain related individual respondents; and *Sutin and Jones*, of Albuquerque, N. Mex., co-counsel for individual respondent Gallagher;

Curtis, Mallet-Prevost, Colt & Mosle, of New York, N.Y., for individual respondent Berdeshevsky;

Hughes, Hubbard, Blair & Reed, of New York, N.Y., for corporate respondent Industrial Molasses and certain related individual respondents;

Sullivan & Cromwell, by *Mr. Hamilton F. Potter, Jr.*, of New York, N.Y., for corporate respondents Czarnikow-Rionda, Molasses Trading, and Leftwich Company, and certain related individual respondents; and *McCorvey, Turner, Johnstone, Adams & May*, of Mobile, Ala., cocounsel for Leftwich Company and certain related individual respondents; and

Mr. Zola A. Aronson, of New York, N.Y., for corporate respondent National Molasses and certain related individual respondents.

INITIAL DECISION BY JOHN LEWIS, HEARING EXAMINER

The Federal Trade Commission issued its complaint against the above-named respondents on April 1, 1959, charging them with the use of unfair methods of competition and unfair acts and practices, in commerce, in violation of the Federal Trade Commission Act by entering into and maintaining certain agreements, combinations and conspiracies to restrain, lessen and eliminate competition in the purchase, distribution and sale of "blackstrap" molasses. After being served with said complaint all of the respondents, except the individual respondent Kaplan and the corporate respondent Compania De Miele De Mexico, appeared by counsel and filed their respective answers thereto. A motion to dismiss was filed on behalf of the individual respondent Kaplan, based on the fact that said respondent was deceased. Said motion was granted by order of the undersigned, dated July 7, 1959, to the extent that provision for dismissal as to said respondent would be made in the initial decision to be issued at the conclusion of this proceeding. A special appearance was filed on behalf of the respondent Compania De Miele De Mexico, S.A., challenging the jurisdiction of the Commission on the ground that said respondent does not do business in the United States.

Thereafter, all of the respondents, except the individual respondent Kaplan and the corporate respondents Compania De Miele De Mexico and New Mexico Timber Company, entered into a series of five separate agreements purporting to dispose of all of this proceeding as to all of the remaining respondents. Said agreements, which are dated, respectively, March 22, 1960, April 4 and 8, 1960, and May 16, 1960, and have been signed by all respondents who are

parties thereto and by counsel supporting the complaint, and approved by the Director and Associate Director of the Commission's Bureau of Litigation have been, submitted to the above-named hearing examiner for his consideration, in accordance with Section 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings.

The signatory respondents, pursuant to the aforesaid agreements, have admitted all the jurisdictional facts alleged in the complaint and agreed that the record may be taken as if findings of jurisdictional facts had been duly made in accordance with such allegations. Said agreements further provide that such respondents waive any further procedural steps before the hearing examiner and the Commission, the making of findings of fact or conclusions of law and all of the rights they may have to challenge or contest the validity of the order to cease and desist entered in accordance with such agreements. It has been agreed that the order to cease and desist issued in accordance with said agreements shall have the same force and effect as if entered after a full hearing and that the complaint may be used in construing the terms of said order. It has also been agreed that the record herein shall consist solely of the complaint and said agreements, and that said agreements are for settlement purposes only and do not constitute an admission by respondents that they have violated the law as alleged in the complaint.

There have also been filed in this proceeding motions to dismiss as to the remaining respondents, Compania De Mielles De Mexico and New Mexico Timber Company. The ground of the motion to dismiss as to the former respondent, which has appeared specially herein, is that it has sold its business assets, has discontinued its business operations, and is now in the process of liquidation. The motion to dismiss as to the latter respondent is based upon the grounds that all of its operating assets were sold, effective February 28, 1959; that since that time its sole business has consisted of transactions in securities; and that prior thereto its activities in the purchase and sale of blackstrap molasses were incidental to its main business of cutting and selling timber, and were negligible in amount. Counsel supporting the complaint do not oppose the granting of said motions to dismiss, and have alleged in their answers to said motions that the orders to cease and desist which have been agreed to by the other respondents will effectively prevent continuation or repetition of the acts and practices alleged in the complaint, and that the public interest will not be served by prolonging this proceeding as to the moving respondents under the circumstances set forth in their motions.

Based on the facts set forth in the affidavits attached to the motions to dismiss, which are not substantially disputed by counsel

supporting the complaint, and in view of the lack of opposition to said motions by counsel supporting the complaint for the reasons above stated, it is the opinion of the undersigned that this proceeding may appropriately be dismissed as to the moving respondents, subject to this decision's becoming the decision of the Commission with respect to the other respondents.

This proceeding having now come on for final consideration on the complaint and the aforesaid agreements containing consent orders, and it appearing that the orders provided for in said agreements cover all of the allegations of the complaint and provide for an appropriate disposition of this proceeding as to all parties signatory thereto, and that this proceeding will otherwise be appropriately disposed of as to all remaining parties, said agreements are hereby accepted and are ordered filed upon this decision's becoming the decision of the Commission pursuant to Sections 3.21 and 3.25 of the Commission's Rules of Practice for Adjudicative Proceedings, and the hearing examiner, accordingly, makes the following jurisdictional findings and order:

1. Respondent Southwestern Sugar and Molasses Company (designated in the complaint as Southwestern Sugar & Molasses Company) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at 55 Fifth Avenue, in the city of New York, State of New York. Said corporate respondent operates a direct branch in the city of Houston, State of Texas. Respondents Lutz H. Frieler and Stanley J. Posner are employees of said corporate respondent. The respective addresses of respondents Lutz H. Frieler and Stanley J. Posner are 1110 Fair Oaks, Houston, Tex., and 6159 Aztec Road, El Paso, Tex. (Said corporate respondent formerly had its principal office and place of business located at 115 Broadway, New York, N.Y., and it is so designated in the complaint. Respondent Lutz H. Frieler formerly was secretary-treasurer of said corporate respondent and is designated as such in the complaint.)

Respondent Molasses Products, Inc. (designated in the complaint as Molasses Products Company) is a corporation organized and existing under and by virtue of the laws of the State of Louisiana, with its principal office and place of business located at 801 Queen & Crescent Building, in the city of New Orleans, State of Louisiana. Said corporate respondent is an affiliate (designated in the complaint as a subsidiary) of corporate respondent Southwestern Sugar and Molasses Company. (Respondent Molasses Products, Inc. is designated in the complaint as doing business under and by virtue of the laws of the State of Louisiana but is presently inoperative.)

Respondent Standard Molasses Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business located at the foot of Milam Street, in the city of Beaumont, State of Texas. Said corporate respondent is a subsidiary of corporate respondent Southwestern Sugar and Molasses Company. (Respondent Standard Molasses Company, Inc., is designated in the complaint as Standard Molasses Company, organized, existing and doing business under the laws of the State of Texas, with its principal office and place of business being the same as corporate respondent Southwestern Sugar and Molasses Company.)

Respondent Imperial Molasses Company, Ltd., is a corporation organized, existing and doing business under and by virtue of the laws of the Dominion of Canada, with its principal office and place of business located in the Board of Trade Building, in the city of Montreal, province of Quebec, Canada, and doing business in the United States. Respondent is a subsidiary of corporate respondent Southwestern Sugar and Molasses Company. (The complaint designates the domestic address of corporate respondent Imperial Molasses Company, Ltd. as being the same as that of corporate respondent Southwestern Sugar and Molasses Company.)

Respondent Thomas P. Gallagher is an individual residing at 1508 Washington Street, N.E., Albuquerque, N. Mex. (Respondent Thomas P. Gallagher is designated Thomas Gallagher in the complaint and formerly was the principal officer of corporate respondent New Mexico Timber Company and is designated as such in the complaint. Respondent is no longer associated with New Mexico Timber Company.)

Respondent Peter G. Berdeshevsky is an individual residing at 8 East 96th Street, New York, N.Y. (Respondent was designated in the complaint as Peter Berdeshevsky and as an employee and officer of Southwestern Sugar & Molasses Company, Molasses Products Company, Standard Molasses Company, Imperial Molasses Company and Compania de Mieles de Mexico, S.A. Respondent is no longer an employee or officer of Southwestern Sugar & Molasses Company, Molasses Products Company, Standard Molasses Company, Imperial Molasses Company, and never has been an employee or officer of Compania de Mieles de Mexico, S.A.)

Respondent Industrial Molasses Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey with its principal office and place of business at Leonia, N.J.; and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr. and John P. Manard are president, vice-president and vice president, respectively, of said respondent corporation.

Respondent Industrial Molasses Corporation is a business affiliate of corporate respondent Southwestern Sugar & Molasses Company. (Respondent Industrial Molasses Corporation is designated in the complaint as Industrial Molasses Company. Respondent John P. Manard is designated in the complaint as John P. Maynard.)

Respondent Czarnikow Rionda Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business at 106 Wall Street, New York, N.Y., and respondents George A. Braga and Joseph B. Clifford are president and assistant secretary, respectively, of the respondent corporation. (Respondent E. J. Kramer formerly was manager, molasses department, of said corporate respondent and is designated as such in the complaint.)

Respondent Molasses Trading Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas, with its principal office and place of business at 503 Jones Building, Corpus Christi, Tex. Respondent is a subsidiary of corporate respondents Czarnikow Rionda Company and J. H. Leftwich & Company, Inc. (designated as J. H. Leftwich & Company in the complaint), and respondents J. H. Leftwich and Frank M. Hicks, Jr. (designated as F. M. Hicks, Jr. in the complaint) are president and vice president, respectively, of the said corporate respondent Molasses Trading Company. (Respondent Harold Fink formerly was comptroller, respondent E. J. Kramer formerly was assistant vice president and respondent R. L. McCauley formerly was sales manager, of said corporate respondent Molasses Trading Company and are designated as such in the complaint.)

Respondent J. H. Leftwich & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Alabama with its principal office and place of business on the Alabama State Docks, P.O. Box 78, Mobile, Ala., and respondents J. H. Leftwich and Frank M. Hicks, Jr. are president and vice president, respectively, of said respondent corporation.

Respondent National Molasses Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its principal office and place of business at Oreland, Pa., and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, are president, vice president, vice president and secretary-treasurer, respectively, of said respondent corporation. Respondent National Molasses Company is a business affiliate of corporate respondent Southwestern Sugar & Molasses Company. (Respondent Samuel G. Fisher is designated in the complaint as Samuel G. Fischer.)

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents named in paragraph 1, hereof. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees; respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other

device, in or in connection with the offering for sale, sale and distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and another or others not party hereto, to do or perform any of the following acts or practices:

(1) Establishing, fixing or maintaining prices, quotations, terms or conditions of sale for the sale of blackstrap molasses in the United States, or adhering to any prices, quotations, terms or conditions of sale so established, fixed or maintained;

(2) Quoting or selling blackstrap molasses at prices calculated or determined pursuant to or in accordance with any single basing-point delivered-price system or any other plan or system of delivered prices which includes freight charges by any seller from a designated point or points to destination other than the actual point of origin and irrespective of means and costs of transportation, resulting in identical price quotations or prices for blackstrap molasses at points of quotation or sale or to particular purchasers by any two or more competing sellers of blackstrap molasses using such plan or system.

(3) Entering into, continuing, maintaining or enforcing any agreement or understanding, express or implied, with any purchaser of blackstrap molasses concerning the price at which such product is to be resold by such purchaser or by which such purchaser agrees or undertakes to include in any delivered price or price quotation any freight or other charge which is different from the actual cost incurred.

(4) Persuading, inducing, coercing, intimidating, compelling, or attempting to influence any purchaser of blackstrap molasses:

(a) To adopt, maintain, or sell or offer to sell such product at any particular price or prices; or

(b) To include in any delivered price or price quotation any freight or other charge which is different from the actual cost incurred.

(5) Threatening to boycott, attempting to boycott or boycotting any purchaser or prospective purchaser of blackstrap molasses.

(6) Designating territories or accounts as exclusive trading territories or accounts for any of the respondents or any competing seller of blackstrap molasses.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees and respondents Lutz H. Frieler and Stanley

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J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees; respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other device, or in connection with the offering for sale, sale and distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and another or others not party hereto, to do or perform the following: Designating supplies of blackstrap molasses in the United States or any Territory thereof as available for purchase by only one or more of the respondents or any competing seller of blackstrap molasses, thereby precluding open and competitive bidding therefor.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees;

respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees; directly or through any corporate or other device, in or in connection with the offering for sale, sale and distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between or among any two or more of said respondents, or between any one or more of said respondents and another or others not party hereto, to do or perform the following: Continuing the joint venture known as "Midwestern Terminals".

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, their representatives, agents and employees; and respondent Peter G. Berdeshevsky, individually, and his representatives, agents and employees, in or in connection with the offering for sale, sale or distribution of molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any conspiracy with Compania de Mielles de Mexico, S.A. (a Mexican corporation), or with any other corporation or person, involving the malicious interference with any other corporation's or person's supply of, or the prevention by other unlawful means of the purchase of, blackstrap molasses intended for resale in the United States.

It is further ordered, That respondent Southwestern Sugar and Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Lutz H. Frieler and Stanley J. Posner, individually and as employees of said corporation, and their representatives, agents and employees; respondent Molasses

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Products, Inc., a corporation, and its officers, representatives, agents and employees; respondent Standard Molasses Company, Inc., a corporation, and its officers, representatives, agents and employees; respondent Imperial Molasses Company, Ltd., a corporation, and its officers, representatives, agents and employees; respondent Peter Berdeshevsky, individually, and his representatives, agents and employees; respondent Industrial Molasses Corporation, a corporation, and its officers, representatives, agents and employees, and respondents Benjamin H. Ticknor, II, Albert A. Teeter, Jr., and John P. Manard, individually and as officers and employees of said corporation, and their representatives, agents and employees; respondent Czarnikow Rionda Company, a corporation, and its officers, representatives, agents and employees, and respondents George A. Braga and Joseph B. Clifford, individually and as officers of said corporation, and respondent E. J. Kramer, individually, and their representatives, agents and employees; respondent Molasses Trading Company, a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and respondents Harold Fink, E. J. Kramer and R. L. McCauley, individually, and their representatives, agents and employees, respondent J. H. Leftwich & Company, Inc., a corporation, and its officers, representatives, agents and employees, and respondents J. H. Leftwich and Frank M. Hicks, Jr., individually and as officers of said corporation, and their representatives, agents and employees; respondent National Molasses Company, a corporation, and its officers, representatives, agents and employees, and respondents Joshua Epstein, Samuel G. Fisher, Joseph M. Rubenstone and Sidney M. Cohen, individually and as officers of said corporation, and their representatives, agents and employees; and respondent Thomas P. Gallagher, individually, and his representatives, agents and employees, in or in connection with the offering for sale, sale or distribution of blackstrap molasses in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist, for a period of five years following the entry of this order by the Federal Trade Commission, from quoting or selling such product at prices calculated or determined pursuant to or in accordance with any single basing-point delivered-price system which results in identical price quotations or prices for blackstrap molasses at points of quotation or sale or to particular purchasers by any two or more competing sellers of blackstrap molasses using such plan or system.

Provided, however, That nothing herein contained shall be deemed or construed to prohibit any of the above named corporate respondents from entering into or maintaining any bona fide intracorporate

or intraenterprise activities with its officers, directors, employees, principals, agents, subsidiaries or business affiliates relating to the sole and separate intracorporate or intraenterprise business of said corporate respondent when it can show (1) that it is not in competition with said officers, directors, employees, principals, agents, subsidiaries or business affiliates; and (2) that the transactions covered by the intracorporate or intraenterprise activities relate solely to the internal operations (intracorporate or intraenterprise) of said corporate respondent, and do not include or involve any competitor or competitors of said respondent or its officers, directors, employees, principals, agents, subsidiaries or business affiliates.

It is further ordered, That the complaint herein be, and the same hereby is, dismissed without prejudice as to the respondents Abram I. Kaplan (incorrectly named in the complaint as Abraham I. Kaplan), Compania De Mieses De Mexico, S.A., and New Mexico Timber Company, subject to this decision's becoming the decision of the Commission as to the other respondents in this proceeding.

FINAL ORDER

By its order of July 28, 1960, the Commission extended until further order the date on which the initial decision of the hearing examiner herein would become the decision of the Commission; and

The Commission now having concluded that said initial decision is appropriate in all respects to dispose of this proceeding:

It is ordered, That the initial decision of the hearing examiner filed June 10, 1960, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That all of the respondents herein, except those as to whom the complaint has been dismissed, 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 the order to cease and desist.

IN THE MATTER OF GARAY & CO., INC., ET AL.