Charge: Carrying out and engaging in an unlawful understanding, agreement, combination and conspiracy to unduly suppress, stifle, and restrict competition between and among respondents and to restrain trade and create a monopoly in the interstate sale and distribution of traffic signals and traffic signal equipment, through acts and practices including standardization of product, sale thereof at identical delivered prices concertedly established, submission of uniform bids, and inducing specifications designed to exclude competitive products.

COMPLAINT: Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the corporations hereinafter named and described and referred to as respondents have violated the provisions of section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. The respondent Crouse-Hinds Co. is a corporation organized and existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Seventh, North and Wolf Streets, Syracuse, N. Y.

The respondent General Electric Co. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its home office and principal place of business located at Schenectady, N. Y.

The respondent Eagle Signal Corp., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts, with its home office and principal place of business located at Moline, Ill.

The respondent Signal Service Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at Elizabeth, N. J.

The respondent Automatic Signal Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its home office and principal place of business located at East Norwalk, Conn.

The respondent Horni Signal Manufacturing Corp. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Jersey, with its home office and principal place of business located at 515 Greenwich Street, New York, N. Y.

PAR. 2. All of the respondents herein named have been for the past several years engaged in manufacturing traffic signals, traffic signal equipment and fittings, and all of said respondents, both in their corporate capacity and through various agencies, have been for more

than 5 years last past engaged in the sale and distribution in commerce among and between the various States of the United States and in the District of Columbia of traffic signals, traffic signal equipment and fittings, and caused said products when sold to be shipped from their respective places of business through and into other States of the United States and into the District of Columbia to the purchasers thereof.

PAR. 3. The said respondents now constitute, and have during all the times herein mentioned constituted, substantially all of the manufacturers of traffic signals and traffic signal equipment and fittings. The said respondents do now and have for the past several years manufactured and sold approximately 90 percent of all the traffic signals and traffic signal equipment and fittings sold in the United States. Prior to the adoption of the practices herein alleged said respondents were in active and substantial competition with each other and with other members of the industry, and but for the acts herein alleged said respondents would now be in active and substantial competition with each other and with other members of the industry.

Traffic signals and traffic signal equipment and fittings are used extensively throughout the United States and are bought by private firms, Federal Government agencies, State agencies, and municipalities, and because of the substantial quantity and because of existing laws and regulations, the different governmental agencies purchase said products by the method of invitation for bids from the different manufacturers and from the bids submitted select the member of the industry from whom the purchase will be made.

PAR. 4. Said respondents, for more than 3 years last past, have carried out and are now engaged in, an unlawful understanding, agreement, combination, and conspiracy to unduly suppress, stifle, and restrict competition between and among said respondents and to restrain trade and create a monopoly, in the interstate sale and distribution of traffic signals and traffic signal equipment in the States and territories of the United States and in the District of Columbia.

Pursuant to said understanding, agreement, combination, and conspiracy, said respondents have cooperatively adopted, performed, and carried out the following, among other collusive competitive methods, practices and acts:

(*a*) Agreed on identical delivered prices to be charged for said products, said prices to be the same to all purchasers throughout the United States irrespective of the cost of transportation and the place of shipment or delivery, and have consistently sold and delivered said products at said prices.

(*b*) Arbitrarily computed or averaged the delivery costs throughout the United States in order to provide a common freight factor in said identical delivered prices and to prevent differences in delivery

costs from various places of production to various places of delivery causing differences in respondents' delivered prices.

(*c*) Agreed on discounts to be allowed dealers in and purchasers of traffic signals and traffic signal equipment and fittings, and have consistently allowed said discounts.

(*d*) At meetings held and through correspondence and by personal contact, have collaborated and advised with one another in compiling and publishing price lists and catalogs in which identical delivered prices of said products and discounts to be allowed were quoted, and have through the cooperative methods above described, compiled, published, and circulated to the purchasing public price lists and catalogs containing said identical delivered prices and discounts, with the understanding or agreement that said prices and discounts would be adhered to and where price and discount changes were contemplated respondents would give to each other advance notice of the contemplated changes.

(*e*) Respondents have required their respective distributors to bid and adhere to the published delivered prices which were agreed upon among respondents as herein alleged.

(*f*) Said respondents have, during the years 1938, 1939, 1940, and 1941, submitted numerous bids to Federal agencies, State agencies, and municipalities to furnish traffic signals and traffic signal equipment and fittings in which bids they and each of them have quoted prices and discounts identical in every particular. Typical examples of the numerous bids of that character submitted are the following:

The bids submitted to the State of Massachusetts, December 27, 1938, in which respondents Crouse-Hinds, General Electric, and Eagle Signal bid on one-way three-color signal, $34.93; one-way four-color signal, $44.29; one-way slip fitter, $5.52, and four-way slip fitter, $6.50.

The bid submitted to the city of Pittsburgh dated June 3, 1939, in which the bids of Crouse-Hinds and General Electric were identical on one article and the bids of Crouse-Hinds, General Electric, Eagle Signal, and Signal Service were identical on two items.

The bid submitted to the State of Massachusetts dated June 27, 1939, in which Crouse-Hinds, General Electric, and Eagle Signal submitted identical bids on one article and Crouse-Hinds and General Electric submitted identical bids on one other article.

The bids to the city of Detroit, dated July 7, 1939, the bids to the city of Cleveland, Ohio, dated August 10, 1939, the bids to the city of Detroit, dated August 22, 1939, the bids to the city of Pittsburgh, dated September 29, 1939, the bids to the city of Philadelphia dated October 31, 1939, the bids to the city of Philadelphia dated December 5, 1939, the bids to the city of Philadelphia dated December 12, 1939, the bids

to the State of Massachusetts dated December 18, 1939, the bids to the city of Grand Rapids dated January 30, 1940, the bids to the city of Omaha dated August 13, 1940, the bids to the city of Cleveland dated October 10, 1940, the bids to the State of Massachusetts dated December 19, 1940, the bids to the city of Cleveland dated March 6, 1941.

(*g*) In cases where bids were submitted and one of the respondents should through error quote a price on an article less than the price quoted by the other respondents in their bids, such respondent would advise the prospective purchaser that he had made an error in his bid and ask to be permitted to correct it so as to make his bid uniform with the other respondents' bids or to be permitted to withdraw his bid.

(*h*) In localities where respondents anticipated lower bid prices from competing manufacturers which were not parties to respondents' alleged combination, they at times quoted prices lower than their regular published prices on the items where such outside competition was expected.

(*i*) Respondents acted in concert and cooperation to establish uniform standards and specifications of quality, design, and performance for their products and have used such standards and specifications to prevent differences therein from interfering with their objective of establishing and maintaining identical noncompetitive prices.

(*j*) In localities where respondents have encountered competition from concerns not parties to the combination herein alleged, in the sale of their products they have, through cooperative action, advised prospective purchasers against buying the products of such competitors by representing to the prospective purchasers, among other things, that the said competitor's products were not standardized products and the cost of upkeep would be far in excess of that of the upkeep of respondent's products.

(*k*) In cases where bids have been submitted by respondents and respondents' competitors wherein the competitors' prices were lower than those of the respondents, the respondents have, cooperatively attempted to persuade, and in many instances have induced the prospective purchasers to refuse to buy the competitor's product by representing to the prospective purchasers that the competitor's product was an inferior product and the upkeep would be greater than that of the upkeep of respondents' products.

(*l*) In localities where respondents anticipated lower competitive bids from other members of the industry, not parties to the combination herein alleged, said respondents have cooperatively induced the prospective purchaser to make specifications which would, in effect, exclude such competitors.

PAR. 5. As an incidental but necessary result of respondents' combination to fix delivered prices identical throughout the United States

without regard to differences in delivery costs from their respective plants to various destinations, as above alleged, the respective respondents have imposed upon nearby customers more and upon distant customers less than the actual cost of delivery and have thereby demanded, accepted, and received from their respective customers, different sums of money per unit of product and larger sums per unit from their nearby customers than from their more distant customers, after allowing for differences in actual cost of delivery. Such inequitable treatment of their customers was for the purpose and with the effect of adhering to respondents' delivered prices and maintaining the identity thereof throughout the United States.

PAR. 6. The capacity, tendency, and effect of such combination, understandings, and agreements and the acts, competitive methods, and practices of the respondents set out herein, and many others not specifically named, are and have been to monopolize in said respondents the said business of manufacturing and selling traffic signals, traffic signal equipment, and fittings and to unreasonably lessen, eliminate, restrain and suppress competition in the manufacture and sale of said products in interstate commerce and have materially enhanced the price to the purchaser of said products and have the tendency and effect of depriving the purchasing public of the advantages of price service and other considerations which they would receive and enjoy under conditions of normal and unobstructed and free and fair competition in said industry, and to otherwise operate as a restraint of trade and a detriment to the fair and legitimate competition in said trade and to obstruct the natural flow of trade into the channels of commerce in and among the several States of the United States and in the District of Columbia.

PAR. 7. The acts and practices of the respondents as herein alleged are all to the prejudice of the public, have a dangerous tendency to and have actually hindered and prevented price competition between and among respondents in the sale of traffic signals and traffic signal equipment and fittings in commerce within the intent and meaning of section 4 of the Federal Trade Commission Act, have placed in respondents the power to control and enhance prices, have unreasonably restrained such commerce in the manufacture and sale of traffic signals and traffic signal equipment and fittings, and constitute unfair methods of competition in commerce within the intent and meaning of section 5 of the Federal Trade Commission Act.

Complaint dismissed by the following order:

This matter coming on to be heard by the Commission upon the complaint, the respondents' answers thereto, testimony and other evidence introduced before a trial examiner of the Commission theretofore duly designated by it, the trial examiner's recommended decision, briefs of counsel, and oral argument; and

The Commission, for the reasons set forth in the accompanying opinion, being of the view that the allegations of the complaint have not been sustained by the greater weight of the evidence; and

The Commission being of the further view that, having determined that the complaint is not sustained by the greater weight of the evidence, it is not necessary to rule more specifically on objections raised by counsel to the recommended decision of the trial examiner:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed.

Opinion by Commissioner Mead Concurred in by Commissioners Mason, Ayres, and Carson

The respondents in this case are engaged in the manufacture and interstate sale of traffic signals and related equipment. On October 9, 1941, the Federal Trade Commission issued a complaint charging that these respondents have engaged in an unlawful agreement and conspiracy to unduly suppress competition among themselves and to restrain trade and create a monopoly in the interstate sale of these commodities. It is alleged that pursuant to such agreement, they have concertedly adopted and cooperatively engaged in 12 specified acts and practices, including, among other things, the standardization of their products, the sale thereof at identical delivered prices compiled through meetings and correspondence, the submission of uniform bids, and the inducing of purchasers to formulate specifications in such a manner as to exclude manufacturers other than themselves.

The annual sales volume in this industry is between 1 and 1½ million dollars, of which respondents account for a substantial portion. Three of these respondents have individual productive capacity sufficient to furnish all the traffic signal requirements of the United States. Substantially all the sales of these commodities are to Government agencies, Federal, State, and city, and are made pursuant to specifications prepared for them by these purchasers. The respondent Horni Signal Manufacturing Corp. has gone into bankruptcy. The respondent Signal Service Corp. discontinued manufacture of traffic signal equipment in 1941.

While the products of the industry are highly standardized, the greater weight of the evidence shows that this is due to the efforts of the Institute of Traffic Engineers, a professional society whose chief officers and most of its members are employed in the electric light divisions of municipalities.

For many years prior to the beginning of this proceeding these respondents sold on a f. o. b. factory basis, including a delivery cost factor which is the same for all destinations. Since these respondents in formulating their individual prices are unable to anticipate the

quantity or method of delivery necessitated when bids are awarded, they include this delivery factor in their f. o. b. price. This factor varies as to each of them but represents about 1¼ percent of the sales price in the case of one manufacturer and ranges from there to as high as 2.7 percent for another. This system of pricing in this industry was adopted in response to the demand and wishes of the purchasers.

From 1936 to 1938 prices varied widely. However, since early in 1939 the price lists of respondents have been substantially identical; and during this period several revisions of catalogue prices by certain respondents, mostly upward, were followed within 2 months or less by similar changes on the part of other respondents. During the intervals between announcements of price revisions by one manufacturer and similar announced changes, by the others, the latter would continue to sell as their original prices.

The respondents contend that such uniformity in bidding resulted from their individual determination to quote their respective catalogue prices and not from any agreement. Some tabulations of bids in 1939 and later on show uniformity, but in others there were found to be variations. The trial examiner found that instances of uniform bidding were of short duration.

Many letters and other communications passing between representatives of the respondents and their home offices are in the record. Counsel supporting complaint contends that these letters and other communications support the allegations. Although these documents indicate considerable reluctance to antagonize competitors by quoting lower prices, and although they expressed the hope that absence of price cutting would continue, we are of the opinion that there is insufficient basis in the record to support an inference that the alleged agreement ever existed. For example, one of the communications passing between two employees of respondent General Electric, stated substantially that there was an agreement to the effect that all manufacturers in this industry would thereafter bid on ornamental pole clamps only. However, the record shows that thereafter General Electric continued to list and bid on plain clamps, an action which is entirely inconsistent with the statements made in the communication. Because of this and other facts brought out in the record, we believe that the communication is merely an expression of an erroneous impression of one employee of the company, and we do not believe that the exhibit is entitled to the weight contended for it by counsel supporting complaint.

We have also noted the absence in the record of several elements which are often found in cases of this nature. While we recognize that they are not indispensable, we realize the difficulties in supporting the allegations of the complaint herein without them. There is no trade association in this industry. The record further shows no

exchange in statistics between members of the industry. We find no evidence of common price filings, simultaneous price changes or differentials in the record. Finally we find no freight rate books or uniform contracts.

Only one meeting of members of the industry is shown in the record. This was held in November of 1938 at the request of the Institute of Traffic Engineers for the purpose of supplying certain lighting data. Immediately after this meeting a representative of the Crouse-Hinds Co. sent copies of their revised catalogue sheet to a representative of a competitor, the Horni Signal Manufacturing Co. However, a week prior to this meeting the Crouse-Hinds Co. had mailed these same sheets to its distributors and customers.

After considering the record in this matter, we are of the opinion that the greater weight of the evidence does not sustain the allegations of the complaint.

Before *Mr. Charles B. Bayly*, trial examiner.

Mr. Floyd O. Collins for the Commission.

Hiscock, Cowie, Bruce, Lee & Mawhinney, of Syracuse, N. Y., for Crouse-Hinds Co.

Cahill, Gordon, Zachry & Reindel, of New York City, for General Electric Co.

Whitman, Ransom, Coulson & Goetz, of New York City, for Eagle Signal Corp.

Mr. Isidore H. Lutzker, of New York City, for Automatic Signal Corp.

Pennie, Edmonds, Morton & Barrows, of New York City, for Signal Service Corp.

Mr. Harold Gilbert, of New York City, and *Mr. Francis W. Hayden*, of Newark, N. J., for Andrew B. Crummy, trustee for Horni Signal Manufacturing Corp.

F. W. FITCH CO. AND F. W. FITCH MANUFACTURING CO. Complaint, May 21, 1946. Order, February 1, 1950. (Docket 5439.)

Charge: Advertising falsely or misleadingly as to scientific or relevant facts, qualities, properties or results, comparative merits, safety and refund or money back guarantee; in connection with the manufacture and sale of toilet preparations, including a preparation designated as Fitch's Dandruff Remover Shampoo.

COMPLAINT:[1] Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that F. W. Fitch Co., a corporation, and F. W. Fitch Manufacturing Co., a corpo-

[1] For interlocutory order (and accompanying opinion) denying motion to recall complaint or for the adoption of certain alternative procedure, see p. 1128, *infra*.