74TH CONGRESS } SENATE { DOCUMENT
1st Session } { No. 4

CHAIN STORES

Final Report on the Chain-Store Investigation

LETTER
FROM THE
ACTING CHAIRMAN
OF THE FEDERAL TRADE COMMISSION
TRANSMITTING
IN RESPONSE TO SENATE RESOLUTION No. 224
SEVENTIETH CONGRESS, THE FINAL REPORT OF THE
FEDERAL TRADE COMMISSION OF ITS INVESTIGATION OF
THE CHAIN-STORE INDUSTRY

Filed with the Secretary of the Senate
December 14, 1934

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1935

SENATE RESOLUTION NO. 228

Submitted by Mr. Brookhart

In the Senate of the United States,
June 8 (calendar day, June 10), 1932.

Resolved, That the reports which may hereafter be filed with the Secretary of the Senate, pursuant to Senate Resolution No. 224, Seventieth Congress, first session, relative to the investigation by the Federal Trade Commission of chain stores, be printed, with accompanying illustrations, as Senate documents.

Edwin P. Thayer, *Secretary.*

CONTENTS

Chapter V

ECONOMIC FACTORS IN GROWTH AND DEVELOPMENT OF CHAIN-STORE MERCHANDISING

Chapter VI

PUBLIC POLICY OF STATES REGARDING CHAIN STORES

Chapter VII

CONCLUSIONS AND RECOMMENDATIONS

APPENDIX

EXHIBITS

LETTER OF TRANSMITTAL

December 14, 1934.

President of the Senate,
United States Senate, Washington, D. C.

Sir: I have the honor to transmit herewith the final report of the Federal Trade Commission covering its study of the chain-store industry in pursuance of Senate Resolution 224, Seventieth Congress, first session. The submission of this report concludes the work of the commission under the above resolution.

The contents of the report may be briefly outlined as follows:

Chapter I. Introduction.
II. Present dimensions and forms of growth of chain-store systems, including pertinent legal discussion.
III. Competitive practices and trade policies of chain stores, including pertinent legal discussion.
IV. Effect of special concessions to chain stores on their growth and development, including pertinent legal discussion.
V. Economic factors in growth and development in chain-store merchandising, including pertinent legal discussion.
VI. Public policy of States regarding chain stores.
VII. Conclusions and recommendations.
Appendix. The appendix sets forth State constitutional and statutory provisions relating to monopoly, restraint of trade, price discrimination, acquisition of competitors, and false and misleading advertising.

In addition to the report here submitted, the Commission has, since the inception of its investigation, completed and submitted to the Congress 33 factual reports on various phases of the chain-store industry. These reports are available in printed form as Senate documents.

By direction of the Commission.

Ewin L. Davis,
Acting Chairman.

LIST OF CHAIN-STORE REPORTS OF THE FEDERAL TRADE COMMISSION

Title	Senate Document No.	Price per copy
SEVENTY-SECOND CONGRESS, FIRST SESSION		*Cents*
Cooperative Grocery Chains	12	15
Wholesale Business of Retail Chains	29	5
Sources of Chain-Store Merchandise	30	10
Scope of the Chain-Store Inquiry	31	5
Chain-Store Leaders and Loss Leaders	51	10
Cooperative Drug and Hardware Chains	82	5
Growth and Development of Chain Stores	100	10
SEVENTY-SECOND CONGRESS, SECOND SESSION		
Chain-Store Private Brands	142	10
Short Weighing and Over Weighing in Chain and Independent Grocery Stores	153	5
Sizes of Stores of Retail Chains	156	5
Quality of Canned Vegetables and Fruits (under Brands of Manufacturers, Chains, and Other Distributors)	170	5
Gross Profit and Average Sale per Store of Retail Chains	178	10
SEVENTY-THIRD CONGRESS, FIRST SESSION		
Chain-Store Manufacturing	13	10
Sales, Costs, and Profits of Retail Chains	40	10
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Grocery	62	10
Prices and Margins of Chain and Independent Distributors, Memphis—Grocery	69	10
SEVENTY-THIRD CONGRESS, SECOND SESSION		
Prices and Margins of Chain and Independent Distributors, Detroit—Grocery	81	10
Chain-Store Wages	82	5
Chain-Store Advertising	84	10
Chain-Store Price Policies	85	10
Special Discounts and Allowances to Chain and Independent Distributors—Tobacco Trade	86	10
Invested Capital and Rates of Return of Retail Chains	87	15
Prices and Margins of Chain and Independent Distributors, Cincinnati—Grocery	88	5
Special Discounts and Allowances to Chain and Independent Distributors—Grocery Trade	89	5
Service Features in Chain Stores	91	10
The Chain Store in the Small Town	93	10
Special Discounts and Allowances to Chain and Independent Distributors—Drug Trade	94	10
Prices and Margins of Chain and Independent Distributors, Cincinnati—Drug	95	5
Prices and Margins of Chain and Independent Distributors, Detroit—Drugs	96	10
Prices and Margins of Chain and Independent Distributors, Memphis—Drugs	97	5
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Drug	98	5
Miscellaneous Financial Results of Retail Chains	99	10
State Distribution of Chain Stores	130	10
SEVENTY-FOURTH CONGRESS, FIRST SESSION		
Final Report on the Chain Store Investigation	4	10

These reports may be obtained at prices above noted from—

THE SUPERINTENDENT OF DOCUMENTS
WASHINGTON, D. C.

FINAL REPORT ON THE CHAIN-STORE INVESTIGATION

CHAPTER I

INTRODUCTION

This is the final report of the Commission upon the results of the investigation directed by Senate Resolution No. 224, Seventieth Congress, first session. It summarizes the facts and presents conclusions and recommendations based upon the factual data obtained throughout the inquiry. The details of such data have been already presented in a series of 33 reports submitted to the Senate and made public from time to time as the inquiry progressed.

The scope of the investigation, the subjects with which it is concerned, and the factual results are indicated by the titles of the 33 reports already made. They were:

Scope of the Chain-Store Inquiry
Sizes of Stores of Retail Chains
Growth and Development of Chain Stores
State Distribution of Chain Stores, 1913–28
Cooperative Grocery Chains
Cooperative Drug and Hardware Chains
The Chain Store in the Small Town
Sources of Chain-Store Merchandise
Chain-Store Manufacturing
Wholesale Business of Retail Chains
Special Discounts and Allowances to Chain and Independent Distributors—Grocery Trade
Special Discounts and Allowances to Chain and Independent Distributors—Tobacco Trade
Special Discounts and Allowances to Chain and Independent Distributors—Drug Trade
Chain-Store Price Policies
Chain-Store Leaders and Loss Leaders
Chain-Store Private Brands
Chain-Store Advertising
Sales, Costs, and Profits of Retail Chains
Gross Profit and Average Sales Per Store of Retail Chains
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Grocery
Prices and Margins of Chain and Independent Distributors, Memphis—Grocery
Prices and Margins of Chain and Independent Distributors, Detroit—Grocery
Prices and Margins of Chain and Independent Distributors, Cincinnati—Grocery
Prices and Margins of Chain and Independent Distributors, Washington, D. C.—Drug
Prices and Margins of Chain and Independent Distributors, Memphis—Drug
Prices and Margins of Chain and Independent Distributors, Detroit—Drug
Prices and Margins of Chain and Independent Distributors, Cincinnati—Drug
Invested Capital and Rates of Return of Retail Chains
Miscellaneous Financial Results of Retail Chains
Service Features in Chain Stores
Quality of Canned Vegetables and Fruits (Under Brands of Manufactures, Chains, and Other Distributors)
Chain-Store Wages
Short-Weighing and Over-Weighing in Chain and Independent Grocery Stores

The text of the resolution under which the investigation was conducted is as follows:

Whereas it is estimated that from 1921 to 1927 the retail sales of all chain stores have increased from approximately 4 percentum to 16 percentum of all retail sales; and

Whereas there are estimated to be less than 4,000 chain-store systems with over 100,000 stores; and

Whereas many of these chains operate from 100 to several thousand stores; and

Whereas there have been numerous consolidations of chain stores throughout the history of the movement, and particularly in the last few years; and

Whereas these chain stores now control a substantial proportion of the distribution of certain commodities in certain cities, are rapidly increasing this proportion of control in these and other cities, and are beginning to extend this system of merchandising into country districts as well; and

Whereas the continuance of the growth of chain-store distribution and the consolidation of such chain stores may result in the development of monopolistic organizations in certain lines of retail distribution; and

Whereas many of these concerns, though engaged in interstate commerce in buying, may not be engaged in interstate commerce in selling; and

Whereas, in consequence, the extent to which such consolidations are now, or should be made, amendable to the jurisdiction of the Federal antitrust laws is a matter of serious concern to the public: Now, therefore, be it

Resolved, That the Federal Trade Commission is hereby directed to undertake an inquiry into the chain-store system of marketing and distribution as conducted by manufacturing, wholesaling, retailing, or other types of chain stores and to ascertain and report to the Senate (1) the extent to which such consolidations have been effected in violation of the antitrust laws, if at all; (2) the extent to which consolidations or combinations of such organizations are susceptible to regulation under the Federal Trade Commission Act or the antitrust laws, if at all; and (3) what legislation, if any, should be enacted for the purpose of regulating and controlling chain-store distribution.

And for the information of the Senate in connection with the aforesaid subdivisions (1), (2), and (3) of this resolution the Commission is directed to inquire into and report in full to the Senate (a) the extent to which the chain-store movement has tended to create a monopoly or concentration of control in the distribution of any commodity, either locally or nationally; (b) evidences indicating the existence of unfair methods of competition in commerce or of agreements, conspiracies, or combinations in restraint of trade involving chain-store distribution; (c) the advantages or disadvantages of chain-store distribution in comparison with those of other types of distribution as shown by prices, costs, profits, and margins, quality of goods and services rendered by chain stores and other distributors or resulting from integration, managerial efficiency, low overhead, or other similar causes; (d) how far the rapid increase in the chain-store system of distribution is based upon actual savings in costs of management and operation and how far upon quantity prices available only to chain-store distributors or any class of them; (e) whether or not such quantity prices constitute a violation of either the Federal Trade Commission Act, the Clayton Act, or any other statute and (f) what legislation, if any, should be enacted with reference to such quantity prices.

As far as practicable, this report will follow in its order of treatment the order in which the above resolution sets forth the subjects on which the Senate desires information and conclusions. First will be presented a survey of the physical growth and present legal status of chain-store systems. Then will follow a summary of characteristic trade policies and competitive practices used by chain stores, and the main factors responsible for their rapid growth and development, including the effect of special buying concessions. The legal status of these policies, practices, and factors will be discussed in connection with their respective factual aspects. The public policy of various States of the United States regarding the chain-store problem will then be described. The final part of the report will be devoted to a discussion of a proper and consistent Federal policy regarding chain stores, considered in the light of the facts disclosed, the existing laws applicable thereto, and whatever new legislation is needed to make such a policy effective.

It is now claimed by some chain-store interests that certain practices described in this report have been abandoned. If this be true, it has been done since publication of the 33 reports prepared and submitted by this Commission to Congress in which attention was specifically directed to those practices. No investigation has been made to determine to what extent such practices may have since been actually abandoned, or to determine what effect the National Industrial Recovery Act and the codes of fair competition adopted thereunder may have had on such practices.

CHAPTER II

PRESENT DIMENSIONS AND FORMS OF GROWTH OF CHAIN-STORE SYSTEMS

Section 1. Size and extent of chain-store systems

The preamble to the resolution recites a number of tentative or hypothetical facts which disclose the Senate's interest in these phases of chain-store development. It also discloses the Senate's interest in the physical and legal forms which have characterized that development, and whether the existing status quo constitutes any actual or impending monopoly of retail distribution.

According to the census reports [1] there were in operation in the United States in 1929 retail stores to the number of 1,543,158 with total sales of $49,114,653,269. These stores were classified into various types or groups according to the method of operation, the principal groups being designated as single-store independents, 2- and 3-store independents, local branch systems (operated from a dominant parent store), local chains (four or more local stores centrally merchandised), sectional chains (with stores in more than one city, but entirely within one geographical division or section of the country), and national chains (with stores in more than one section of the country).

There were 7,061 chain-store organizations operating 159,638 stores, or about 10 percent of all the retail stores in the country. Sales of these chains aggregated $10,740,385,208, or about 22 percent of the total retail sales. Local chains operated 52,465 stores with total sales of $3,293,890,233; sectional chains, 41,083 stores with sales of $2,191,250,396; and national chains operated 51,058 stores with sales of $3,960,086,992. Other types of chains not included in these classes operated 15,032 stores with sales of $1,295,157,587. The following tabulation, based on table 5A of the United States Bureau of the Census Summary of Retail Distribution, shows the proportions of chain stores operated and net sales of chains compared with number of stores and net sales of independent retailers.

Retail distribution by types of operation, 1929

Type of operation	Number of stores	Percentage of stores	Net sales	Percentage of sales
Independents	1, 295, 114	83. 9	$35, 826, 154, 061	72. 9
Local chains	52, 465	3. 4	3, 293, 890, 233	6. 7
Sectional chains	41, 083	2. 7	2, 191, 250, 396	4. 5
National chains	51, 058	3. 3	3, 960, 086, 992	8. 1
Other types [1]	103, 438	6. 7	3, 843, 271, 587	7. 8
Total	1, 543, 158	100. 0	49, 114, 653, 269	100. 0
Total chains	144, 606	9. 4	9, 445, 227, 621	19. 2
Total others	1, 398, 552	90. 6	39, 669, 425, 648	80. 8

[1] "Other types" includes mail-order houses, direct selling, roadside markets, rolling stores, itinerant vendors, etc. This classification includes 15,032 stores of chains other than those classified as local, sectional, and national, with sales of $1,295,157,587.

---

[1] Retail Distribution, Bureau of the Census, 1930.

The foregoing tabulation shows that nearly 20 cents of each dollar spent in retail stores by the consumer went to chain stores. There is a wide variation in the proportions of retail sales of chains in the different territorial divisions. It was as high as $1 in every $4 of total retail sales in the District of Columbia and as low as $1 in $14 in Mississippi.[2]

More than half the chains reporting to the Commission are found in the 2–5 store group. These small chains, however, operate less than 5 percent of the stores. In contrast to this situation, chains with 1,000 stores or over comprise less than 1 percent of the chains, but account for approximately one-half of the stores, and about 40 percent of the total sales.

The three national grocery-store chains—the Great Atlantic & Pacific Tea Co., the Kroger Grocery & Baking Co., and the Safeway Stores, Inc. (including MacMarr Stores, Inc., acquired by Safeway in 1931)—operated during 1930 nearly 25,000 retail grocery stores with aggregate sales of almost $1,600,000,000. The Great Atlantic & Pacific Tea Co. alone operated 15,738 of these stores, with total sales of $1,065,000,000 during 1930.

The significance of these figures is heightened by the apparent tendency of chain stores to increase at a faster rate than independents. A comparison was made for the 10 years 1919–28, of the openings and closing of chain-store units, as reported to the Commission, with the corresponding figures of Buffalo, N. Y., independent merchants in the grocery, drug, hardware, and shoe fields (published by the University of Buffalo, Bureau of Social and Business Research). This indicates that while the opening rate of independent stores is substantially higher than that for the stores of chains, the independent closing rate is nearly as high as their rate of openings, whereas the chain rate of closings is roughly one-fourth that of their openings.

The marked increase which has occurred in the total number of chain stores reported in operation, in each succeeding year of the series during the period 1913–28 over the preceding year, extends, without exception, to each of the nine census geographic divisions, but naturally there have been considerable variations in the extent of the increase in different divisions. Approximately two-thirds of all chain stores reported in each of the 6 years are located in the three contiguous and populous divisions of the extreme North and East—New England, Middle Atlantic, and East North Central—although from 1919 to 1928 the aggregate proportion of stores reported therein is gradually diminishing.

The figures as a whole indicate a tendency for chains to concentrate their stores first in the most populous or most densely settled sections or communities, and later to extend their operations to the less populous localities—from time to time fortifying their competitive position in the localities penetrated earlier by adding new stores there as well. In 29 different States a larger proportion of total stores is reported for 1928 than for 1913. These States include only 5 (Illinois, Indiana, Massachusetts, California, and Michigan) of the leading 10, a fact which further indicates that chain-store

[2] Fifteenth Census of United States, Census of Distribution Retail Chains, pp. 12–13.

operators apparently have placed more emphasis during the later years upon the penetration of the less populous sections.

Chain expansion has usually been more pronounced where population is concentrated. In 1929 the three largest grocery chains operated 23,925 stores (42.6 percent of all grocery, meat, and combination grocery and meat chain units) located in cities of various sizes as follows: 11,123 stores in cities of more than 100,000 population; 3,882 in cities with population from 25,000 to 100,000; 2,416 in cities of 10,000 to 25,000; and 6,420 in all places with less than 10,000 population; a balance of 84 stores unclassified. Units of these three chains were operated in the geographic divisions in the following proportions: New England, 9.7 percent; Middle Atlantic, 26.6 percent; East North Central, 33.3 percent; West North Central, 6.1 percent; South Atlantic, 10.3 percent; East South Central, 4.0 percent; West South Central, 3.5 percent; Mountain, 1.2 percent; Pacific, 5.3 percent.

Sec. 2. Size and extent of cooperative chain store systems

As a means of meeting the competition of the typical chain store which operates under single ownership and management, the independent retailers in certain lines of distribution, particularly groceries, drugs, and hardware, have organized or been organized into cooperative chains. Such chains may not be classed as chain stores in the ordinary sense, because individual ownership is preserved; but they represent an intermediate development which must be taken into account in any consideration of the chain store problem as a whole. Such chains have the common characteristic of preserving individual store ownership completely and individual store management very largely and of providing for cooperative buying. Some such chains undertake to establish uniformity among their members as to important sales policies, while others confine themselves to the problem of group buying. Cooperative chain stores have shown a rapid development in recent years.

There are two types of cooperative chains, depending on whether control is lodged in the retailers composing the chain, or in some wholesaler who may have organized it. The retailer cooperative chain is an organization of independent retailers which advertises, functions as a wholesaler, or performs other merchandising activities cooperatively, and which is not connected with any particular wholesaler in such activities. The wholesaler-retailer cooperative chain is a group of independent retailers affiliated with a wholesaler for buying, advertising, or other merchandising activities. The retailer cooperatives have concentrated primarily on buying and placing goods in the stores of their members at low cost, while the wholesaler-retailer cooperatives, by contrast, have emphasized selling economies and policies, such as cooperative advertising and low-priced leaders. The cooperative chain movement had a slow and somewhat irregular development up to the year 1925, but since then its growth has been more rapid. The wholesaler-retailer cooperative activities did not begin until about 30 years after the retail grocers started cooperative buying for themselves, but since 1926 the wholesaler-retailer grocery cooperative has shown a much more rapid growth than has the retailer cooperative.

The Commission collected information and data for a total of 319 cooperative grocery chains with a retail membership of 43,141 independent grocery stores as of the beginning of 1930. The Commission estimates that there were 395 cooperative grocery chains in the country with an estimated membership of 53,400 retail stores. This number compares with a total of 52,514 centrally owned chain grocery stores operated in 1929 by 693 chains of 4 stores or over as reported by the Bureau of the Census. The estimated volume of business of these 395 cooperative chains in 1929 was between $600,000,000 and $700,000,000. As nearly as can be estimated not more than three-quarters of this volume, and probably only about two-thirds, is represented by business with members.

The Commission also collected information and data for a total of 24 cooperative drug chains with a retail membership of 6,041 independent drug stores at the close of 1929. The total sales in 1929 of 16 reporting cooperative companies amounted to $24,553,000, practically all of which represented sales to members.

From the standpoint of age and number of groups organized the cooperative chain movement in the hardware field is still young as compared with the grocery and drug trades. Limited information and data were procured from six retailer cooperative hardware chains having a membership of 990 retail stores. The total net sales for five of the cooperative hardware companies (excluding one small buying and advertising group that does not operate a warehouse) amounted to somewhat over $6,000,000 in 1929.

Sec. 3. Growth of chains by internal expansion

A large part of the growth of the more important regular chains is a result of the expansive power of their organization. This power manifests itself in the opening of new stores as distinguished from acquisition of stores already in existence under other ownership.

During the period covered by store detail reports, varying from 1 to 43 years, depending upon the date when a continuous record is first available, the 1,591 reporting chains opened 51,565 new stores and acquired 6,475, or a total of 58,040 gross total additions through 1928. In other words, of the gross total stores added by these chains during the period covered about 89 percent represent actual openings of new units. Adding the openings and acquisitions for 1929 and 1930 of 1,687 and 1,478 chains, respectively, reporting store detail, the total number of stores opened increased to 62,405, acquisitions to 11,035, and gross total additions to 73,440. As a result, the ratio of openings to gross total additions (stores acquired plus stores opened) declined to 85 percent.

The Great Atlantic & Pacific Tea Co., perhaps the largest retail dealer in the world, has built up its chain of stores throughout the United States to its present dimensions almost entirely by opening new stores

Sec. 4. Growth through acquisition and consolidation

While the low average percentage of acquisitions to total stores added, as shown heretofore, indicates that this method of expansion has not been a large factor in the growth of chains generally, such averages do not tell the complete story. The extent of expansion by acquisition and consolidation as well as the actual and potential effect on competition can be determined only by considering the individual chains in relation to their acquisitions.

Data with respect to acquisitions by individual chains were obtained through a questionnaire sent in the summer of 1931 to 135 selected chain companies. The questionnaires were sent to the large national, sectional, and local chains and 108 [3] replies were received from chains in the following types of business:

Grocery	[3] 34
Drug	4
Tobacco	3
Confectionery	5
Variety	14
Clothing	23
Shoes	14
Department	3
Furniture	3
Music	5
Total	[3] 108

Each of these groups, except tobacco and music, reported having made acquisitions of other chains. The greater part of the acquisitions were of assets. However, acquisitions of capital stock of other chains were found in the grocery, drug, confectionery, variety, and furniture groups.

Acquisitions as a whole were predominantly of other chain stores rather than of independent stores. Only in the case of drug, grocery. and grocery and meat, general merchandise, and men and women's shoe chains, were more than 50 independent stores apparently acquired by reporting chains. In the case of the grocery, and grocery and meat combined groups, however, the ratio of independent to total acquisitions was negligible.

Subjecting the total acquisitions rate in the six numerically important groups (grocery, grocery and meat, drug, dollar-limit variety, men and women's shoes, and dry goods and apparel) to further analysis, it appears that the bulk of the reported acquisitions in each of these kinds of business are those of one or, at most, a few of the larger chain-store organizations. In grocery and meat the total acquisitions of Kroger Grocery & Baking Co. through 1928 aggregated 1,668 stores and the combined acquisitions of Kroger, American Stores, and Grand Union totaled 2,491 stores, or nearly one-half and two-thirds, respectively, of the 3,668 acquisitions reported for this kind of chain. In the straight grocery group, National Tea Co. had taken over from others through December 31, 1928, a total of 767 units or 54 percent of the total acquisitions reported in this group, while J. C. Penney had acquired 101 out of a total 150 units reported for the dry goods and apparel chains. In the drug chains the 248 units obtained by the Louis K. Liggett Co. from others and the combined total of 366 units acquired by Liggett, the Walgreen Co., and Peoples Drug Stores represent 42 percent and 62 percent, respectively, of the total acquisitions of this group; and for the dollar-limit variety chains, McLellan Stores (Inc.), and G. C. Murphy Co. acquisitions of 64 stores, are practically 60 percent of 114 stores acquired by this group. The Geo. E. Keith Stores Co. (Walk-Over) acquisitions were 37 percent of the 120 stores acquired by the men and women's shoe group. It also appears that the chains in these six groups which were so largely re-

[3] Includes MacMarr Stores, which was acquired by Safeway Stores, Inc., in 1931.

sponsible for acquisitions reported through 1928 also represent a substantial proportion of the acquisitions for these same groups in 1929 and 1930.

Acquisitions by grocery chains.—The grocery chains (including grocery and meat, and meat chains) constitute the largest group and are the most important, both from the standpoint of size and volume of business as well as general interest in their activities. Thirty-three chains of this group supplied information on acquisitions and consolidations in response to the questionnaire. This group represents all the larger chains, and the importance of the companies is shown by their operation on January 1, 1931, of 40,708 stores with total sales for the year 1930 of $2,314,298,190 compared with a total of 220 chains operating 44,213 stores with total sales of $2,563,680,410.[4]

With the exceptions of Larkin Co. with 84 stores and Buehler Bros., Inc., with 62 stores, each of the chains represented operated over 100 stores, the number ranging from 125 to more than 15,000; 18 of the 33 chains reported having made no acquisitions or consolidations and 15 reported having acquired other chain companies.

The grocery chains which have materially increased the number of their retail stores and extended their operating territory by acquiring the assets of existing chains include the American Stores Co. and First National Stores, Inc., both large sectional chains operating in the eastern part of the United States. The eight chains which made acquisitions of capital stock of other chains include The Great Atlantic & Pacific Tea Co., which built up a chain of over 15,000 retail grocery stores almost entirely by opening new stores. However, this company acquired in 1925 the capital stock of Quaker Maid, Inc., operating a chain of grocery stores in Kentucky and southern Indiana. The assets of Quaker Maid, Inc., were taken over by The Great Atlantic & Pacific Tea Co. in 1927.

The two outstanding examples of large grocery chains which built up their organizations primarily by acquisitions of capital stock and/or assets of existing chains are the Kroger Grocery & Baking Co. and the Safeway Stores, Inc.

The Kroger Grocery & Baking Co., with headquarters in Cincinnati, Ohio, and operating generally in the Middle West section, was organized in 1902, with an initial chain of 40 retail stores. The company added 4,647 stores by openings, and 2,245 by acquisitions. With aggregate closings, during the period, of 1,767 stores there were in operation on January 1, 1930, a total of 5,185 stores. During the 20-year period, 1908 to 1928, the company purchased 38 other chains with an aggregate number of 2,141 grocery stores. All of the acquisitions, except two, were made through the purchase of assets. The two exceptions were Consumers Sanitary Coffee & Butter Stores operating 324 stores in Chicago and vicinity; and the Roanoke Grocery & Milling Co., a wholesale dealer in Roanoke, Va., having as a wholly-owned subsidiary the Jamison Stores with 91 retail grocery stores in the same general territory. Both the Chicago and the Roanoke companies were acquired through the purchase of capital stock and continued to be operated as separate entities.

---

[4] Sales, Costs, and Profits of Retail Chains, by Federal Trade Commission (S. Doc. 40, 73d Cong., 1st sess.).

Safeway Stores, Inc., was the result of a merger in 1928 of Safeway Stores, operating 465 stores in southern California; Skaggs Cash Stores, with 7 stores in Nevada, 40 in Utah, 10 in Wyoming, 66 in northern California; and Skaggs United Stores, with 28 stores in Colorado, 34 in Idaho, 12 in Montana, 42 in Oregon, and 87 in Washington. These companies occupied different territories, and there was no competition in retail selling among them. In 1928 Safeway Stores, Inc., acquired the capital stock of Arizona Grocery Co. and its subsidiary, Pay'n Takit Stores, operating 38 stores in Arizona; Standard Grocery Co., with 14 Stores in Texas; Sanitary Grocery Co., operating 383 stores including the Piggly Wiggly Stores in Washington, D. C., and 46 stores in Virginia; and Eastern Stores, operating 67 stores in Maryland. The acquisition of these several companies extended the operating territory of the Safeway Stores, Inc., into sections not previously occupied by it. In the same year Safeway Stores, Inc., acquired the assets of Piggly Wiggly Pacific Co., with 84 stores in California and 7 in Hawaii; and Bird Grocery Co., with 21 stores in Arkansas, 2 in Kansas, 88 in Missouri, and 113 in Texas. In 1929 Safeway Stores, Inc., acquired the assets of Sun Grocery Co., operating 67 stores in Oklahoma; Skaggs Cash Stores, with 7 stores in northern California; and Piggly Wiggly Western States Co., operating 174 stores in southern California and 14 in Utah.

Safeway Stores, Inc., acquired the assets of MacMarr Stores, Inc., in 1931. At the time of this acquisition, Safeway Stores, Inc., operated 2,529 stores in 20 States and the District of Columbia, as well as stores in the Territory of Hawaii and in Canada. MacMarr Stores, Inc., had been built up during 1929 and 1930 by the acquisition and absorption of some 30 other grocery chains and at the time of its acquisition by Safeway, operated 1,382 stores in 10 States. The Safeway Stores, Inc., also operated 1,511 stores in these same States. This consolidation was accomplished by the acquisition and merger of assets of MacMarr Stores, Inc. The following tabulation shows the number of stores in each of the 10 States operated by each, the Safeway Stores, Inc., and MacMarr Stores, Inc., at the time of the acquisition.

Safeway Stores, Inc.	Stores	*MacMarr Stores, Inc.*	Stores
Arizona	63	Arizona	30
California	982	California	689
Colorado	81	Colorado	159
Idaho	38	Idaho	24
Montana	23	Montana	15
Nebraska	97	Nebraska	3
New Mexico	18	New Mexico	8
Oregon	73	Oregon	216
Washington	123	Washington	226
Wyoming	13	Wyoming	12
Total	1,511	Total	1,382

Safeway Stores, Inc., operated 1,018 additional stores located in 10 other States and the District of Columbia. This consolidation eliminated such competition as might have existed between these two major chains in the States in which both operated, and secured for the Safeway Stores, Inc., the greater proportion of chain business in those States. The total stores operated by both companies in the 10 States listed above was 2,893, or approximately 10½ percent of the 27,753 retail grocery stores in the same States.

Acquisitions by confectionery chains.—Loft, Inc., acquired the Happiness Candy Co. in 1930 by purchase of capital stock. The stores acquired were operated under the Loft name in cities in which the Loft Co. had not previously operated and were consolidated with Loft units in those cities in which both companies had been in operation. Both companies operated retail candy stores in Connecticut, New York, New Jersey, and Pennsylvania.

This acquisition eliminated such competition between the two companies as existed in these States.

Acquisitions by drug chains.—Information was received from four large drug chains, all of which made acquisitions of other drug chains.

The People's Drug Stores, Inc., acquired, in 1926, the capital stock of People's Service Drug Stores, Inc., operating two stores in Maryland and one store in Virginia; and N. H. Shearer & Co., operating 24 stores in Pennsylvania. In 1928, the People's Drug Stores, Inc., acquired the capital stock of the Summit Drug Co. engaged in the wholesale drug business at Akron, Ohio, and the Day Drug Co., operating 21 retail drug stores, also in Akron, Ohio. These acquisitions extended the territory of the People's Drug Co. into States in which it had not been operating.

The Walgreen Co. acquired during 1925 to 1930, inclusive, the assets of 11 small retail drug chains operating 82 stores in 11 States. In addition to the acquisitions of companies by purchase of assets, the Walgreen Co. has acquired three companies by purchase of capital stock. In 1927, the company acquired the capital stock of the Economical Drug Co., operating 17 stores in the business section of Chicago. In 1928, it acquired the capital stock of the George B. Evans Co., with 8 stores in Pennsylvania, and in 1929, the capital stock of the Schramm-Johnson Co., operating 30 stores in California, Idaho, Nevada, Utah, and Wyoming, was acquired. With the exception of the Economical Drug Co., all the acquisitions of capital stock were of companies in territories in which the Walgreen Co. had not previously operated.

The Louis K. Liggett Co., formerly a subsidiary of United Drug Corporation, which was a subsidiary of Drug, Inc., acquired by purchase of assets the Portes Drug Co., operating 5 stores, and the MacLean Drug Co., operating 16 stores, all in Chicago, Ill., in 1928. The Liggett Co. also acquired, by the purchase of capital stock, the Bowman Drug Co., with 7 stores in California, in 1925; the Beacon Drug Co., with 45 stores in Michigan, in 1927; the B. & R. Drug Stores, with 7 stores in Illinois, in 1928; the May Drug Co., with 18 stores in Pennsylvania, in 1929; and Wolff-Wilson Co., with 9 stores in Missouri, also in 1929. The acquisitions were practically all in districts in which the Liggett Co. had not theretofore been operating.

Recent reports indicate that the Louis K. Liggett Co. was involved in bankruptcy proceedings and that a new company, under the name of Liggett Drug Co., Inc., was organized as a subsidiary of the United Drug Co. and had acquired all of the assets of the Louis K. Liggett Co. from the trustees in bankruptcy.

102886—35——2

In January 1930, Drug, Inc., a large holding company, acquired the capital stock of The Owl Drug Co. which had been developed by the acquisition of small drug chains and was in competition with the Liggett Co. in nine Western States.

However, Drug, Inc. has disposed of its holdings and has been dissolved. The Owl Drug Co. is now being operated by a trustee in bankruptcy and an effort is being made to dispose of its assets.

Acquisitions by variety chains.—Five of the fourteen variety chains reporting made acquisition of other chains. Only one of these acquired capital stock of existing chains.

The J. J. Newberry Co., operating 51 stores in Pennsylvania, Ohio, Vermont, Maine, Maryland, New Jersey, West Virginia, New York, Rhode Island, Connecticut, and Indiana, extended its territory into New Hampshire and Massachusetts, by the acquisition, in 1923, of the capital stock of the F. E. Nelson Co., operating 7 stores in these States. California was included in its territory in 1926, with the acquisition of capital stock of the California 5-and-10-cent stores, with 4 stores in that State, and in 1928, the territory was extended into Washington and Oregon by the acquisition of the capital stock of Brittan Brothers, Inc., operating 4 stores.

The F. & W. Grand-Silver Stores, Inc. was formed November 8, 1929, by consolidating the F. & W. Grand Co. with Isaac Silver & Brothers. This merger brought under one management 137 variety stores located in 29 States and the District of Columbia.

Acquisitions by furniture-store chains.—Three furniture chains furnished information, only one of which had made acquisitions. The Reliable Stores Corporation reported, that at the time of its incorporation, in 1925, nine companies were consolidated. These companies received stock in Reliable Stores Corporation in exchange for the capital stock of the respective companies. The consolidating companies and the territories which they served were as follows:

		Stores
1.	Reliable Furniture & Carpet Co., Indianapolis, Ind	1
2.	Terre Haute Furniture Co., Terre Haute, Ind	1
3.	Reliable Furniture & Carpet Co., Rochester, N. Y	1
4.	Christian Schmidt Carpet Co., Newark, N. J	1
5.	Reliable Furniture & Carpet Co., Detroit, Mich	1
6.	George B. Clark Co., Bridgeport, Conn	1
7.	Julius Lansburgh Furniture Co., Washington, D. C	1
8.	National Furniture Co., Washington, D. C	1
9.	Hub Furniture Co., Washington, D. C	1
10.	H. Crockin Furniture Co., Norfolk, Va	1

The three stores in Washington, D. C., were operating in competition and since the time of acquisition have continued to operate under the old name and ostensibly are competitors.

Sec. 5. Production and movement of goods in chain-store merchandising

Primarily chain companies are organized for the purpose of distributing merchandise at retail, and the vast majority of chains function only as retail organizations. Some chains, however, manufacture at least a part of the commodities to supply their own stores. Some chains sell their surplus of manufactured articles at wholesale to other dealers. The majority of the large chains operate and maintain warehouses to which purchased supplies or their own manufactured articles are shipped and from which supplies or articles are distributed to the retail stores within their respective districts. A small amount of selling at wholesale is done by the chains from these warehouses and shipments made to purchasers both within the State and across State lines.

Roughly speaking, the reports for 1928 show that chains operating between 2 and 10 stores maintain them in less than 2 States on the average; those operating between 11 and 50 stores, in less than 5 States; those operating between 51 and 1,000 stores in approximately 9 States; and the 9 reporting companies in the 1,001 stores and over group, in an average of 23.22 States, or approximately half of those in the country.

There are three types of chain-store manufacturing companies: First, those that are completely integrated concerns, selling in their stores only what their factories produce; second, those that are engaged primarily in manufacturing, are only secondarily interested in retailing and dispose of their product largely through independent channels; and third, those that are primarily retailing organizations and engaged in manufacturing to a limited extent. The concerns whose business is primarily manufacturing with the operation of chain stores as a secondary consideration are to be found in the confectionery, shoe, and ready-to-wear clothing groups. The food and drug chains are primarily retailing organizations, as are most of the department and variety store chains.

The large chains are large purchasers, and all purchases of merchandise, whether to be used in manufacturing or for resale at wholesale or retail, are delivered to the factory for use in manufacturing or to warehouses for storage until needed or to the retail store for sale over the counter.

The purchasing and transportation of merchandise to warehouses and direct to chain-store retail units comprehends all goods sold by the chains, except that part originating in the chain's own factories, and represents by far the larger part of the goods sold, except in those groups where there is full or extensive integration, as in the confectionery, shoes, and certain others of the wearing apparel groups. Substantial portions of the goods thus purchased and transported move across State lines.

In addition to the movement of purchased merchandise, goods move to the warehouse or direct to the retail unit from the company-owned factory, and also to the retail unit from the warehouse. Frequently this movement is from without the State in which the warehouse or retail unit is located.

By their purchases in foreign countries and transportation to their warehouses and retail units, chain-store companies are extensively engaged in buying goods for movement across both State and National boundaries.

Manufacturing chains operate over 50 percent of the total number of stores in nine kinds of business, namely, confectionery, men's shoes, men's ready-to-wear, unlimited price variety, drug, grocery, grocery and meat, department store, and dry goods and apparel. They account for over 50 percent of the 1930 sales in nine kinds of business, including all of those just mentioned except department stores and with the addition of millinery chains.

Over 70 percent of the sales of manufacturing chains is represented by goods of their own manufacture in seven kinds of business (confectionery, men's shoes, men's ready-to-wear, women's shoes, hats and caps, men and women's shoes, and women's accessories), and in no other line of business do manufacturing chains produce more than one-third of the merchandise they sell. Over 50 percent of the total sales of all reporting chains is produced by the manufacturing chains in three lines of business (confectionery, men's shoes, men's ready-to-wear), and in no other kind of business does this proportion exceed 30 percent. It appears that those lines of chain-store business such as foods, drugs, and variety which handle wide assortments, as contrasted with specialized lines of merchandise, while experiencing the greatest expansion in number of stores operated, have experienced, relative to their volume of sales, the least development of chain-store manufacturing.

Of 1,068 chain-store companies in 26 kinds of business which furnished information on the question of manufacturing, 162 reported that they manufactured part of the goods sold by them in their stores in the year 1930. These 162 manufacturing chains operated 32,127 stores at the end of that year and made sales during the year of $2,490,262,300, of which $349,950,600 is the estimated retail value of the goods manufactured by them. While these 162 chains comprise 15.2 percent of the total number of chains reporting, the stores operated by them comprise 60.4 percent of the total number of stores and their sales are 57.9 percent of the total sales of $4,304,009,600 of the 1,068 chains reporting.

The retail sales in 1930 of goods manufactured by these chains amounted to approximately $350,000,000, equivalent to 14.1 percent of the total retail sales of the 162 manufacturing chains and to 8.1 percent of the total sales of the 1,068 chains reporting. Seventy-five, or a little less than one-half of the manufacturing chains produce less than 25 percent of the merchandise they sell, 14 of them manufacture from 25 to 50 percent, and 73, or 45 percent of the total number, manufacture from 50 to 100 percent of the goods sold in their stores.

As nearly as can be estimated, the 1,396 reporting chains in 25 different kinds of business purchase, in the aggregate, 93 percent and manufacture 7 percent of their total supply of merchandise. Less than 14 percent of all reporting chains engage in manufacturing. Chains in five kinds of business do no manufacturing, namely, $5 limit variety, men's furnishings, dry goods, general merchandise, and hardware chains.

Purchase from manufacturers is by far the most important source of chain-store merchandise, accounting for approximately 70 percent of the aggregate supply of all chains. Three other sources—wholesalers, brokers, and commission men, and growers and growers' organizations—each contribute approximately 7 percent of the total supply, with wholesalers supplying slightly more than brokers and brokers slightly more than growers. Other miscellaneous and unspecified sources supply the remaining 2 percent of chain-store merchandise.

A larger number of chains patronize manufacturers than patronize any other source of supply. Of all reporting chains, 92 percent buy from manufacturers, and the volume obtained from that source comprises 75.5 percent of the aggregate purchases of all chains. Here and in the following discussion the percentages given are based upon total purchases, excluding the 7 percent of the total supply of merchandise which the chains manufacture for themselves. Although wholesalers supply only 7.9 percent of chain purchases, 77 percent of the chains patronize that source of supply. Brokers and commission men, furnishing 7.3 percent of the total amount purchased, are patronized by 22 percent of the chains; while 13 percent of all reporting chains buy from growers and growers' organizations the 7 percent of purchased merchandise which is obtained from that source.

Reports obtained from a number of the larger grocery and meat chains, describing their purchasing practices in considerable detail, indicate that the extensive dependence of food chains upon brokers and commission men is accounted for in a large degree by the highly perishable character of many products which they sell. The food chains' necessity of obtaining promptly their enormous requirements in perishable products from whatever sources are at the time in a position to deliver them gives the broker an opportunity to perform a service for which these chains are apparently willing to pay. The Great Atlantic & Pacific Tea Co., and the Kroger Grocery & Baking Co. have developed broker organizations of their own for purchasing fruits and vegetables, but even these subsidiary organizations do not by any means take care of all their requirements in these products.

Dry-goods and general-merchandise chains purchase more than half of their merchandise from wholesalers, and in seven other kinds of business the proportion runs from 20 to above 40 percent. This last group includes such important lines as the drug, meat, dry-goods and apparel, and hardware chains. The grocery, department-store, and men's furnishings chains also buy more than 10 percent from wholesalers and, if The Great Atlantic & Pacific Tea Co. and the Kroger Grocery & Baking Co. be omitted, the purchases from wholesalers by the grocery and meat chains average 17.3 percent of their total purchases. While these figures do not give any measure whatever of the effect of chain-store growth upon the business done by independent wholesalers, they do show that the chains are still far from being as independent of middlemen as may be commonly supposed.

During the interval from 1922 to 1928, however, an appreciable decrease took place in the dependence of chains upon the services of wholesalers, and there was also a slight decrease in the proportion purchased through brokers and commission men. Direct purchases from manufacturers by the 555 chains reporting for both years increased from 76.5 percent of total purchases in 1922 to 81.2 percent in 1928. The brokers and commission men's proportion declined fractionally during this period, while that of the wholesalers dropped from 13 to 8.5 percent. Increases in direct buying occurred more commonly among chains operating more than 50 stores and were least common among chains operating from 11 to 50 stores.

The 2–5 store grocery, and grocery and meat chains purchase 27 percent from manufacturers, while chains operating more than 1,000 stores in the same lines of business purchase 66 percent from that source. The drug and tobacco chains of smaller sizes buy less than 40 percent from manufacturers, while the larger chains in these groups buy 95 percent from that source. In most lines of business the proportion purchased from manufacturers increases with an increase in the size of chain, and there is a corresponding decrease in the proportion supplied by wholesalers. As the grocery and the grocery and meat chains increase in size, however, the increase in the proportion supplied by manufacturers is accompanied by substantially increased purchases through brokers and commission men.

Two hundred of the 1,655 chains answering the inquiry in respect to wholesale business report that they wholesale as well as retail. These chains operated 29,208 retail stores and had a total of $1,835,484,202 retail sales in 1928. They account for nearly one-eighth of all chains, almost half the stores, and more than one-third the total retail sales of all the chains reporting upon the question.

The 200 companies that do wholesaling in addition to their retail business include some of the largest chains in the country, which explains the high ratios of both retail stores and retail sales to the number of chain systems engaged in wholesaling. Eliminating data respecting two of the largest companies—The Great Atlantic & Pacific Tea Co. and the Kroger Grocery & Baking Co.—while the remaining 198 chains engaged in wholesaling would still represent about 12 percent of the total chains, they would account for slightly less than 20 percent of the stores and something over 17 percent of the total retail sales.

On the average, chains engaged in wholesaling operate about six times as many stores per chain as those which report no wholesale business. Again excluding the same two large companies, the retail chains that wholesale average about twice the number of stores per chain as those that do not.

One hundred and thirteen of the two hundred chains that wholesale, report a break-down of their 1928 sales between wholesale and retail business. These chains operated 27,473 stores and had total sales of $1,686,005,590 in 1928, of which 5.1 percent ($86,087,693) were sales at wholesale. But if the results for the two large chains are excluded, then the proportion of wholesale sales of the remaining 111 chains is much greater—well over 12 percent.

In this report, size has been measured by the number of stores operated by each reporting chain. Four out of the total of nine retail chains operating more than 1,000 stores each, carry on a wholesale business. These four account for nearly 75 percent of the stores and slightly more than 65 percent of the 1928 retail sales in this group. At the other extreme just over 8 percent of the chains operating from 2 to 5 stores sell at wholesale. These organizations account for approximately 9 percent of the stores in this group and 16.5 percent of the retail sales.

Twenty-five chains, operating from 6 to 10 stores, report 37.4 percent of their total sales as wholesale business, the highest ratio reported by any size group. The aggregate wholesale sales of the chains in the 4 size groups between 26 and 1,001 stores are well over 15 percent of their total sales. Although 4 chains, each operating over 1,000 stores, report a combined 1928 wholesale business of almost $20,000,000, this sum equals only 1.5 percent of the aggregate wholesale and retail sales for this group.

Nearly one-fourth of all items retailed by 49 reporting chains are, on the average, also sold by them at wholesale; the average number of items wholesaled is 1,024, against an average of 4,513 items sold at retail. Some chains wholesale only one item or class of commodity, while at least one company reports wholesaling its entire stock, consisting of several thousand items.

Nearly all the retail chains that wholesale conduct their wholesale operations through the same company as that operating the retail stores. One hundred and forty-eight out of 171 of the companies that wholesale, 86.6 percent, report that the wholesale business is conducted by the chain-store company itself. Seventeen others, or 9.9 percent, wholesale through a subsidiary company while 4 chains, or 2.3 percent, operate this portion of their business through an affiliated company and 2 others, or 1.2 percent, report a wholesale connection through holding companies. Interest in 13 of the 17 subsidiary companies is reported to be stock ownership, usually 100 percent. One of the largest of these 17 chains operates approximately 2,000 stores, although the majority of such chains operate less than 100 stores each.

Sec. 6. Legal status of existing chain-store systems

The resolution recites the remarkable growth of chain-store sales in proportion to total retail sales and the possibility that this growth and the consolidation of chain-store systems may produce monopolies. It calls for a report upon the extent to which there has been a tendency to create monopoly or concentration of control and the extent to which consolidations have been effected in violation of the antitrust laws. The resolution also raises the question of how far chain stores are engaged in interstate commerce and therefore susceptible of regulation under Federal laws.

Interstate commerce of chain stores.—There have been no court decisions on the extent to which chain stores are engaged in interstate commerce. Each chain system, of course, must be separately considered in its relation to this or any other legal question involving its amenability to existing law. On the principles established by the Supreme Court in other cases, however, there is good reason to believe that Federal jurisdiction would be upheld as to many phases of chain-store operation. The most doubtful phase from the standpoint of Federal jurisdiction, of course, is that covering retail, over-the-counter sales to the consumer.

Some of the large retail chain organizations operate thousands of retail stores located throughout the several States. These stores are supplied by a central buying unit purchasing merchandise in the several States and in foreign countries in trainloads and cargo lots. Both interstate and foreign commerce are often involved in their purchase and transportation of merchandise to the numerous retail units. Warehouses are maintained for convenience in storing and distributing the goods to the retail stores. Much of the goods handled are delivered to the individual stores from the warehouses in unbroken case lots. Perishables are delivered direct from the railway cars or trucks to the store. A number of the chains manufacture goods for sale in their stores and transport them across State lines as a prerequisite to such sales.

Considering these facts in the large, the following language of the Supreme Court in *Dahnke-Walker Milling Co.* v. *Bondurant* (257 U. S. 282) seems applicable:

Where goods in one State are transported into another for purposes of sale the commerce does not end with the transportation, but embraces as well the sale of the goods after they reach their destination and while they are in the original packages. (*Brown* v. *Maryland*, 12 Wheat, 419, 446–447; *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500, 519.) On the same principle, where goods are purchased in one State for transportation to another the commerce includes the purchase quite as much as it does the transportation. (*American Express Co.* v. *Iowa*, 196 U. S. 133, 143.) This has been recognized in many decisions construing the commerce clause (p. 290).

It is important to note that the only interstate transportation which took place in the above case was at the instance of the purchaser, and so far as the contract between buyer and seller was concerned, it was consummated entirely within a single state.

The court continued:

In no case has the court made any distinction between buying and selling or between buying for transportation to another State and transporting for sale in another State. Quite to the contrary, the import of the decisions has been that if the transportation was incidental to buying or selling it was not material whether it came first or last (p. 291).

In this same case the Supreme Court discussed interstate commerce under the commerce clause of the Constitution, as follows:

Such commerce is not confined to transportation from one State to another, but comprehends all commercial intercourse between different States and all the component parts of that intercourse.

In *Binderup* v. *Pathe Exchange, Inc., et al.* (263 U. S. 291), the existence of interstate commerce was disputed on the ground that films, the commodity there involved, although transported across State lines by the shipper, were first delivered to a local agency of the shipper before passing into the hands of those for whose use they were brought into the State. The Supreme Court said:

If the commodity were consigned directly to the lessees, the interstate character of the commerce throughout would not be disputed. Does the circumstance that in the course of the process the commodity is consigned to a local agency of the distributors, to be by that agency held until delivery to the lessee in the same State, put an end to the interstate character of the transaction and transform it into one purely intrastate? We think not. The intermediate delivery to the agency did not end and was not intended to end the movement of the commodity. It was merely halted as a convenient step in the process of getting it to its final destination.

In *Stafford* v. *Wallace* (258 U. S. 495), the Supreme Court said that the principles of the Swift case "have become a fixed rule of the court in the construction and application of the commerce clause." In the Pathe case referred to, the Supreme Court cited the *Swift case* (196 U. S. 375, 393), to the effect that the recurring purchase of livestock at the stockyards, transported there from without the State, was a "part and incident" of interstate commerce. The court then continued:

It further appeared in that case that Swift & Co. were also engaged in shipping fresh meats to their respective agents as the principal markets in other cities for sale by such agents in those markets to dealers and consumers; and these sales were held to be part of the interstate transaction upon the ground "that the same things which are sent to agents are sold by them, and * * * some at least of the sales are of the original packages. Moreover, the sales are by persons in one State to person in another." In the same case in the court below, 122 Fed. 529, 533, upon this branch of the case, it is said:

"I think the same is true of meat sent to agents, and sold from their stores. The transaction in such case, in reality, is between the purchaser and the agents' principal. The agents represent the principal at the place where the exchange takes place; but the transaction, as a commercial entity, includes the principal, and includes him as dealing from his place of business."

If the above doctrine of agency be applied, it would seem that when chains ship merchandise across State lines to their branches or warehouses as "a convenient step in the process of getting it to its final destination" and into the hands of local purchasers, "the whole transaction", particularly if original packages are involved, may be considered as in interstate commerce, to paraphrase the language of the Supreme Court in the Pathe case (supra). On the other hand, no court has definitely held that ordinary, over-the-counter retailing constitutes a part of interstate commerce. In fact, the decisions are adverse to any such theory. The conclusion, therefore, is that while application of the theory of the Pathe and Swift cases would put some parts of chain-store retailing under Federal jurisdiction, it would require special litigation to determine the exact scope of such jurisdiction.

Chain-store systems as possible monopolies under the Sherman Act.—In the grocery group, where chain-store systems have reached their largest development, it has been shown (supra, p. 8) that the large national and sectional chains participate proportionately with smaller sectional and local chains in retail grocery sales falling to these types. The competition which they furnish to each other, supplemented by that of independent stores, would seem to negative monopoly by any individual chain. The same is true as to the larger chains in the drug group, where the two large national chains in active competition with each other at various points together control but 6.8 percent of total retail drug sales.

A study of the extent to which chain-store companies have invaded the general field of retail distribution of commodities does not indicate a monopolization of that field, taken as a whole. For the year 1929 total chain-store sales represented 19.3 percent of the aggregate retail sales of the United States as against 80.7 percent for all other methods of distribution. Local chains accounted, however, for 6.7 percent and sectional chain companies only 12.6 percent of the United States aggregate sales.

A much stronger showing might be made from the standpoint of particular chain companies and their percentage of control in the particular line of commodity distribution of which each is a part. It is possible, also, that a monopolistic condition might be established in a given section of the country and not for the country as a whole. However one may view the economic question of monopoly, it is futile to treat the legal question of monopoly as one that is determinable from size or the proportion of business controlled. Under the principles announced by the Supreme Court a concern may do all the business in its field of operation and have no competition without infringing section 2 of the Sherman Law, which makes it a penal offense to monopolize, attempt to monopolize, or combine or conspire with others to monopolize "any part" of interstate and foreign trade or commerce.

The broad prohibition of the Sherman Law against monopoly has been narrowed by interpretation of the courts to mean that only actual, as distinguished from potential, monopoly is unlawful, and that the mere possession of monopolistic power, in the absence of overt acts indicating an illegal use thereof, is not a violation of this statute. As stated by the Supreme Court in *U. S.* v. *International Harvester Co. et al.* (274 U. S. 693), "the law does not make the mere size of a corporation, or the existence of unexerted power on its part, an offense, when unaccompanied by unlawful conduct in the exercise of its power." To the same effect see *U. S.* v. *United States Steel Corporation* (251 U. S. 417). Under the principles of these decisions, if there should develop one gigantic all-inclusive chain-store system for each line of distribution, its status as a lawful monopoly could be attacked only to the extent it had violated the law as a means of attaining monopoly, and exercised its monopolistic power contrary to law. The situation may call for a reconsideration by Congress of the public policy involved in the monopoly section of the Sherman Law, whether the Supreme Court has correctly interpreted the legislative intent and whether any restatement of such intent is desirable.

There seems even less basis for considering cooperative chain-store systems as monopolies or combinations in restraint of trade under the Sherman Law. They do not control nearly the proportion of the business which some of the regular chain-store systems control. Except upon the radical and far-reaching theory that competition among buyers must not be encroached upon by cooperative buying because of its ultimate results, it would be almost impossible to sustain the proposition that cooperative buying by independent stores is or should be made a violation of law. So far as their sales are concerned, there is no united action which might be classed as a violation of the antitrust laws, unless agreement upon the prices to be charged for jointly advertised leaders may be so considered. Prima facie such an agreement would seem to run counter to any State or Federal law which forbids price fixing by agreement among competitors.

Chain-store acquisitions and consolidations under the Clayton Act.—Section 7 of the Clayton Act declares it unlawful for any corporation engaged in interstate commerce to acquire any part of the capital stock of another corporation likewise engaged, where the effect "may be to substantially lessen competition" between them, or "to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce." The section also forbids any corporation, whether engaged in interstate commerce or not, to acquire any part of the capital stock of two or more corporations engaged in interstate commerce where the effect may be as above stated. The Federal Trade Commission and Department of Justice are both given jurisdiction to enforce these provisions.

A noteworthy feature of the section is that there is no prohibition of acquisition or consolidation of the physical properties of competing corporations. Many of the consolidations of chain-store systems took that form and thereby placed themselves beyond reach of the act. Another difficulty in enforcement of the section is that the Supreme Court has held that the Commission cannot order the divestiture of physical properties even though acquired through the voting of stock acquired in violation of the section. A historical analysis of the section is given in chapter VII of this report.

During the course of the investigation, there came to the attention of the Commission instances of purchases by chain-store companies of capital stock in other chain companies in the same line of business, involving acquisitions by grocery chains, drug chains, variety-store chains, furniture-store chains, and confectionary chains.

Several of the larger grocery chains made substantial acquisitions through purchase of assets. These chains include the American Stores Co., First National Stores Co., and Kroger Grocery & Baking Co.

There has been but one merger of the major grocery chain companies, that of Safeway Stores, Inc., and MacMarr Stores, Inc. In this instance, the two companies each operated in 10 of the Rocky Mountain and Pacific States. In those States in which they were both represented, they operated 11 percent of grocery stores, with approximately 18 percent of total grocery sales. In five of these States in which they were the most largely represented, the two companies controlled approximately 25 percent of total retail grocery sales. With this consolidation, the only competition in this territory between chains with national and sectional distribution was eliminated.

However, the merger was effected through the acquisition of assets and so did not come within the purview of section 7 of the Clayton Act.

Of the grocery chains which made acquisitions through purchase of capital stock, the acquisitions by some of the chains merely extended the distribution territory of the companies and there appeared to be no elimination or substantial lessening of competition in selling at retail among the stores acquired. The two outstanding examples of large chains built up through acquisition—the Kroger Grocery & Baking Co. and Safeway Stores, Inc.—either acquired assets originally or acquired the capital stock and subsequently obtained the assets of the companies whose stock had been acquired, thus defeating the jurisdiction of the Federal Trade Commission under the ruling in the *Thatcher Manufacturing Co. case* (272 U. S. 554). The National Tea Co. reported the acquisition, over the period 1923 to 1928, of the capital stock of 10 grocery-store chains with an aggregate number of 767 stores at the time of the several acquisitions. These stores were absorbed by the acquiring company and thereafter operated as National Tea Co. stores. The companies whose stock was acquired are inactive and are kept alive for the purpose of preserving the several company names and franchises.

Investigations made by the Commission from time to time have failed to disclose reason to believe there have been violations of section 7 of the Clayton Act by chain stores of the grocery group.

Only one of the large confectionery chains reported any acquisitions. In September 1930, Loft, Inc., purchased 71 percent of the capital stock of Happiness Candy Co. and through the purchase came into the control of that company and its 57 retail candy stores. While each company operated stores in Connecticut, New Jersey, New York, and Pennsylvania, of the competition that might have been lessened, that in New York City, where Loft operated 42 stores and Happiness 41 stores, is the only competition which might have been substantial. While it is probable there was some competition between the retail stores of these companies, located in New York City, the amount that was eliminated under the conditions was probably not substantial if figured on a percentage basis as the Supreme Court did in the International Shoe Co. case (280 U. S. 291). On the other hand, all the competition which previously existed between them was eliminated and the amount of gross business consolidated was substantial.

In the group of the larger drug chains, the Walgreen Co. purchased the capital stock of the Economical Drug Co., operating 19 retail drug stores in Chicago. While this purchase brought to the Walgreen Co. important centrally located drug stores, the amount of competition which existed and which was eliminated was not substantial on a percentage basis. Here again, however, all the competition previously existing was eliminated and the amount of gross business combined was substantial.

The most important acquisitions in the drug group were those made by Drug, Inc., with which Louis K. Liggett Co. was affiliated. Drug, Inc., acquired the capital stock of a large number of drug manufacturers of special trade-marked products involving no competition, and a number of drug chain stores, including the Owl Drug Co., which operated stores in California, Oregon, Washington, and Utah. During 1933 Drug, Inc., disposed of all its holdings and made preparation for dissolution.

Three chain-store companies in the variety group, out of the 14 large chains, made acquisitions through purchase of capital stock. In two of these instances there was no competition and the acquisition served only to extend the distribution of the acquiring companies into new territory. The third company, F. & W. Grand-Silver Stores, Inc., was a consolidation under which the new company acquired all the capital of the two consolidating companies. The companies were each operating one store in Savannah and Atlanta, Ga., Plainville, N. J., and Baltimore, Md. The Isaac Silver Co. operated one store each in Brooklyn, N.Y., and Philadelphia, Pa. The F. & W. Grand also operated stores in these cities. The extent of possible competition that was lessened was that between the stores in these cities, 12 stores out of the 137 involved in the consolidation. In August 1933, all the assets of this corporation were purchased by H. L. Green Chain Stores Corporation from the receiver under court order of sale.

In the furniture group, one chain, Reliable Stores Corporation, reported that it was a holding company and at its organization it had acquired the capital stock of nine companies. Of these acquired companies, three, located in the city of Washington, D. C., have continued operating under their respective names and can be said to be in actual or potential competition.

The difficulty with all these cases, aside from the ever present one of Federal jurisdiction, is that there is no precise method for determining the amount of competition between stores located in the same market area. If the legal status of potential competition were less vague a conclusion could be more easily reached. The Commission is giving further study to these various questions in their bearing upon the chain-store acquisitions above described in order to decide whether there is reason to believe that section 7 has been violated and whether the violation is beyond reach of the Commission's remedial processes as defined by the Supreme Court.

CHAPTER III

COMPETITIVE PRACTICES AND TRADE POLICIES OF CHAIN STORES

Introduction

The resolution calls for a report upon "evidences indicating the existence of unfair methods of competition in commerce or of agreements, conspiracies, or combinations in restraint of trade involving chain-store distribution." In response to this it may be said that so far as agreements, conspiracies, or combinations in restraint of trade among chain stores themselves are concerned, the inquiry has failed to disclose any such practices. On the contrary, chain companies within the various commodity groups actively compete with other chains in the same group. Practically no one has even alleged the existence of any contracts between, or combinations of, competing chains to fix prices, control production, divide territory, or otherwise seek to restrain competition by united action. The investigation has shown, however, a number of competitive practices and trade policies which merit presentation as being possibly "unfair methods of competition in commerce" as called for by the resolution.

Of 62 private complaints against chain-store concerns of which investigations have been made, 38 involved grocery chains, 5 drug chains, 6 confectionery chains, 4 tobacco chains, 3 variety chains, and 6 involved general and department store chains. In 26 of the complaints the investigation involved possible violations of section 7 of the Clayton Act.

The records of the Commission show that 27 private complaints have been filed alleging unfair practices by chain stores in the sale of merchandise. Twenty-three complaints come in the category of misbranding of goods and false and misleading advertising, 3 involved charges of selling below cost to the injury of competitors, and 1 contained charges of conspiracy to maintain prices, the operation of a lottery and price discrimination.

Other alleged unfair practices involved in chain-store marketing have from time to time been charged against chain-store organizations and some manufacturers selling them goods. Chain companies have been charged with obtaining and manufacturers have been charged with making for chains, exclusively, undersized or irregular packages of goods containing less than the standard packages sold to the general trade. In some cases it has been alleged that special containers, which resemble in every respect the accepted standard containers but which are smaller, are used, or being of same size and not completely filled, thereby enabling the chains to retail the commodities in such containers at a lower price.

Such charges have been investigated from time to time. It has been found that in some cases the size of the container is changed by some manufacturers, as occasion arises, in order to meet price fluctuations. As the chain stores have a more rapid turn-over they naturally receive the new size containers before their independent competitors do, and the fact that these containers were on sale in the chain stores before they reached the independent retailer gives rise to the belief that manufacturers were making special sizes for the chain stores.

It is true that some manufacturers do make special sized packages for chain stores, but these are made to sell at a low price. Illustrations may be found in the small packages of popular tooth pastes sold in dime stores. The small sizes are not, as a rule, sold in any but chain variety stores, and while some customer competitors of chains have objected to this restriction the manufacturer claims that he is within his rights in confining the sale of his product in special size packages to a class of purchasers of his own choosing.

Section 1. Chain-store buying methods — Brokers —

As shown elsewhere, the ability of the chain store to obtain its goods at lower cost than independents and of large chains to obtain goods at lower cost than small chains is an outstanding feature of the growth and development of chain-store merchandising. These lower costs have frequently found expression in the form of special discounts, concessions, or collateral privileges which were not available to smaller purchasers. In seeking to buy at the lowest possible cost the chain does only what the independent does, but its size and bargaining power are such as to make its efforts yield far better results than those of the independent.

There has been considerable criticism of some of the methods used by chain systems in their bargaining with manufacturers for special-price concessions. The criticism comes largely from the manufacturers themselves, many of whom protest the methods used while yielding to them. Some state their yielding was accomplished only as the result of "threats" and "coercion." All these cases of threats and coercion, however, seem to be reducible to chain-store statements or intimations to the manufacturer that unless the concessions sought were granted, the chain would either enter upon the manufacture of the goods in question for itself, buy them from some other source than the seller with whom it was then negotiating, or would discourage the sale of his products.

A vivid idea of the enormous bargaining power embodied in chain-store purchases may be gained from the fact that The Great Atlantic & Pacific Tea Co. makes purchases of merchandise amounting to over $800,000,000 annually and other large chains make purchases in proportionate amounts.

There were interviews with 129 manufacturers in the grocery group, 76 of which admitted that preferential treatment in some form was given. Thirty-three of the manufacturers interviewed stated positively that threats and coercion had been used by chain-store companies to obtain preferential treatment. In some of the cases where no threats or coercive measures were employed, the preferences were given as the result of requests on the part of the chain stores. One manufacturer reported that it had been requested time and again to enter into advertising campaigns with large chain customers, but it had never taken part in any cooperative advertising of any kind; and another, that it is incessantly importuned by the large buying units to grant extra discount, but that so far, it had not departed from its policy of treating all buyers alike.

One large grocery chain is usually successful in buying under the list price because of its keen knowledge of the markets. For example, it will frequently play the market of one State against the market of another with threats that if the price at which goods can be obtained from the other State is not met, the manufacturer will not obtain the business. Similar chains and wholesalers, it was reported, who do not feel the pulse of other markets in this way, do not secure the preferential treatment.

In 23 of the 33 instances, threats and coercive measures were employed and resulted in securing the concession demanded. Of the 10 cases where the manufacturers refused to accede to chain buyers, 5 were demands for brokerage and 5 for concessions of various other kinds. A number of manufacturers reported that due to their unwillingness to accede to such demands, they had not only lost some regular customers, but had been unable to sell others making the demands. One chain based such demand on the fact that the manufacturer could dispense with the services of a broker or other intermediary. Two of the large chain companies do not place orders with a certain manufacturer because of its refusal to allow brokerage. Another manufacturer reported that it does not sell to two chain companies, because they operate commission establishments or buying agencies which demand a brokerage fee on all purchases. This manufacturer expressed the opinion that buyers who operate in this manner are endeavoring to obtain remuneration for services which have not been performed. On the other hand, it might be said that to include brokerage in the price where the buyer does his own brokerage is likewise obtaining remuneration for services which are not performed. The reason given by one manufacturer for refusing to allow brokerage to a chain was that the practices of the chain companies in using their preferences to reduce prices gives them an unfair advantage in competing with wholesalers and small retailers. One expressed the opinion that chain companies seek to realize such advantage through volume buying as will offset the cost of operating their buying agencies.

Of the 23 instances in which manufacturers in this group stated that they acceded to the demands of chains, 15 were demands for brokerage, 1 for freight allowance, 2 for lower prices, and 5 were for other concessions. Those who granted brokerage, because of demands therefor, stated that they acceded in order to obtain the business. This was also true with respect to a manufacturer granting a freight allowance. One or two manufacturers, stating that coercion had been employed to force the cutting of prices, said that if the customer has a large order and demands a cut price, the company often is required to meet the demand or lose the business to its competitors. The other stated that the large chains "chisel" a substantial percentage from the net invoices of every order placed.

One manufacturer reported that some years ago it made extensive sales to a chain, but that the demands of that chain became so excessive that it was forced to stop selling the chain. The chain in question had built up the volume of its purchases to about 40 percent of this manufacturer's output, and then suddenly demanded larger concessions, which the manufacturer was forced to grant or else have its production curtailed to that extent. As a result of this experience the manufacturer built up a trade with small jobbers to avoid being forced to make concessions. Another manufacturer reported that a chain company refused to handle its products unless the chain was given a free-goods allowance. Another manufacturer stated that an arrangement is in effect with one chain company whereby a percentage of net invoice price is rebated. Still another manufacturer was forced to grant concessions to a chain by threat that it would discontinue its purchases and manufacture its own products unless it were granted a preferential price.

Fear of losing the business of certain chains through whom a large part of their output was marketed, and threat to manufacture a competing product were reasons assigned by some grocery manufacturers for acceding to the demand of chain-store buyers for special concessions in the way of special prices, discounts, and allowances.

There were 88 manufacturers interviewed in the drug group, 36 of which admitted that price preferences are given to chains. The facts disclosed indicate greater reticence on the part of drug manufacturers than those in the other groups in admitting the exercise of pressure on the part of chain-store owners in obtaining preferential treatment. Only four of the total number interviewed stated that threats and coercion had been employed. The others either made no definite statements or indicated that the buying policy pursued by the chains was such as to make the granting of preferences necessary. As to the four reporting the use of coercion by chains, one stated that the giving of preferential treatment is the thing it has been compelled to fight at all times and that large chain stores are continually seeking to buy at larger discounts than are granted to other customers. Another reported that one of the chains had temporarily discontinued the sale of its product because of the refusal of the company to pay any proportion of the cost of a number of signs displaying its product along with other merchandise.

Of the 26 tobacco manufacturers interviewed, 16 admitted that price preferences were given by means of extra discounts, rebates, or other allowances. Where threats or coercive measures to force discounts and allowances were employed, some of the manufacturers yielded rather than risk the consequences of their failure to meet the demands of these powerful buying organizations. In those instances, the threat by chain-store operators that their commodities would not be accorded free outlet seems to have been the most effective method employed in forcing preferences from manufacturers. In the execution of such threats, goods are not featured or placed within vision of purchasers and attempts are made by the distributor to substitute goods of manufacturers who do grant the preferences demanded.

Another type of coercive measures encountered in the tobacco trade is the absolute refusal on the part of the distributor to handle the commodities of manufacturers refusing to yield. Of the 16 manufacturers in the tobacco group granting preferences, 12 stated a reason for granting of such preferences. The principal reason given for extending preferential treatment was that the immense bargaining power in the hands of the chain-store owners naturally made them better buyers than their competitors.

There has been considerable agitation on the part of the competitors of chains alleging monopolistic tendencies and unfair methods of competition in the operation of buying agencies. These agencies are usually operated as wholly owned subsidiaries of the chain companies. They perform the usual functions of commission houses, and in addition buy produce in the open market. The bulk of the produce so purchased is used to supply the needs of the parent company, a part has been contracted for by other chains, wholesalers and distributors, and the remainder is disposed of in the market. A commission is charged on all produce handled by the agency. The advantage derived by the chain company from its operation of this type of subsidiary is a price advantage based on the profit in excess of operating expenses, the general practice being to remit all such profits to the parent company for use in reducing the cost of the merchandise.

In the case of The Great Atlantic & Pacific Tea Co., purchases of nationally known trade-marked and nationally advertised goods are made by the central purchasing office in New York City. Under the direction of the vice president in charge of the central purchasing, buying offices are also maintained for direct buying of merchandise produced or packed in the following market centers: Minneapolis, Rochester, Seattle, San Francisco, New Orleans, Milwaukee, Baltimore, New York, Chicago, and Boston. Some of these were originally conducted as independent brokerage offices, the brokers buying largely for The Great Atlantic & Pacific Tea Co. They are now, however, a part of The Great Atlantic & Pacific Tea Co. organization and the heads of the several offices, in some instances the former brokers, are now salaried employees of the company. On practically all purchases a brokerage, or a discount in lieu of brokerage, is collected, and inures to the benefit of The Great Atlantic & Pacific Tea Co. Many manufacturers have stated that they have been unable to sell to The Great Atlantic & Pacific Tea Co. because they would not allow brokerage, and others, that they have been able to sell the company only because they were allowed brokerage. The purchases of these offices for the year 1932 are reported as amounting to approximately $255,000,000. The brokerage is equivalent to the prevailing brokerage in the various markets.

For obtaining its supply of produce The Great Atlantic & Pacific Tea Co., as parent company, operates the Atlantic Commission Co. as a 100-percent owned subsidiary. Approximately 70 percent of the produce handled by the Atlantic Commission Co. is delivered to The Great Atlantic & Pacific Tea Co., retail stores, the remaining 30 percent being sold to other distributors. Its reported total sales for 1931 were approximately $71,000,000. The company collects a commission or brokerage on all produce handled, both that which is purchased for the parent company and that sold to others.

The company maintains a field force of some 75 representatives who cover the large producing areas.

For the most part, the company contracts in advance for the produce it is to handle. In 1933 it had agreements with something over 200 shippers. The general form of contract provides for the appointment of the Atlantic Commission Co., Inc., as "exclusive marketing agent to handle the sale and distribution of the entire shipment of fruits and vegetables owned, controlled, or otherwise handled by the shipper for and during"[5] a designated season. With the larger shipping organizations formal written contracts are ordinarily not entered into, but the terms of agreement are fixed by correspondence or are oral. Many of these larger contracts require exclusive dealing, and others give to the Atlantic Commission Co. certain exclusive distribution territory.

The Atlantic Commission Co., organized in 1925, entered the Eastern Shore of Virginia produce field in 1926, purchasing and contracting individually. In 1929 or 1930, the Eastern Shore division of the United Acceptance Corporation came into this market. It made advances to growers and so controlled the sale of their products. Under contract the Acceptance Corporation marketed the production it controlled through the Atlantic Commission Co.

In January 1932, by an arrangement between the Eastern Shore of Virginia Produce Exchange, a cooperative marketing association, the Atlantic Commission Co., and the Eastern Shore division of the United Acceptance Corporation, the Produce Exchange took over the business of the Acceptance Corporation. Under contract the Atlantic Commission Co. agreed to make all its purchases of Eastern Shore produce from the Produce Exchange; the latter in turn agreed to supply the Atlantic Commission Co. with such Eastern Shore produce as the Atlantic Commission Co. might be able to sell, giving to it exclusive selling rights in some cities and in others the joint right to sell, the Exchange retaining its agency or brokerage representatives in such cities. The Atlantic Commission Co., through the United Acceptance Corporation, and the Eastern Shore of Virginia Produce Exchange were, prior to this arrangement, the strongest competitors for the handling of the produce of this field. In 1932 the Eastern Shore of Virginia Produce Exchange handled the following percentages of production of the Eastern Shore section: Strawberries 70 percent, cabbage 60 percent, onions 65 percent, Irish potatoes 57 percent, sweetpotatoes 65 percent.

The two next largest grocery chain companies operate subsidiary commission produce companies organized subsequently to the Atlantic Commission Co. The Kroger Grocery & Baking Co. owns and operates the Vesco Foods Co.; and the Safeway Stores, Inc., operates the Tri-Way Brokerage Co. The gross sales of these two parent companies, however, each approximate but one-fourth those of The Great Atlantic & Pacific Tea Co.

√ **Sec. 2. General price policy of chain stores**

Among the subjects on which the resolution calls for a report are "the advantages or disadvantages of chain-store distribution in comparison with those of other types of distribution as shown by prices * * *."

√ The Commission's study tends to establish the fact that on the average, chain stores can and do sell at prices which are somewhat

[5] Appendix, exhibit 1.

lower than the prices charged by independent retailers or even cooperative chains.

The evidence is inconclusive on the question whether the large chains undersell the smaller ones.

For reasons connected with the time and funds available, it was practicable to analyze only the facts for the grocery and drug items. For similar reasons it was necessary to eliminate one city (Des Moines) from the original five in which selling prices were obtained and to confine the analysis to Washington, Cincinnati, Memphis, and Detroit. On the basis of these studies, it may be definitely stated that chain-store prices on comparable standard-brand merchandise, average substantially lower than those of independent retailers. This is true of the unweighted selling prices of the chain and independent stores and of prices weighted by either of the methods employed. In fact, the weighted prices of the independents were usually somewhat higher in comparison with chain-store prices than were the unweighted prices. This was true also when the geometric average was used. It should be understood that these statements refer to the aggregates of the averages of the prices of all drug or grocery commodities priced by the Commission for all independents combined and for all chains combined in each city. It does not mean that the prices of the chains average lower than those of the independents for every item compared, nor necessarily that the aggregate of the average chain-store prices for all commodities was lower than the aggregate for these same commodities for every independent establishment.[6]

In groceries, some price comparisons were also made between the chains and cooperatives and in both groceries and drugs between the large and small chain-store systems in particular cities.

The following tabular statement shows the aggregates of the average chain and independent grocery prices in the four cities priced:

City [1]	Number of items	Authorized chain prices	Independent store prices	Index of selling prices in terms of chain prices as 100 percent	
				Chain	Independent
Washington	274	$54.0778	$58.0310	100	107.310
Memphis	193	35.9567	38.1088	100	105.985
Detroit	183	33.2565	35.6616	100	107.232
Cincinnati:					
Large chains	120	21.9539	23.3473	100	106.35
Small chains	120	22.0791	23.3473	100	105.74

[1] Prices and margins of chain and independent distributors: Table 1, Washington grocery; table 1, Cincinnati grocery; table 2, Memphis grocery; table 2, Detroit grocery.

In Washington, D. C., 274 grocery items cost the consumer $58.031 at the average prices of the independent stores as compared with $54.077 at the chain stores, the independent price being 7.31 percent higher than the chain price. Relationships in other cities are as shown in the table.

[6] Because of the large number of retailers, however, the time and expense made comparisons of selling prices of individual retailers with chain stores impracticable.

If the foregoing prices are weighted by the volumes of the different items moving through chain stores and through independent stores and the results averaged geometrically, the independent price becomes much higher in comparison with the chain price than in the unweighted figures, except that at Washington, D. C., the geometric average shows the prices of independents to be only 6.42 percent higher than those of the chains as compared with 7.31 percent in the unweighted figures.

Index of independent grocery store selling prices in terms of chain-store prices as 100 percent

City [1]	Unweighted	Geometric average of prices weighted by chain and independent volume
Washington, D. C.	107.310	106.42
Memphis	105.99	108.28
Detroit	107.232	110.470
Cincinnati:		
Large chains	106.347	108.841
Small chains	105.744	109.847

[1] Ibid. Table 2, Washington grocery; table 3, Memphis grocery; table 3, Detroit grocery; table 2, Cincinnati grocery.

On a weighted basis the highest independent prices as compared with chain prices were in Detroit, where the geometric average for the independents was 10.47 percent higher than for the chain. Some of the independents had prices above and some below this average and there were, of course, variations between the different items.

A similar situation is found in the case of products sold through retail drug stores. In all four of the cities studied for these commodities, the unweighted average independent store prices on over 200 items was higher than the average chain price by from 9.8 percent (Cincinnati), to 12.4 percent (Memphis).

City [1]	Number of items	Authorized chain prices	Independent store prices	Index of selling prices in terms of chain prices as 100 percent	
				Chain	Independent
Washington	226	$117.4892	$130.0864	100	110.722
Memphis	212	106.0188	119.1694	100	112.404
Detroit	256	[2] 129.6699	144.7348	100	111.618
Cincinnati	268	130.5398	143.3377	100	109.804

[1] Prices and margins of chain and independent distributors, table 2, Washington drug; table 1, Cincinnati drug; table 1, Memphis drug; table 2, Detroit drug.
[2] Using the average store price of $131.1463 the ratio would be 110.361.

A large proportion of drug and toilet items are sold by chain stores in very large volume at very low prices. From 27 percent

(Detroit),[7] to 38 percent (Washington),[8] of the items included in this study in all four cities were handled by the chains on a gross margin of less than 30 percent.

The independents, on the other hand, sold less than 8 percent of the items at less than 30 percent gross profit on sales in any one of these cities. Presumably because of the very large volume of goods moving through chain drug stores at these low mark-ups, the weighted retail selling prices of the chains on all items are very much lower in comparison with the independents than are the unweighted prices. Thus the geometric average of chain and independent prices, when weighted by chain and when weighted by independent volume, indicates that the prices of independents are from 14.527 percent (Detroit)[9] to 22.72 percent (Washington)[10] higher than those of the chains in the four cities studied by the Commission, as compared with the range of 9.8 percent to 12.4 percent in the unweighted figures.

Index of independent drug-store selling prices

[Chain-store prices=100 percent]

City [1]	Unweighted	Geometric average of prices weighted by chain and independent volume
Washington, D. C.	110.722	122.724
Memphis	112.404	120.690
Detroit	[2] 111.618	117.479
Cincinnati	109.804	120.346

[1] Ibid. Table 3, Washington drug; table 2, Cincinnati drug; table 2, Memphis drug; table 2, Detroit drug.
[2] Using the average store prices of the chains the unweighted average would be 110.361, geometric average 114.527.

The studies of grocery prices contain indications that the difference between chain and independent selling prices is appreciably less on merchandise delivered directly by the manufacturer to retail store units, whether chain or independent, than on goods handled through wholesale or chain-store warehouses. Although the absorption of the wholesale function by the manufacturer does not necessarily reduce the cost of goods to the consumer, it apparently tends to reduce differences between chain and independent prices. For example, in Washington, D. C., the unweighted aggregate of the average independent prices on 182 warehouse items was 9.261 percent higher than the chain prices, but on 56 direct items it was only 4.445 percent higher.[11] A similar situation is found in the other three cities except Cincinnati.

[7] Table 7, ibid. Detroit drugs.
[8] Table 7, ibid. Washington drugs.
[9] Table 9, ibid. Detroit drugs. This is based on store price. According to the headquarters price, the figure would be 17.479 percent, table 3, ibid.
[10] Table 3, ibid. Washington drugs.
[11] In both Cincinnati and Detroit the direct figures are not fully representative of direct items as a whole, being confined chiefly to biscuit and cracker items. This is somewhat less true in Detroit than in Cincinnati, however.

Index of independent grocery store prices, unweighted

[Chain-store prices=100 percent]

City [1]	Number of items	Warehouse items independent price higher than chain price	Number of items	Direct items independent price higher than chain price
		Percent		*Percent*
Washington, D. C	182	9.261	56	4.445
Memphis	154	6.09	21	3.91
Detroit	159	7.450	15	5.078
Cincinnati:				
Large chains	108	5.944	12	14.319
Small chains	108	5.426	12	11.917

[1] Ibid. Table 2, Washington grocery; table 3, Memphis grocery; table 3, Detroit grocery; table 2, Cincinnati grocery.

If the selling prices on warehouse and direct grocery items are weighted, by the volume sold, the independent price on direct items approaches even more closely to the chain price, particularly at Detroit.

Here using the geometric average of the chain and independent prices weighted by chain volume and by independent volume, it appears that the independent prices on direct grocery items were only 2.448 percent higher than those of the chain, although on warehoused items the independents were 12.266 percent higher.

Index of independent grocery store selling prices—Geometric average of weighted results

[Chain-store prices=100 percent]

City [1]	Number of items	Warehouse items independent price higher than chain price	Number of items	Direct items independent prices higher than chain prices
		Percent		*Percent*
Washington, D. C	182	8.71	56	2.97
Memphis	154	10.20	21	4.74
Detroit	159	12.266	15	2.448
Cincinnati:				
Large chain	108	8.851	12	9.079
Small chain	108	9.912	12	6.801

[1] Ibid. Table 2, Washington grocery; table 3, Memphis grocery; table 3, Detroit grocery; table 2 Cincinnati grocery.

When asked to state whether it is the policy to price their merchandise according to some rules or standards, or whether the pricing of goods is left to the descretion of certain officials, 511, of the 991 chains replying, state either that no rule is followed or that it is left to the discretion of the pricing officials. The 480 chains that claim to set their prices according to some rule or standard, however, operate approximately 70 percent of the total number of stores. Some of these, in descriptions and discussions of their methods by the officials, reveal systematic and carefully worked out policies of marking up and pricing their merchandise, but among the 480 chains there are 68 which state simply that their prices are determined by competition, and 76 which claim to use a rule but fail to state the character of the rule employed. One chain official states:

> In a broad way, it may be said that pricing depends upon what the traffic will bear. What the traffic will bear depends upon a number of factors—what consumers will pay, what it costs to put the merchandise in the stores, and what competition will allow.

Pricing at a set average mark-up over cost is the rule most frequently reported by the chains. Next in order is the rule that prices are set by competition, which in turn is followed by the policy of selling at fixed retail prices determined in advance of the purchase of the goods, as exemplified in 5- and 10-cent store chains. The latter policy is not confined, however, to the policy of selling at a limited number of fixed retail prices but includes any policy of buying goods to sell at predetermined retail prices. When a set mark-up is employed, the cost of the goods is treated as the basic figure and retail prices are set so as to provide the desired profits. When, on the other hand, fixed retail prices are the starting point, the purchase prices paid for the goods must be low enough to yield the chain its profit. The difference between the two methods is a difference in emphasis; the former presumably stimulates the chains to reduce their operating expenses as a means of increasing net profit, while the latter tends rather to emphasize reduced purchase cost as the source of increased profit.

A considerable number of chains state that competition determines the rule or standard which they employ as a basis of pricing their merchandise. While such policies may reflect how chain officials feel about it rather than the actual basis of chain-store pricing, they probably do serve to indicate the extent to which chain stores have made prices and price competition a central feature of their merchandising policies. Over 36 percent of all the reasons cited by chains for price variations among their stores was the necessity of meeting competition.

Some of the chains interviewed with regard to price policy express a broad and unqualified purpose of meeting all competition, as illustrated by an official of a candy chain who says on this point:

> We meet and beat it, and this applies to all kinds of competitors and all lines of merchandise carried.

Other chains state definitely that they do not meet certain types of competition. Several chains claim to place some limitation as to the kind of competitors whose prices they will meet, confining such efforts to chains in the same line of business as their own and at the same time generally conciliating price cutting of independents and ignoring special sales or sporadic price cuts. Chains also make some distinction as to the kinds and classes of commodities which are most subject to competition or on which they make most effort to meet all competitive prices.

Some chains profess to follow, but never to initiate, price cuts, although each of two chains engaged in a competitive conflict may claim that the other is the aggressor. More drastic methods of meeting competition by the use of specials or loss leaders are illustrated by an official of one variety chain who says:

> Rather than simply cutting prices to meet competition we prefer to shoot specials into the town until the competitor gives up his warfare.

The most important protection from the effects of direct price competition, as revealed by statements of chains interviewed, is the development of their own private brands. To avoid meeting competition several chains state that at times they seek the cooperation of manufacturers to force competitors to cease undesirable price cutting. This may take the form of getting lower prices on merchandise from the manufacturers, obtaining special kinds of merchandise for the occasion, or it may take the form of a threat by the chain to buy elsewhere, if the price cutting on the manufacturer's goods is not stopped.

Some chains require each store to produce individually the minimum rate of gross profit that is established for the chain as a whole. Insofar as such a policy is adhered to by a chain, it places a limit upon the local price-cutting activities of its stores and thus denies itself the competitive advantage which results from the power of a chain to draw upon the profits of some of its stores for the funds with which to wage a drastic price war in highly competitive localities. Such restraint, however, is unusual. By far the greater number of chains indicate in their statements on price policy that they meet local competitive conditions as they arise.

Few of the chains that were interviewed in the field keep competitive price changes strictly within the control of headquarters officials, but many of them place limitations upon the discretion of subordinate officials in meeting competitive situations. The wide discretion granted by chains to store managers and to other district officials, for the purpose of meeting local competitive conditions, places in the hands of these local employees a competitive weapon of great power, due to the working of the averaging process referred to. Such discretion is frequently resorted to by the chains in connection with perishable, seasonal, and slow-moving merchandise.

The competitive advantage of chains over single-store competitors, arising from the fact that chains do business in many localities, is most aggressively pursued on those occasions when chains cut their prices locally below the prices of their competitors in that locality, while maintaining prices in their other stores. Discussion of this question by officials of leading chain organizations indicates that it is quite a usual practice among them to cut prices locally not only to meet, but to go below, the prices of their competitors. A few chains say that this is against their rules, but exceptions to the rule appear even among these few. Others refer to such undercutting of competitors' prices as a matter of course, while a few of them illustrate the effective use that may be made of this powerful competitive device. In addition to these competitive price cuts, it is apparent that the pricing of specials and the reduction of prices to stimulate the volume of business of a particular store also lead the chains to sell at different prices in different communities. Whether or not price reductions made for the latter purposes result in prices lower than those of competitors is a matter with which the chain-store executives interviewed do not seem to be particularly concerned. And in this connection it is interesting to note that, although perhaps aware of their existence, chain-store officials in discussing their price policies make little or no mention of State or Federal laws against price discrimination as influencing or limiting such policies.

One of the interesting features of chain-store prices as indicated by the price and margin studies in groceries and drugs is the frequency and extent of deviation of chain-store prices from the headquarters prices in the same city. Although these studies indicate that about 10 percent of the chain price quotations vary from headquarters prices, the instances of these variations are as a rule rather evenly distributed above and below the headquarters prices. Of 82,213 grocery price quotations in chain units in 3 cities, 5 percent were above and 5.4 percent were below the headquarters prices.[12]

The range of these variations, however, is from more than 20 percent above to more than 20 percent below the headquarters prices. No less than 700 price quotations were 20 percent or more above the headquarters prices and 262 quotations were 20 percent or more below this price. Only 2 percent, however, of the total 82,213 quotations were 10 percent or more above headquarters prices and a total of 3 percent were 10 percent or more below the headquarters prices.[13]

The variation from headquarters prices and the differences in prices in the various stores of the same chain is an indication that chain prices are not very closely controlled by headquarters. In some chains this variation may be due to the fact that the managers are given a large degree of discretion in the making of prices[14] which they are not allowed in other chains. In some, it may result from the fact that the store managers in different stores in different sections of the same city are given different prices for merchandise by headquarters, either for competitive or other reasons. Again certain chains make allowances to the stores for shortage, spoilage, and theft while other chains do not. Failure to make any such allowances tends, it is claimed, to produce a certain amount of overcharging by store managers in order to offset this loss. Store managers or employees may also overcharge customers in an effort to produce a larger store volume or higher net profit. In other cases, overcharging may be employed for the personal profit of the manager or employees.[15]

An examination of the comparative selling prices of the larger and smaller grocery and drug chains in various cities fails to furnish very strong evidence that the large chains sell at lower prices than the smaller, at least so far as standard brand merchandise is concerned.[16] The A. & P. Tea Co., the largest chain in the grocery field, showed the lowest aggregate price for the chain items on which comparisons could be made, in only one of the three cities covered in which it was selling, and Kroger, in none of the three in which it was represented.

The following table is a comparison of selling prices of the chains named, in the cities studied:

---

[12] Table 17, chain-store price policy.
[13] Table 18, ibid.
[14] Table 9 ff., ibid.
[15] Cf. ibid., sec. 5, especially subsections on Unauthorized Pricing by Store Managers. Shortage Allowances and Overcharging, Dishonesty of Store Employees and Method of Detection.
[16] The figures on which this analysis is based are unweighted and their weighting by the actual quantities purchased might change the results shown. They also take no account of prices on private brand items either purchased or manufactured by the chains. It seems to be true that larger proportions of the large than of the small chains own private brands (Chain Store Private Brands, tables 10 and 13), but it is not so clear that the larger chains sell very much larger proportions of such merchandise than do the smaller ones.

Chain	Number of stores	Washington, D. C.[1]		Cincinnati[2]		Memphis[3]		Detroit[4]	
		Number of items	Selling price	Number of items	Selling price	Number of items	Selling price	Number of items	Selling price
The Great Atlantic & Pacific Tea Co.	15,738	136	$27.9817	73	$14.1198			69	$10.4194
American Stores	2,728	136	27.6874						
Sanitary Grocery Co	431	136	27.9886						
Kroger Grocery & Baking Co.	5,165			73	14.3069			69	10.5745
Voss Grocery Co	29			73	14.2251				
Burke Grocery Co	47			73	14.3600				
Clarence Saunders Stores	150					115	$19.5012		
Mr. Bowers Stores	[5] 59					115	19.3844		
Piggly Wiggly Stores	[5] 60					115	19.3726		
Silver Savers, Inc	7					115	19.2910		
Liberty Cash Grocers	13					115	18.6613		
C. F. Smith	620							69	10.5940
Nat'l. Grocerterias (Nat'l. Tea Co. of Ill.)	1,600							69	10.3576

[1] Table 7, Washington grocery.
[2] Table 7, Cincinnati grocery.
[3] Table 9, Memphis grocery.
[4] Table 8, Detroit grocery.
[5] Approximately.

In drugs, the results are more favorable to the large chains, the Liggett Drug Co., which is the largest drug chain, showing the lowest price in three out of four cities. In both Memphis and Cincinnati, however, the Walgreen Co., the second largest chain, was undersold by the smaller chains. The tabular statement following contains a comparison of prices of various drug chains.

Chain	Number of stores	Washington, D. C.[1]		Cincinnati[2]		Memphis[3]		Detroit[4]	
		Number of items	Selling price	Number of items	Selling price	Number of items	Selling price	Number of items	Selling price
L. K. Liggett Co	549	226	$116.7747	266	$125.3308	206	$101.5115	223	$111.3247
Peoples Drug Stores, Inc	118	226	117.4449						
Whelan Drug Co., Inc	162	226	119.9398						
Dow Drug Co	58			266	129.8398				
Walgreen Co	441					206	106.1859	223	113.6555
Pantaze Drug Stores	3					206	101.1980		
Small Local Chains	25					206	115.3114		
Cunningham Drug Stores	13							223	112.1037
Economical Drug Co	46							223	116.1747
Hynes & Murphy	20							223	124.7300
The Schettler Drug Co	13							223	131.4300
Small chains of less than 10 stores	[5] 100							223	125.5259

[1] Table 8, Washington drug.
[2] Table 7, Cincinnati drug.
[3] Table 7, Memphis drug.
[4] Table 12, Detroit drug.
[5] 20 chains operating 3 or more stores, 12 chains operating 2 stores.

The studies of short and over weights in chain and independent grocery stores also have considerable bearing on the degree of price variation between stores of the same chain within the same city. In this study of short weighing in four cities, the Commission's shoppers made an exact record of the prices paid for each article purchased. The price and weight data thus procured indicate an even higher degree of price variability between stores of the same chain in the same city than between store and headquarters prices as shown in the grocery price and margin study.

For example, in the stores of chain A in city no. 1 shopped on particular days, the prices paid per pound for identical quantities of bulk granulated sugar differed in 5 out of 7 shopping days by from ½ cent to 1½ cents per pound. On April 28 the price was 3½ cents in 1 store, 4½ cents in 1 store, and 5 cents in 3 stores. On May 2 the price was 4½ cents in 2 stores, 5 cents in 2 stores, and 5½ cents in 2 stores. On 2 of the 7 days of shopping when there were no variations indicated, only 1 store was shopped on one day and only 2 stores on another day.

In chain B in city no. 1, the extreme range of price per pound of sugar purchased on any day was 2 cents or ½ cent greater than the range shown on any day in the case of the stores of chain A. On April 30, sugar in identical quantities cost the Commission's shoppers 4 cents per pound in 1 store, 4½ cents per pound in 1 store, 5 cents in 1 store, and 6 cents in 1 store. In the case of both of these chains there was during the period a decided modal price of 5 cents per pound throughout the shopping period, which was probably the headquarters price. In the case of one of the chains, however, less than half of the total purchases made by the Commission's shoppers were at the modal price and in the case of the other chain, only 70 percent of the purchases. These two chains, however, illustrate the maximum of variation in intracity prices for sugar. The prices in the other chains in the four cities studied showed much less variability and in some cases, practically none. Thus in 49 stores operated by one chain, identical quantities of sugar were bought at 5 cents per pound in 48 of the stores and of the 148 stores of another chain, 145 charged 5 cents per pound.[17]

The greatest variation in the prices paid by the Commission's shoppers for 3 pounds of navy beans was shown by chains in cities no. 2 and no. 3. In chain A in city no. 2, on May 5, 3 pounds of navy beans were purchased at 12 cents in 1 store, at 14 cents in 2 stores, at 15 cents in 3 stores, at 18 cents in 1 store, and at 20 cents in 1 store. In chain B in city no. 3, on May 14, 3 pounds of navy beans cost 9 cents in 1 store and 10 cents in 2 stores, 12 cents in 1 store, 13 cents in 1 store, 15 cents in 1 store, and 18 cents in 1 store. In both cases the prices varied every day among the store units at which these purchases of beans were made.

In contrast to this situation, however, is a chain in another city where all the bean purchases made over a period of 8 days for 39 stores were at uniform prices.

It is impossible to say why the indicated degree of price variability on these bulk commodities purchased in connection with the weighing study is so much higher than in the case of commodities priced in the price and margin study.[18]

One of the very important advantages of chain-store organizations is the possibility of varying the prices charged not only within the same city, as in the foregoing illustrations, but also as between dif-

[17] Table 22, ibid.

[18] The cities used for the weighing analyses were not the ones which were used for the price and margin studies, which may to some extent affect the situation. The items in the weighing study were bulk commodities which were actually purchased by the Commission's shoppers, whereas the items in the price and margin study were packaged standard-brand items which were priced but were not purchased in the various stores.

ferent cities in the same section or between different sections,[19] in order to take full advantage of local conditions by charging what the traffic and competition will bear. The chain has an inherent advantage over the independent retailer in price competition because the chain is able to average the profit results obtained from its stores in various localities, the low prices in one or more localities being offset by the higher prices obtained at other points. This strategic advantage is greatest, of course, to the large chain over the independent retailer, but it also applies in a less degree to the large chain as compared with small chains.

It is between the chains and independent retailers that the averaging process is most significant, the essence of the process being the opportunity it affords the large chain to derive profits from one group of stores which may be used either offensively or defensively for price-cutting warfare on other chain or independent retailers. All the resources represented by the profits of other stores may be thus utilized by the chain for price cutting in any particular locality, but independent stores will not thus come to one another's defense. It is true that the wide-spread operation of the large chains makes it necessary that such chains meet competitive prices at a very large number of points but this is not in any sense an offset to the advantage which such chains derive from the averaging process. Although an independent or small-chain competitor may encounter a condition of severe price competition less frequently than a large chain, this price cutting is of relatively greater significance to him because it affects the total business of the independent and frequently of the smaller chain also, and thus bears more heavily upon the smaller than upon the larger competitors. None of these local price-cutting encounters nor perhaps all of them together will effect so large a proportion of the total business of the large chain as of that of the independent or small-chain competitors involved. The ability of the larger chain thus to average its prices and profits gives this type of organization another very important advantage in its ability to use leaders and loss leaders more effectively.

It is perhaps in its inability to average store results that the cooperative chain is weakest competitively. The grocery cooperatives have learned rapidly the value of regular newspaper and other advertising, the advantages of leaders and loss leaders, of private brands and even, in some cases, of manufacturing. The profits of the stores, however, belong to the individual proprietors and those of one store cannot be used to offset the competitive losses of another.

Sec. 3. Chain-store policies as to price "leaders"

An important aspect of chain store price policy is the frequent use of "leaders" consisting of specially low-selling prices on particular items. A large part of the prevalent public belief that chain-store prices are lower than those of independents has its root in that policy.

In a broad sense leaders may be defined as merchandise featured or sold at reduced prices to attract buyers and thereby stimulate sales not only of these leaders but also of other goods. Such leaders may be used more or less regularly and may or may not be adver-

[19] Table 16, ibid.

tised. Goods marked down because of change in style, end of the season, or clearance sales, odd-lot offerings, or goods that do not sell readily, or that must be closed out because of their perishability, and which are therefore sold at reduced prices are not always considered as leaders by the chains. There are, however, numerous chains which select some of their leaders from one or more of these kinds of merchandise or feature such goods in special sales.

It is not to be understood that the chains necessarily sell their leaders in all their stores at the same time, but rather that they sell them at least in some of their stores some of the time. In some cases, however, one or more of the leaders may be sold in all of the stores all of the time. The general policy, however, is that all of the retail units within the same trading area, such as a city, shall sell the selected leaders, if they are advertised in newspapers.

According to chain-store officials, there are apparently four purposes for which leaders are used. These purposes are pithily summarized in the following statement of the president of a grocery and meat chain which operates several hundred stores:

> The extent to which prices are cut depends on competition, the necessity of introducing a commodity, the need for moving a line of goods, and the desire to bring customers into the store.

Authority for the selection of leaders may be vested in the headquarters or subheadquarters offices of a chain or the warehouses or store managers or any combination of the four. Out of 26 kinds of business, there were 10 in all in which more than 50 percent of the companies selling loss leaders reported that headquarters did not have complete control of the selection of articles to be used as leaders.

The prices of leaders, like their selection, may be dictated by central headquarters, subheadquarters, warehouses, or store managers, or by any combination of them. Even under partial or complete decentralization, however, there appears to be some tendency for the headquarters or subheadquarters to exercise some control over the pricing of leaders, particularly if the prices are reduced to or below cost.

In some cases, the character of the commodity apparently affects the decision as to the merchandise to be employed as a leader. The seasonableness of the merchandise is also an important factor. Leaders are frequently thought of as being chiefly associated with advertised brands, but bulk goods and various kinds of unbranded merchandise are frequently used as well, especially by certain kinds of chains. There are, however, many instances in which the merchandise so used consists principally of nationally advertised goods. Merchandise under private labels of the chains is relatively seldom selected for loss leader use.

Last, but by no means least, of the factors determining the kind of merchandise selected as leaders is the matter of allowances or discounts obtained from the manufacturer, which sometimes absorb much, if not all, of the cut in prices.

Leaders are divisible into two general classes, those which are sold at less than the usual price but which still carry a profit and those which are sold at a loss. The term " loss leader ", however, is rather loosely used among chain stores. It is clearly applicable to goods sold at less than net purchase cost. Its applicability to goods sold below net purchase cost plus average cost of doing business is not so clear, especially if the average be other than that of the particular chain making the sale. The cost of doing business by a given chain may differ substantially from the average cost of all chains or from the average cost of all retailers. Any chain's cost of selling a given line of goods may likewise differ substantially from its average cost of selling all goods or differences in turnover may affect such differences. To apply the term "loss leader" to sales made at less than the usual mark-up or replacement cost is wholly fallacious. Yet all these things are comprehended in the term "loss leader" as used in various lines of chain store distribution.

Of 1,458 chains operating 47,966 stores reporting on the sale of leaders (other than private brands) *at less than net purchase cost*, only 174 chains operating a total of 8,056 stores admitted that they engaged in this practice in the latest of the 2 years for which the information was requested.

A total of 827 chains operating in excess of 35,000 stores reported on the question of whether they sold in the last week of 1 year leaders *at less than the actual net purchase cost of the goods plus the operating costs of the chain for that year.* In this case 11.7 percent of the chains, operating 12,949, or over one-third of the stores, reported that they had employed this practice during the period in question. That higher proportions of the chains and stores operated are not reported in either of these two "leader" categories is probably due in part to the existence of the special discounts and allowances referred to above. These concessions sometimes make possible relatively low chain prices and yet do not involve the chains in any loss.

	Chains		Stores operated	
	Number	Percent	Number	Percent
Reporting the sale of leaders (other than private brands) at less than net purchase cost, 1928 [1]	174	11.9	8,056	16.8
Reporting not selling leaders (other than private brands) at less than net purchase cost, 1928	1,284	88.1	39,910	83.2
Total	1,458		47,966	
Reporting no sales in last week of 1928 of leaders at less than the actual net purchase cost of the goods plus the operating costs of the chain for that year [2]	730	88.3	22,593	
Reporting as selling in last week of 1928 leaders at less than the actual net purchase cost of the goods plus the operating costs of the chain for that year	97	11.7	12,949	
Total	827		35,542	

[1] Chain store leaders and loss leaders, table 1.
[2] Chain store leaders and loss leaders, table 17.

Losses figured on a replacement cost basis do not necessarily mean that the sales involving these are actually below the actual purchase price of the goods. Figured on that basis, however, the percentage of losses on the largest selling articles sold below net purchase cost by grocery chains ranged from a fraction of 1 percent on Shredded Wheat, cake flour, and sugar to as high as 12 percent on Campbell's tomato soup.[20] In grocery and meat chains the price cutting was

[20] Table 12, ibid.

even more pronounced, practically all the items sold below net purchase cost showing at least 1 percent loss on replacement cost and many of them losses of 15 percent or more, including Palmolive soap (23.1 percent), Crystal White soap, Jell-O, Star lard, and Shredded Wheat.[21] Several drug chains reported Palmolive sold at from 20 to 31 percent below replacement cost and other items sold by drug chains with losses of 20 percent or more on replacement cost were Ipana toothpaste, Crystal White soap, Kotex, Nujol, Beecham's Pills, and Hind's Honey and Almond Cream.[22]

Assuming that net purchase cost, plus the cost of doing business during a representative week, constitutes their total cost, the average loss on leaders reported by grocery, and grocery and meat chains was approximately 10 percent and that reported by the drug chains was 14 percent.[23] Eighteen percent of such items in grocery and meat chains, 13 percent of those in grocery chains, and over 40 per cent of those in drug chains carried losses of 16 percent or more, assuming their total cost to be net purchase cost plus average cost of doing business.

The price and margin studies furnish further evidence of the prevalence in all grocery and drug chains of sales of merchandise below net purchase cost plus the average cost of doing business. These figures afford some comparison of the relative importance of this type of selling in chain and independent establishments.

In Washington, approximately 9.5 percent of a total of 274 grocery items were sold by the chains at an average gross profit of less than 15 percent on sales as compared with an average operating expense ratio of 15.59 percent for all grocery and meat chains during the year of the study. The independent distributors, on the other hand, sold only 10, or 3.6 percent, of the 274 items at less than that percentage of gross profit.[24]

These and comparable figures for Memphis and Detroit appear in the following summary.

City	Total number of items	Proportion of grocery items sold at average gross margin of less than 15 percent	
		Chain	Independent
Washington [1]	274	9.5	3.6
Memphis [2]	193	5.2	2.1
Detroit [3]	183	8.2	2.2

[1] Prices and Margins of Chain and Independent Distributors, Washington grocery, table 6.
[2] Ibid. Memphis grocery, table 7.
[3] Ibid. Detroit grocery, table 7.

In Washington, practically half of the 226 drug-store items priced were sold on the average by the chains at less than a gross profit of 33.28 percent on sales, which represented the average operating ex-

[21] Table 13, ibid.
[22] Table 14, Ibid.
[23] Table 30, chain store leaders and loss leaders.
[24] In the case of the independent distributors the margin represents the spread between the manufacturer and the consumer through the wholesaler and independent retailer where the goods are sold to the wholesaler or through the retailer for items sold directly by manufacturers to independent retailers. (Prices and Margins of Chain and Independent Distributors, Washington Grocery table 6.)

pense ratio of 118 drug chains operating 1,882 stores in the same year. Thirty-eight percent of these 226 items carried a gross [24a] margin of less than 30 percent as compared with 7.9 percent of the items for the independent stores. Although no one of these leader items was sold by the chains at less than net purchase cost after allowing for all special discounts and concessions, many such items carried practically no gross profit. Thus, Lavoris averaged only .825 of 1 percent gross profit on its average selling price by the Washington chains; Ipana toothpaste, only 1.350 percent, and Listerine only 1.813 percent. In addition, Fletcher's Castoria, California Syrup of Figs, D. & R. Cold Cream, Gude's Pepto-Mangan, Doan's Kidney Pills, and Cuticura Soap all realized less than 4 percent on sales on the average in Washington chains at the time of the Washington price study. (Ibid, Washington Drug, table 7 and accompanying text.)

It should be borne in mind, however, that figuring profit on sales price gives a lower percentage than if figured on cost and makes it impossible to show a profit as great as 100 percent.

These and the figures for other cities follow in tabular form.

City	Number of items	Proportion of drug items sold at average gross margin of less than 30 percent	
		Chain	Independent
Washington [1]	226	38.0	7.9
Cincinnati [2]	268	36.6	7.4
Memphis [3]	212	30.7	3.8
Detroit [4]	256	27.4	1.6

[1] Ibid. Washington drug, table 7.
[2] Ibid. Cincinnati drug, table 6.
[3] Ibid. Memphis drug, table 6.
[4] Ibid. Detroit drug, table 7.

Private-brand goods are much less frequently sold below net purchase cost than other kinds of merchandise. Only 18 chains out of 364, or less than 5 percent, sometimes sold such goods as leaders at less than net purchase cost in 1928. Only 8 of the 26 groups include any chains reporting the sale of private-brand merchandise at less than actual net purchase cost.

Sec. 4. Chain-store sales policy on private brands

The sale of their own private brands of certain merchandise is characteristic of many chain-store systems. The advantage of these private-brand items, from the point of view of the chain store, is apparently that most of the chains handling this type of merchandise are able to mark it up by a percentage over cost as high, or higher, than their mark-up of competing standard-brand merchandise, while tending to sell it at a price as low as or lower than that of the compet-

[24a] This gross profit in the case of the independents is the combined total wholesaler-retailer spread where the goods go through both the wholesaler and the retailer and the independent retailer spread only for goods sold directly by the manufacturer.

ing standard-brand items. A tabulation analytical of this situation follows:

Reporting[1]	Chains		Stores operated	
	Number	Percent of total	Number	Percent of total
Higher mark-up on private than on competing standard brands	93	30.6	7,157	21.0
Same mark-up on private and competing standard brands	193	63.5	19,418	57.1
Lower mark-up on private than on competing standard brands	18	5.9	7,441	21.9
Total	304	100.0	34,016	100.0
Private brands priced higher than competing standard brands	43	17.3	939	2.1
Private brands priced the same as competing standard brands	126	50.8	11,181	24.9
Private brands priced lower than competing standard brands	79	31.9	32,733	73.0
Total	248	100.0	44,853	100.0

[1] Tables 30 and 34, Chain store private brands.

Detailed comparisons of the selling prices and gross margins, especially those of grocery and drug chains, on numerous specific items appear to establish definitely that the chain gross profit margins on such private-brand items are usually higher than on competing standard brands, and that the prices on such private-brand items are usually, though somewhat less consistently, lower.[25]

Provided that adequate volume is secured, the maximum advantage to the chain from a private brand is to be found, no doubt, in those cases where the chain obtains a higher mark-up or gross margin on the private brand than on the competing standard-brand item, but is none the less able to sell it at a lower price. If the chain marks up its private brands more than the competing standard article and sells both at the same price, it obtains the advantage of a still higher margin per unit although it loses that of the lower selling price. The wider margin per unit in the private-brand items does not necessarily mean a higher total dollar net profit than on competing standard brands because of differences in the turnover of the two. If the sales of private-brand merchandise are sufficiently great, however, a wider margin per unit will funish funds with which to offset losses on standard-brand loss-leader items. (See Leaders and Loss Leaders above.)

Tending to support this statement is the fact that only 4.9 percent of the 364 private-brand chains sold private-brand merchandise at less than net purchase cost for loss leader purposes as compared with 11.9 percent of 1,458 reporting chains which sold standard-brand merchandise on this basis. Moreover, the former group operated only 3 percent of the 33,033 stores belonging to the reporting private-brand chains, whereas the latter operated 16.8 percent of the 47,966 stores belonging to the 1,458 chains reporting on loss leaders.[26]

[25] Tables 41 to 50. ibid.
[26] Tables 1 and 11, Chain store leaders and loss leaders.

The advantage of private-label merchandise to the chain store is indicated by the fact that a large proportion of all of the grocery cooperative chains have developed lines of such merchandise. The private brands reported by wholesaler-retailer cooperatives are, no doubt, in many cases, brands formerly sold by the wholesaler under his own label before the organization of the cooperative. More than half of the 147 retailer cooperatives reporting to the Commission distributed private-label merchandise and they averaged 33 items per chain under their own labels. Private-brand merchandise is important in several of the larger national cooperatives such as Red & White Corporation, the Independent Grocers Alliance, and Clover Farms. Red & White at one time claimed over 600 items under private label, Independent Grocers Alliance between 200 and 300, and Clover Farms more than 500, this type of merchandise being available for large proportions of all items carried by the ordinary retail grocery store.[27]

The extensive private-brand development among grocery cooperatives presumably represents an attempt to obtain the advantages which chain retailers may have from the distribution of such merchandise some of which have already been indicated.

Sec. 5. Chain-store advertising policy

Chain-store advertising, which is predominantly newspaper advertising, has frequently been cited as an important factor in the growth of such companies and as an advantage which most independent competitors cannot employ, except to a limited degree. The average per store cost of all forms of advertising for grocery and meat chains reporting detailed advertising expenditures in 1928 was $362. The expenditure of this sum by the average independent grocery and meat dealer for advertising would be, apparently, unprofitable. Individual retail dealers in many lines are confronted with a similar situation. An owner of a small department store possibly has some chance in competitive advertising with large mail-order houses, and doubtless there are individual dry-goods and apparel dealers who match their chain competitors advertisement for advertisement, but on the whole the individual retailer in most lines is placed at a competitive disadvantage by the extensive newspaper advertising done by large chains in their respective fields.

It would seem that most independent dealers cannot compete successfully with the chains in newspaper advertising. The larger individual stores, doubtless, are in a better position in respect to such advertising than the small dealers, and this is particularly true of some lines of business such as department stores, clothing and apparel lines, and furniture stores.

The cooperative chains are of particular interest in connection with advertising, especially those in the grocery field. As is shown in the Commission's report on cooperative grocery chains, there were over 300 cooperative grocery chains in the United States in 1929 and many of these groups engage in quite extensive advertising programs. The stores of members of the cooperatives frequently are painted a uniform color and almost always have uniform signs which give a

[27] Ch. 9, Cooperative grocery chains.

definite tie-up to the advertising program. Newspaper advertisements featuring specials are run at frequent and regular intervals, handbills and dodgers, and store and window cards are supplied, advice given on window and counter displays, billboards, street-car and bus cards are used, radio programs broadcast, and a few have run advertisements in national magazines.

Based on eight retail trades for which the data are available, it appears that chain-store advertising is generally more extensive than that of independents in lines of " convenience goods ", such as grocery and drugs, as well as in general-merchandise stores, not only in actual amounts spent but also in ratio to sales. These are kinds of business which are predominantly composed of relatively small operating units. In the men's clothing, shoe, department store, and furniture trades the advertising ratios seemingly are generally similar for chains and independents, but in the hardware business the ratio of the independents exceeds that of the chains.

The ratio of advertising expenditures to net sales, which averaged 1.52 percent for all chains reporting total advertising expenditures, ranged from 0.51 percent for the chains in the 501–1,000 stores group to 3.74 percent for the 6–10 store chains. There was a generally consistent downward tendency in the ratios of advertising expenditures to sales with increases in the size of the chains. This tendency indicates that there is an inverse relationship between size of chain and ratio of advertising expenditures to sales. This is to be expected because a given outlay for advertising will often serve a large number of stores as well as a few. The average sales per chain increased steadily from $546,860 per company for the smallest size group to $213,522,213 per company for the largest size group. The correlation between this upward tendency of average sales per chain and the downward tendency of the advertising-expense ratios shows that as the size of the chains increases a decided advantage is obtained insofar as advertising expense is concerned.

The number of chains (1,506) reporting their total advertising expenditures for 1928 is somewhat less than the number which reported the use of advertising (1,663). The former operated 59,939 stores and spent over $65,500,000 for advertising, an average of $43,552 per chain and $1,094 per store. The sales of these 1,506 chains exceeded $4,322,000,000 and the ratio of advertising expense to sales was 1.52 percent. This ratio was greater than that of any of the 3 earlier years reported on, there being a steady increase in this respect, with ratios of 1.15 percent in 1919, 1.30 percent in 1922, 1.42 percent in 1925, and 1.52 percent in 1928, as stated above.

The ratio of advertising expense to sales varied greatly among different kinds of chains. In 1928 the range was from 0.29 percent for dollar-limit variety chains to 6.77 percent for furniture chains. Low ratios were also reported by tobacco chains, 0.31 percent; meat chains and grocery and meat chains, 0.65 percent; grocery chains, 0.73 percent; and confectionery chains, 0.99 percent. Among the higher ratios reported were men and women's ready-to-wear, 4.33 percent; musical instruments, 4.21 percent; and women's ready-to-wear chains, 4.20 percent.

In 1928 the 1,030 chains reporting their expenditures for different kinds of advertising spent 72.3 percent of the total advertising expenditures ($45,709,278) for newspaper advertising. Miscellaneous or other advertising accounted for 14.1 percent of the total, with window and counter next (7.9 percent) and pamphlet and dodger expenditures accounting for the fourth largest proportion (4.1 percent). The remaining kinds of advertising each accounted for less than 1 percent of the total.

The average per store expense for newspaper advertising in 1928 was $683, for other advertising $133, window and counter displays $74, and pamphlet and dodger advertising $39.

Only three kinds of chains (tobacco, men's shoes, and dry goods) reported less than 50 percent of their total advertising expenditures as being for newspaper advertising. All three of these had higher than average proportions of their total advertising expenditures under other advertising. Millinery, unlimited-price variety, and furniture chains, on the other hand, reported newspaper advertising expense as accounting for over 90 percent of their total expenditures for advertising. Grocery and meat chains reported 72.2 percent of total advertising expenditures used for newspaper advertising; grocery chains, 72.8 percent; drug chains, 76.2 percent; and department-store chains, 60.4 percent.

The ratios of total advertising expense to sales for the 1,030 chains reporting detailed advertising expenditures for 1928 was 1.371 percent.

The newspaper advertising expense ratio was 0.991 percent; other advertising, 0.194 percent; and window and counter display, 0.108 percent.

Sec. 6. Chain-store policy as to short weighing and over weighing

The Senate resolution calls for a report upon "the advantages or disadvantages of chain-store distribution in comparison with those of other types of distribution." The charge is frequently made that chain grocery stores obtain an advantage over independent stores through the short weighing of bulk commodities.

To determine the extent to which the chain stores short weigh commodities sold in bulk and also to determine whether this practice occurs more often in chain than in independent stores, five bulk articles were purchased for weighing from both kinds of stores without disclosing by whom and for what purpose such purchases were being made. The commodities purchased were navy beans, dried prunes, lima beans, light-weight sweetened crackers, and sugar. The quantities of the commodities bought varied from ½ pound to 4 pounds.

The purchases were made in four cities each having a population of over 100,000. To make the study representative the cities selected were located in different sections of the country; 1 in New England, 1 in the Middle Atlantic States, 1 in the South, and 1 in the Middle West. In each of these cities there were one or more of the five largest chain-store systems and also one or more local chains as well as one or more cooperative chains with their membership of independent grocers. Practically all stores in the four cities were shopped, hence all types of stores in all types of neighborhoods are represented. In the 4 cities a total of 1,691 stores was shopped for the 5 bulk commodities.

Of the total number of stores shopped, 702, or 41.5 percent, belonged to 11 different grocery or grocery and meat chains; 320, or 18.9 percent, were independent stores affiliated with 11 cooperative chains; and 669, or 39.6 percent, were independent stores without cooperative affiliations. As certain of the 11 chains operated stores in more than 1 of the 4 cities, the city comparisons are for 14 groups of chain stores.

The study of short and overweights in the grocery trade in four cities indicates that, in the case of commodities sold by weight, some small part of the difference between chain and independent selling prices may be due to weighing. According to these analyses, (1) the chains weigh exactly a much larger proportion of the purchases made from them than do the independents; (2) somewhat higher proportions of the purchases from chains than from independent retail stores were short weight; and (3) appreciably higher proportions of the purchases from independent retailers than from chains were overweight.

	702 chain stores (percent)	989 independent stores (percent)[1]
Proportion of exact-weight purchases[2]	15.6	8.4
Proportion of short-weight purchases	50.3	47.8
Proportion of over-weight purchases	34.1	43.8
Total items purchased	2,946	3,694

[1] This includes independent stores which are members of cooperative chains.
[2] Table 1, short weighing and over weighing in chain and independent grocery stores.

On the average, in the four cities studied, it appears that the consumer was somewhat more likely to get short weight in a chain than in an independent store and appreciably more likely to get excess weight in the latter than in the former establishment.

The aggregate net shortage in weight on total purchases from the chain stores was 0.321 of 1 percent, while the actual net overage on purchases from independent stores, including members of cooperative chains, was 0.096 of 1 percent,[28] the net difference amounting to a total of 0.417 percent. If it could be assumed that the combined net weight shortage on different priced articles involves a proportionate increase in total sales value, it could be concluded that the chains tended to pick up a little profit from their excess of short weights over their overweights, whereas the independents tended to lose a little profit through the reverse. On the same assumption, to put it in another way, the price actually charged by the grocery chains for merchandise sold by weight would be slightly higher than the price asked, whereas in independent stores the price actually charged was slightly less than the price asked. It is possible, however, that the inclusion of a relatively high-priced article having a low net weight shortage might invalidate these conclusions.

While the size of the shortage for chains may seem insignificant to many, it would amount to 3.41 percent on the investment in these bulk commodities, figured on the basis of the average stock turn of grocery and meat chains of 10.61 times per annum.

[28] Table 2, ibid.

On the other hand, if the amount of short weights be considered alone, without allowance for overweights, the showing is more favorable to the chains than to the independents. The short weights (not including overweights) on total purchases from chains (0.987 of 1 percent) were substantially below those of independents and cooperative chains combined (1.265 percent).

It should not be inferred that all chain stores gave short net weights or that all independent stores gave net overweights. In city no. 1 the chains gave short weights less frequently than either the cooperatives or independents. In the other three cities, the former were more frequently short than the latter. In no one of the four cities did the chains give overages more frequently than shortages although the cooperatives did so in 1 city, the independents in 2, and the cooperatives and independents combined in 2.

It is sometimes contended that preweighed bulk purchases reflect more clearly the attitude or policy of grocery stores in the matter of accurate weights. Considerable interest therefore attaches to the weight of such bulk items—that is, those items weighed by employees in advance of sale. A total of 795 items, or 12 percent of total purchases (6,640 items) made, were preweighed, and nearly two-thirds (64.4 percent) of these were obtained from chains. As has been often alleged, short weights occurred more frequently on these preweighed items than on items weighed at the time of sale. For the chains the proportion of preweighed items which were short in weight was 59 percent, as compared with 50.3 percent on both preweighed and other items. For independents and cooperatives combined, the difference was much more striking, the proportion of shortages on preweighed items being 65 percent as against only 47.8 percent on the total items purchased from those dealers. The chains therefore had a considerably smaller proportion of short weights on preweighed items than the independents or cooperatives separately or combined. They also gave exact weights on a larger proportion of items.

The buyer of commodities weighed and packaged in advance of sale stands about two chances out of three that he will get short weights from either the independent dealer or the cooperative and only a slightly better chance in the chain store. Furthermore, the net shortage on these preweighed items is much greater on the average than is the case with items weighed at the time of purchase. On preweighed items the net shortage represented slightly over eight-tenths of 1 percent (0.813) of the quantity purchased as compared with less than one-tenth of 1 percent (0.091) on total quantities of all goods bought. Between chains and the combined cooperative chain and independent dealers the difference in the size of the shortages on preweighed items was markedly in favor of the chains. The chains showed net shortages of 0.719 of 1 percent of the total weight of the preweighed items bought as compared with 1.005 percent for the independents and cooperatives combined.

It is often stated that in weighing out bulk commodities exact net weights cannot be achieved in a large percentage of cases but that over a long period the shortages and overages will balance each other. Both shortages and overages are likely to occur when clerks weigh out bulk merchandise hurriedly while other customers are waiting to be served, or when the weight of a unit of the article sold is comparatively large.

The results of this study indicate, however, that both in chain and independent stores the number of underweight sales is substantially greater than the number of overweight sales.

Opinions may differ as to the validity of any general conclusions which may be drawn from the Commission's study of weights and weighing of bulk commodities. It might be urged that the number of cities, the number of commodities, and the number of purchases were too limited to warrant any broad conclusions applicable to retail grocery distribution. And, of course, the study has no bearing upon other lines of chain-store merchandising. It might be urged that, since the chains less frequently gave short weight than the independents in 1 of the 4 cities studied, the inclusion of a larger number of cities might offset the opposite showing in the other three cities.

One fact stands out, however, the consumer in those four cities was in an unfortunate position when 50.3 percent of his purchases of bulk goods in chain stores and 47.8 percent of his purchases in independent stores were likely to be short weight. Nor was this offset by overweight in the remaining instances, as overweight was given on only 34.1 and 43.8 percent of the purchases, respectively. It cannot be assumed that the amount and value of overweight is greater than the number of instances.

Sec. 7. Legal status of foregoing practices and policies

Taking up in order the practices and policies described in the preceding sections of this chapter, the first question concerns the legal status of the chain store's buying methods. Those methods are divisible into two broad classes: (1) The use of "threats" and "coercion" to obtain special price concessions from manufacturers and (2) the operation of brokerage and commission agencies.

The "threats" and "coercion" used consisted of statements or intimations that unless the manufacturer would grant the chain special concessions in price, the chain would either buy the goods elsewhere, proceed to manufacture its own, or conduct its stores so as to discourage therein the sale of the recalcitrant manufacturer's goods. If it be admitted that the chain has a legal right to adopt any or all of these policies, it seems to follow that it has a right to announce its intention of doing so unless certain conditions are met. Unless the law be so made or applied as to prevent vertical integration, a chain store may engage in manufacturing. As to buying elsewhere if concessions are not given, it has not been even proposed to deprive the chains of that right. And for a chain in its own stores to encourage or discourage the sale of such goods as it may choose in its own discretion seems beyond legal attack under any existing law. If an attempt should be made to outlaw the use of such "threats" and "coercion" without also removing the existing legal right to do the things threatened, it would be abortive and ineffective. For it is the manufacturer's recognition that the chain, with its tremendous purchasing and distributing power, may do those things and not the "threat" of the chain to do them that is the real inducement for granting the special concession.

The position and policy of The Great Atlantic & Pacific Tea Co. with regard to its brokerage and commission business present the legal problem of chain-store relationship to such business in its most aggravated form. May a concern of such enormous buying and distributing power further enlarge that power by setting up buying agencies which in effect give it special concessions from the producer? May it thereby obtain advantages over independent retailers who buy through independent buying agencies and at the same time compete with those independent agencies for the trade of its own retail competitors? May it make exclusive dealing contracts with large numbers of producers?

The legal questions embodied in such a situation are obviously complex and debatable and the Commission is giving further study to them before deciding whether to issue a formal complaint to test out the matter. On the one hand it may be urged that the situation involves a substantial encroachment upon a field hitherto occupied by independent distributive agencies, such as brokers and commission men, with a tendency to monopoly of that field. It may also be urged that it tends to subordinate retail competitors who come to depend on the chain's distributive agencies and to close producing outlets to other distributors by its exclusive dealing contracts. On the other hand, it may be urged that, under the principles laid down by the Supreme Court, monopolistic power is not per se unlawful unless abused or developed as the result of unfair and oppressive methods. It may also be urged that absorption of the broker's and commission man's function is no more unlawful than absorption of the wholesaler's function which occurs when the chain buys direct from the manufacturer. As to independent retailers buying through their chain competitor's brokerage or commission agencies, it may be urged that so long as the chain's connection with such agencies is known to the retailers they are presumably finding it more advantageous to use their chain competitor's facilities than those which are independent of them both. Nevertheless, it is not difficult to see that the ultimate result will be to accentuate whatever tendency there may be in the evolution of chain-store systems toward monopoly.

As to the general policy of underselling independents which the Commission has found to characterize chain-store merchandising, there can be no question of the legal status of that policy under a competitive economy. The growth of chain stores indicates the response of the public to that policy.

Price competition in interstate commerce must, of course, be amenable to the laws of fair competition. There are two such Federal laws: the Federal Trade Commission Act, which broadly prohibits unfair methods of competition, and the Clayton Act, which prohibits certain specified methods of competition. The underselling policy of chain stores is not per se an unfair method of competition except on the theory that price competition is itself unfair. Even selling below cost has been held not per se an unfair method of competition under the Federal Trade Commission Act. The Clayton Act imposes certain limitations upon price competition by prohibiting price discrimination under specified conditions and having specified results.

As shown in sections 2 and 3 of this chapter, chains frequently sell the same quality goods at the same time at different prices in their various stores. This manifests itself in the form of leaders and so-called " loss leaders " at some stores, in the pricing of private brands, and in differences between the headquarters price and the branch-store price on many articles. The ability of chain stores to vary prices among their different branches and thus to average their profit results is one of their chief advantages over independents. In other words, it is one of the chief elements in the growth of chain-store systems to their present dimensions and there is no ground for expecting a different effect upon their future growth. This means that chain-store systems will probably continue to increase in size and tend more and more toward a monopolistic position. And their legal position will be impregnable under the Supreme Court's view that mere size or possession of monopolistic power without abuse is no violation of the Sherman Law. The only vulnerable spot under existing law is prevention of methods which lead to that result.

Section 2 of the Clayton Act forbids discrimination in price where the effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce." Variation in price between different branches of a chain would seem to be a discrimination, the effect of which "may be" to produce the forbidden results. It is one thing, however, to reach such a broad conclusion on the results of this practice by chains in general and quite another to prevent by legal means its use by some particular chain. The reason is that the Clayton Act itself specifically permits price discrimination "in the same or different communities made in good faith to meet competition." The Commission has no evidence which would establish that price discrimination by chain stores has not been in good faith to meet competition and there is good ground to conclude that in many cases it has been for that purpose.

Difficult legal questions arise in this connection, such as whether a price discriminator may merely "meet" the price of a competitor or may beat it, and whether a concern which occupies a monopolistic position has the right to maintain itself by discriminating in good faith to meet competition. If the monopoly be considered legal it is difficult to deny it the same privilege of protection against competition which the statute assures the independent. Yet that creates the anomaly of a monopoly being allowed to use the same weapons to maintain itself which are denied to others for fear of creating monopoly.

If Federal jurisdiction over price discrimination by chain stores does not exist because of absence of interstate commerce, it is a responsibility resting upon the States of preventing or permitting that method of competition being used as an instrument for substantially lessening competition, creating a monopoly, and then maintaining it, if such is desired. Thirty-one States have antidiscrimination laws but so far as known to the Commission there have been no cases prosecuted under them against chain stores.

There appear to be no legal grounds on which to question the general advertising policy of chain stores, notwithstanding that it constitutes a definite advantage over independents. Ability to spend large sums for advertising, ability to distribute the cost over large sales, and ability to reap larger proportionate benefits from advertising, may produce competition which is decidedly unequal but which cannot be said to be, therefore, unfair. False and misleading advertising, however, has been judicially held to be an unfair method of competition under the Federal Trade Commission Act. It has been suggested that the use of leaders and "loss leaders" and the sale of private brands at higher than standard-brand prices, is a form of deceptive advertising, in that it tends to mislead the customer into the belief that all other items are correspondingly low priced and that private brands are of higher quality because higher in price. However one may view the ethics of the practice, the conclusion that it is legally unfair under existing law is one that is difficult to maintain. Further, except under special circumstances, retail sales may not involve interstate commerce necessary to give the Commission jurisdiction.

As to short weighing, there seems no reason to consider it from any legal standpoint other than local laws penalizing it. Unfortunately, it seems that, despite these laws, the consumer all too often is the victim of short weighing, but this is only little, if any, more likely in purchases from chains than from independents.

CHAPTER IV

EFFECT OF SPECIAL CONCESSIONS TO CHAIN STORES ON THEIR GROWTH AND DEVELOPMENT

The resolution calls for information on "how far the rapid increase in the chain-store system of distribution is based upon actual savings in cost of management and operation, and how far upon quantity prices available only to chain-store distributors or any class of them." It is apparent that no exact measurement of the relative effect of these factors in the growth of chain stores can be arrived at. It can be said, however, that lower selling prices are a very substantial, if not the chief, factor in the growth of chain-store merchandising, and that lower buying prices than are available to independents are a most substantial, if not the chief, factor in these lower selling prices. These lower buying prices frequently take the form of special concessions. Many times the result is to give the chain lower prices than the wholesaler.

Section 1. Weight of total chain buying advantages

In addition to such buying advantage as the chains obtain by special discounts and allowances, the terms of regular trade and quantity discounts and allowances offered may be relatively advantageous to them. Grocery chains apparently have a decided advantage in the matter of such regular trade and quantity discounts and allowances but this is not the case in the drug trade.

For groceries and drugs in certain cities, there are available the actual buying prices of chain and independent distributors [29] on identical merchandise after the deduction of all special discounts and allowances. Using these figures and the differences in the selling prices of the two types of distributors on the same merchandise, it is possible to estimate how much of the difference in selling prices between chain and independent distributors is represented by the differences in the buying prices in these two lines. Based on the unweighted figures of grocery items purchased by consumers at chain and independent stores, it would appear that as high as 45 percent of the difference between chain and independent selling prices on standard grocery items is attributable to the lower buying prices of the chains. In Detroit, for example, the 183 grocery items priced would have cost a consumer at average prices a total of $35.6616 through the independent stores but only $33.2565 through the chains, a difference of $2.4051 in favor of the latter. These items, however,

---

[29] Wholesale when the manufacturers sell to the wholesalers or the chains buy from wholesalers, and retail when the goods are sold directly to retailers.

cost the chain only $24.5253 at average buying prices, whereas the wholesaler (where the merchandise moved through the wholesaler) or the retailer (where the goods were sold directly) paid $25.3532 at average prices, or $0.8279 more than the chain. This last figure represents between 34 and 35 percent of the $2.4051 by which average chain retail selling prices were lower than those of the independents.

	Number of items	Aggregate of average retail selling price	Aggregate of average buying price
Detroit: [1]			
Independent	183	$35.6616	$25.3532
Chain	183	33.2565	24.5253
Difference		2.4051	.8279
Memphis: [2]			
Independent	193	38.1088	27.8354
Chain	193	35.9567	26.8596
Difference		2.1521	.9758
Washington; [3]			
Independent	274	58.0310	42.8044
Chain	274	54.0778	41.5072
Difference		3.9532	1.2972
Cincinnati: [4]			
Independent	120	23.3473	17.4050
2 small chains	120	22.0791	17.3266
Difference		1.2682	.0784
Independent	120	23.3473	17.4050
2 large chains	120	21.9539	17.1456
Difference		1.3934	.2594

[1] Ibid. Detroit grocery, table 5.
[2] Ibid. Memphis grocery, table 5.
[3] Ibid. Washington grocery, table 4.
[4] Ibid. Cincinnati grocery, table 4.

Proportion of chain-selling price advantage represented by chain-buying price advantage

	Percent
Detroit	34.4
Memphis	45.3
Washington	32.8
Cincinnati:	
2 small chains	6.2
2 large chains	18.6

In the drug trade the total buying advantage of the chains is apparently very much less than in the case of groceries. For 226 items bought through Washington chain drug stores the customer would have paid $117.4892 at average chain prices, or $12.5972 less than he would have paid had he purchased the same items through independent drug retailers in the same city. However, the drug chains paid only $79.8187 on the average for this merchandise, or only $1.7021 less than the independent drug wholesalers (or retailers where the manufacturer sold directly) paid for the same merchandise. This amount represents only from 13 to 14 percent of the total chain advantage of $12.5972 in selling prices.

	Number of items	Aggregate retail selling price	Aggregate buying price
Washington:[1]			
Independent	226	$130.0864	$81.5208
Chain	226	117.4892	79.8187
Difference		12.5972	1.7021
Memphis:[2]			
Independent	212	119.1694	69.5606
Chain	212	106.0188	68.8173
Difference		13.1506	.7433
Cincinnati:[3]			
Independent	268	143.3377	88.3195
Chain	268	130.5398	87.2307
Difference		12.7979	1.0888
Detroit:[4]			
Independent	256	144.7348	85.6164
Chain (store prices)	256	131.1463	83.9676
Difference		13.5885	1.6488

[1] Ibid. Washington drug, table 5.
[2] Ibid. Memphis drug, table 4.
[3] Ibid. Cincinnati drug, table 4.
[4] Ibid. Detroit drug, table 10.

Proportion of chain-selling price advantage represented by chain-buying price advantage

	Percent
Washington	13.5
Memphis	5.65
Cincinnati	8.5
Detroit [30]	12.1

In the remaining cities the buying advantage of the chain on an unweighted basis was even less than Washington.

When a weighted basis of comparison is employed, the apparent chain buying advantage is substantially reduced. On a weighted basis, using chain-store quantities, the difference represented by the lower chain buying prices on groceries ranged from about 3 percent of the total difference in selling prices at Cincinnati to about 20 percent in Washington, and, when independent quantities were used for weighting, from less than 5 percent in Cincinnati to 35.8 percent in Memphis. The following summary contains comparisons for four cities:

	Chain weights	Independent weights
	Percent	Percent
Detroit[1]	16.6	19.19
Memphis[2]	19.16	35.8
Washington[3]	20.5	23.6
Cincinnati[4]	3.01	4.8

[1] Ibid. Detroit grocery, appendix tables 6 and 7.
[2] Ibid. Memphis grocery, appendix tables 6 and 7.
[3] Ibid. Washington grocery, appendix tables 6 and 7.
[4] Ibid. Cincinnati grocery, appendix tables 9 and 10. These figures are comparisons of chains with independent distributors and two small chains combined.

[30] This result is obtained when average store prices are used. When average of headquarters' prices are used the chain buying advantage represents 10.9 percent of the chain selling price advantage.

Similarly in drugs on a weighted basis the difference in chain and independent buying prices in Washington accounts for only 9.7 percent (chain weights) or 10.8 percent (independent weights) of the total difference in chain and independent selling prices, whereas on an unweighted basis the difference was between 13 and 14 percent. Results for Washington and other cities studied are shown in the next tabulation.

	Chain weights	Independent weights
	Percent	*Percent*
Washington [1]	9.7	10.8
Cincinnati [2]	7.7	5.4
Memphis [3]	5.3	3.9
Detroit [4]	17.4	18.3

[1] Ibid. Washington drug, appendix tables 6 and 7.
[2] Ibid. Cincinnati drug, appendix tables 6 and 7.
[3] Ibid. Memphis drug, appendix tables 6 and 7.
[4] Ibid. Detroit drug, appendix tables 10 and 11. The figures given above are based upon the averages of the store prices. When headquarters' prices are weighted by chain volume the chain buying advantage is equal to 14.8 percent of the difference in selling prices in favor of the chain and, when weightedby independent volume, 15.6 percent.

In the drug trade, practically all of the lower average buying prices of the chains are represented by special discounts and allowances.[31] In groceries, the total of the independent [32] unweighted buying prices before the deduction of special discounts and allowances was substantially above that of the chains in all four cities, so that special discounts and allowances account for much lower proportions of the total difference in buying prices.

Data procured by the Commission indicate that in the grocery trade an appreciable proportion of the buying advantages of the chains can be overcome by fairly large and well-organized cooperatives. For example, the retail members of the District Grocery Stores, Inc., operating in Washington and vicinity, showed an aggregate cost or buying price of $22.2987 on 136 identical items. For all other Washington independents, excluding cooperatives, the aggregate of the averages of the buying prices on these same items was $22.4538 and for the American Stores Co., which showed the lowest chain aggregate buying price, $21.7966. Here the difference of $0.1551 between the cooperative buying price and that of all independents except cooperatives is equivalent to 23.6 percent of the difference between the aggregate of the average buying prices of the independent retailers and of the chain showing the lowest net purchase cost.

Similar data obtained in Memphis showed a saving by cooperatives of over 50 percent of such difference. See the following summary.

[31] Thus, the unweighted aggregate of average invoice prices to independent drug dealers in Washington, on 226 drug and toilet items before special discounts and allowances, was only 2 cents higher than the corresponding chain aggregate and in Detroit only 6 cents higher on 256 items. In Memphis, the aggregate of the average chain prices was actually 36 cents higher than the aggregate of the independents on 212 items and in Cincinnati, 71 cents higher on 268 items.
[32] To wholesalers, where sold through wholesalers, and to retailers, where sold by the manufacturer directly to retailer.

	No. of items	Aggregate buying price
Washington:[1]		
Independents, excluding cooperatives	136	$22.4538
District Grocery Stores	136	22.2987
		.1551
Independents, excluding cooperatives	136	22.4538
American Stores Co	136	21.7966
		.6572
Ratio of District Grocery Stores buying advantage over independents excluding cooperatives to buying advantage of American Stores over independents, excluding cooperatives (percent)		23.6
Memphis:[2]		
Independents, excluding cooperatives	95	12.1260
Independent Grocers Alliance	95	11.9890
Difference		.1370
Independents, excluding cooperatives	95	12.1260
Piggly Wiggly and Mr. Bowers Stores[2 3]	95	11.8546
		.2714
Ratio of Independent Grocers Alliance buying advantage over independents, excluding cooperatives to buying advantage of Piggly Wiggly and Mr. Bowers Stores over independents, excluding cooperatives (percent)		50.47

[1] Ibid. Washington Grocery, table 7.
[2] Ibid. Memphis grocery, table 8.
[3] The two chains are owned and operated by the Kroger Grocery & Baking Co.

Sec. 2. Extent of special concessions

Special discounts and allowances were defined by the Commission, for the purposes of this inquiry, as all those forms of allowances, made to distributors, not appearing on the face of the invoice. Primarily this rule was adopted because of the difficulty of determining what should be regarded as a special discount or allowance and the necessity of having a practical rule of uniform application. Other reasons were that the Commission's study of invoices indicated that generally they carried chiefly ordinary trade, quantity, and cash discounts together with some allowance of "free goods", all of which were usually open to all buyers; that many types of allowance such as those based on specific quotas or on percentages of increase over prior periods and certain advertising allowances do not lend themselves to inclusion in the invoices for specific quantities; and finally that the invoice prices on identical merchandise showed a considerable tendency to be the same to all the wholesalers and chains in the same city, variations apparently being largely due either to price changes between purchase dates or to differences in quantities purchased.

The Commission secured the reports from several hundred manufacturers of tobacco, groceries, and drugs covering their sales and allowances to a large number of selected distributors in each of two successive years. The chains apparently benefit to a much greater extent than the wholesalers from these special discounts and allowances. The Commission's figures indicate that more manufacturers make allowances to chains than make such allowances to wholesalers, and the proportion of chain accounts carrying allowances was far greater than the proportion of wholesale accounts, as appears from the following tabular statement:

Business [1]	Number of accounts reported		Percentage of accounts with allowance	
	Chain	Wholesale	Chain	Wholesale
			Percent	*Percent*
Tobacco	1,227	1,823	32.5	16.0
Grocery	4,961	7,028	30.7	10.5
Drug	8,787	24,117	18.0	10.5

[1] Special discounts and allowances to chain and independent distributors, tobacco, table 4; grocery, table 1; drug, table 1.

Also, in all three of these lines of business, the percentage rates of allowances were very much higher on sales to chains than on those to wholesalers. In 1930, for example, the rates of special allowances on total sales of all reporting manufacturers to tobacco chains was 3.57 percent as compared with 0.71 percent to wholesalers, to grocery chains 2.02 percent as compared with 0.91 percent to wholesalers, and to drug chains 5.19 percent compared with 1.11. In relation to sales of only those manufacturers which made allowances, the rates were of course higher.

Business [1]	Percentage of allowances on sales of—			
	All reporting manufacturers, 1930		Manufacturers making allowances, 1930	
	Chain	Wholesaler	Chain	Wholesaler
	Percent	*Percent*	*Percent*	*Percent*
Tobacco	3.57	0.71	4.99	1.42
Grocery	2.02	.91	3.58	2.33
Drug	5.19	1.11	10.05	4.45

[1] Ibid. Tables 5 and 6, tobacco; tables 2 and 3, grocery and drug.

Finally, the total amounts of the allowances made by all the manufacturers to chains greatly exceed the amounts given to wholesalers.

Business [1] (1930)	Total allowances	Chain allowances	Wholesale allowances	Percent of total	
				Chain	Wholesale
Tobacco	$6,928,000	$6,122,000	$806,000	88	12
Grocery [2]	6,439,000	5,840,000	354,000	91	5
Drug [2]	3,798,000	2,848,000	911,000	75	24

[1] Ibid. Tables 5 and 6, tobacco; tables 2 and 3, grocery and drug.
[2] Detail does not add to total allowances as other types of distributors not included.

The proportion of the total allowances paid to the chains is much higher and that paid to the wholesalers is much lower, relatively, than the respective quantities bought by each of these types of distributors.

In the tobacco trade, the total allowances paid the chains were 4.7 and 7.5 times the allowances paid to the wholesalers in the 2 years, though the total chain purchases included in the report were only 1.3 and 1.5 times those made by the wholesalers in the corresponding years. In groceries, the chain allowances were between 15 and 16 times those paid to the wholesalers in both years, though the chains bought less than 8 times the amounts purchased by the wholesalers included in the study. In the drug business, the purchases made by the wholesalers actually aggregated somewhat more than those made by the chains, but the allowances to the chains were 2.5 and 3.1 times those of the wholesalers in the first and second of the 2 years, respectively.[33]

A distribution of the various customer accounts by percentages of allowances on sales shows that much larger proportions of chain than of wholesale accounts are found in the higher allowance brackets (15 percent and up).

Business[1] (1930)	Proportions of customer accounts carrying allowances of 15 percent or more	
	Chains	Wholesaler
	Percent	*Percent*
Tobacco	11.28	0.34
Grocery	6.10	3.92
Drug	19.97	12.77

[1] Ibid. Table 8, tobacco; table 5, grocery and drug.

Chains, and those retailers who buy direct from manufacturers, are in a position promptly to reflect to customers in lower prices the benefit of any special discounts and allowances that may be received. Where goods are purchased from a wholesaler, however, the retailer cannot use this manufacturer's allowance to reduce his prices to consumers unless the allowance is passed along to him by the wholesaler. If the wholesaler does pass the allowance along to the retailer, there is no certainty that the latter will give it to the consumer. It is, of course, true that a chain may likewise retain an allowance, but the effort of many chains to build sales volume generally may be expected to result in the passing on of such allowances. This situation, and the fact that the chain allowances are much greater than those to wholesalers, gives the former an important price-cutting advantage.

The data on which the reports[34] already issued on this subject, by the Commission, were based has been supplemented by additional information through questionnaire letters and personal interviews by the Commission's attorneys.

Sec. 3. Kinds of preferential treatment granted to chain stores

The term "preferential treatment" as used here means that treatment granted to chain stores but not given to other retail dealers, which results in a lower net cost to chain-store customers than to other retailers. These preferential treatments usually take the form

[33] Ibid. Table 5, Tobacco; table 2, Grocery; table 2, Drugs. If the figures of manufacturers making allowances are used, there is still a similar though not quite so pronounced an advantage for the chains.

[34] Special Discounts and Allowances in the Grocery Trade, by the Federal Trade Commission (S. Doc. 89, 73d Cong., 2d sess.); Special Discounts and Allowances in the Drug Trade, by the Federal Trade Commission (S. Doc. 94, 73d Cong., 2d sess.); Special Discounts and Allowances in the Tobacco Trade, by the Federal Trade Commission (S. Doc. 86, 73d Cong., 2d sess.).

of special discounts and allowances, sometimes given in consideration of promotional sales work or special service rendered by the chain-store receiving the concession.

The preferences granted chains by manufacturers fall into the following general classifications: Volume allowances, promotional allowances, allowances in lieu of brokerage, freight allowances, and guarantees against price decline.

Volume allowances have been classified as: Straight volume allowances, no quotas or increase specified; volume allowances, with a quota specified; progressive discounts increasing with volume; discounts for increases in volume over some prior periods; and all other volume allowances not specified.

Promotional allowances are classified as: Newspaper advertising allowances; window display allowances; counter display allowances; allowances for featuring and deals; and other advertising and promotional allowances, and have for their purpose the mutual benefit of the interested parties. They usually contemplate the performance of specific acts by the recipients thereof, such as the insertion of advertisements in local newspapers and catalogs and in programs of local events, the dressing of windows and counters with the products or signs of the manufacturers, and the display of products on show cases. They also include special effort in the promotion of sales by clerks in selling the preferred merchandise instead of affording merely a free outlet, and the miscellaneous other forms of cooperation on the part of chain customers in the interest of the manufacturers. Where preferences are granted in the form of promotional allowances without the rendition of services in return, they are, in effect, price concessions having no direct relation to quality of goods, quantity purchased, or cost of selling.

In the consideration of discounts and allowances, an effort has been made to confine the discussion to those discounts and allowances which are preferential, as hereinbefore defined.

The following statement shows for the grocery, drug, tobacco, and confectionery groups the number of manufacturers giving information with respect to preferences granted chain stores and the nature of the preferences given:

Group	Number of manufacturers granting preferences	Nature of allowances						
		Promotional allowances	Special discounts	Brokerage	Freight allowances	Special prices	Miscellaneous	Total
Grocery	76	48	30	24		13	6	121
Drug	36	31	15		4			50
Tobacco	16	10	13					23
Confectionery	10	7	5	1				13
Total	138	96	63	25	4	13	6	207

In all, 257 manufacturers were personally interviewed, of which 129 were in the grocery group, 88 in the drug group, 26 in the tobacco group, and 14 in the confectionery group. It should be noted that in some instances these groups include manufacturers who, if classified strictly according to products, would not come within the group. They are included, however, because their principal distribution is made through the outlets that fall within the respective groups.

Special prices.—Thirteen of the manufacturers interviewed, all in the grocery group, stated that they sell to chain companies at lower prices than to other customers. In some instances the difference in price is based on quantity purchased, while in others the quantity purchased has no relation to the difference in price. In one instance the prices were made lower to chain than to others solely for the purpose of inducing this customer not to handle similar products of any other manufacturer. Others stated that prices are lower to chains than to other customers due to the fact that the prices are the result of bargaining. In other instances manufacturers claimed that better prices are predicated on volume purchases, but qualified their statements by saying that in such instances prices are arrived at by trading to the best advantage. Some of the manufacturers stated that differences in price are based on competitive conditions and not on quantity buying. Other manufacturers grant chain stores the same prices as wholesalers. This is a common practice which, one manufacturer stated, gives chain stores an advantage over other retailers because chain stores are able to distribute the goods at retail without the addition of the wholesalers profit. Several of the manufacturers gave chains an advantage in price, but did not state whether or not such action was based on quantity purchases.

Promotional allowances.—Ninety-six manufacturers, including 48 in the grocery group, 31 in the drug group, 10 in the tobacco group, and 7 in the confectionery group, granted preferential treatment to chain-store companies in the form of "promotional allowances." These include allowances for newspaper advertising, window and counter displays, clerk promotion, sales effort, and featuring and deals. Closely allied with these is the allowance of free goods. These promotional allowances represent a considerable proportion of all preferences given. Many manufacturers in widely separated areas explained that such allowances were granted only when purchasers were sufficiently powerful to demand them. Other manufacturers informed the Commission that this type of allowance is restricted to chains on the theory that similar cooperation from jobbers would not be effective. Many of these allowances which bear no direct relation to the volume of sales, have been granted as the result of bargaining or negotiations, regardless of volume, in which event the allowance is kept as low as possible.

Frequently money advanced for advertising was not used for that purpose at all but used for the purpose of reducing the price to the consumer. Some manufacturers, however, keep a complete check or audit on all newspaper advertising done by customers and pay the customer line for line for such service. A similar check is also made, in some instances, on the counter and window display service and other types of featuring. As manufacturers have no way of determining whether the salesmen or clerks have obeyed instructions, little check can be made of sales effort or clerk promotion.

Special discounts.—There are 31 manufacturers in the grocery classification who gave discounts to chains greater than those given to wholesalers or other retailers.

Not infrequently the rate of discount granted chain companies is twice as large as that granted independent retail dealers and often such discounts are in excess of the amount granted wholesalers. One manufacturer stated that wholesalers, retailers, and chains are each separately classified; that chains receive a trade discount of 10 and 3 percent, wholesalers receive a 10 percent trade discount, and retailers receive varying discounts ranging from 2 to 5 percent. About 95 percent of the chains receive the 10 and 3 percent. Those chains which do not receive the larger discounts are the smaller ones and are classified with and receive the same discount as jobbers.

Of the 16 manufacturers in the tobacco group granting preferences, 13 grant special discounts, while some of the special discounts are claimed to be granted to chains for quantity purchases, such discounts are generally found to be arbitrary price preferences favoring one chain company over another, or favoring chains generally over wholesalers or retailers. Illustrative of these types of special discount, one manufacturer grants to two chains a discount of 10 and 2 percent, while to another the amount is limited to 10 percent. Another manufacturer makes the same discount discrimination between chains. Retailers receive from this manufacturer a discount of 3 and 2 percent. As another illustration of a purely arbitrary discount, one manufacturer stated that he grants certain chains an allowance of from 1 to 5 percent to meet supposed competion of other manufacturers, upon notice by the chain of discount received from other manufacturers and threat not to handle the product unless demanded discount is granted. Another manufacturer gave a discount in the form of confidential rebate at the end of the year, the rate to wholesalers being 2 percent, to chains generally it was 5 percent, but to two particular chains, it amounted to 10 percent.

Allowances for brokerage.—A number of the manufacturers in the grocery group stated that they give allowances in lieu of brokerage to certain chain customers. Some of these give this allowance only when the customer has a buyer at the producing center or shipping point, the amount of such allowance being equal to regular brokerage. Other manufacturers stated that they limit the payment of such allowance to a few large chain customers and then only in response to a demand. Such allowances are not uniform as between chains. Where brokerage allowance is granted, some of the manufacturers allow cooperative chains 2½ percent, while they allow corporate chains a brokerage fee of 5 percent. The reason for this discrimination is that it is necessary to grant the larger discount to the corporate chains to obtain their business.

Some manufacturers who distribute through brokers stated that they were required to pay brokerage not only to their brokers, but also to the chain purchasers. One manufacturer, however, stated that where it pays brokerage to one of the large chain-store purchasers, no brokerage is paid to its own broker. The chain involved has established a buying agency which holds itself out to be a merchandise broker. When the chain, through this buying agency, orders a car of the products of the manufacturer for delivery to one destination, the buying agency receives brokerage. If the manufacturer has a broker located in the territory to which the products are shipped, the broker receives no brokerage. However, when the buying agency of the chain orders a car of the products of the manufacturer for delivery to more than one destination, a mixed shipment, the brokerage is divided, the agency for the chain receiving one half and the broker into whose territory the shipment is destined receiving the other half of the brokerage fee.

Free goods.—Seven manufacturers in the grocery group reported that they give free goods in one form or another. Some of the manufacturers who claim that the products receive wider distribution through chain stores, give free goods with initial orders. Other manufacturers pay for their window and counter displays by giving merchandise therefor. One company reported having given free goods as an experiment to stimulate the sale of its products but the practice was abandoned.

Allowances classified by some manufacturers in the drug group as free goods and featuring and deals are really allowances for promotional work. These have been granted on the basis of purchases in carload lots, on the basis of regular deals, on the basis of reduction in price, and for sales effort.

Sec. 4. Legal status of special concessions to chain stores

The resolution directs the Commission to report " whether or not such quantity prices constitute a violation of either the Federal Trade Commission Act, the Clayton Act, or any other statute." To interpret the term " quantity prices " in the same sense as the words quantity and price are used in the Clayton Act necessarily means a negative answer, as section 2 of that act expressly permits price discrimination due to variation in quantity. So it is assumed that the term is used in the resolution to refer to the lower buying prices of chain stores and special concessions to them from whatever cause.

Section 2 of the Clayton Act reads:

> That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce:
>
> *Provided,* That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition:
>
> *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

It is apparent that the above can have no application to the mere acceptance of discriminatory prices by purchasers but can apply only to the making of same by sellers.

If competition between chain stores and their independent retail competitors " may be " substantially lessened by discriminatory price concessions or a tendency to monopoly " may " result therefrom and these results occur in the course of interstate commerce, Section 2 of the Clayton Act apparently makes them unlawful under the decision of the Supreme Court in the case of *George Van Camp & Sons Co.* v. *American Can Co. et al.* (278 U. S. 245) decided in 1929. It was there held that competition "in any line of commerce" includes that between the seller's customers and is not confined to that between the seller and his competitors. Prior to this case, court decisions to the opposite effect had blocked the Commission from prosecuting price discrimination in favor of chain stores. The same principle would apply to the effect on competition between such chain stores as are engaged in wholesaling and the regular wholesalers. This, of course, is on the assumption that the price discriminations are made by manufacturers to the chains in the course of interstate commerce and are not permitted under the provisos of the section.

Much more than a mere possibility and, in fact, a strong probability exists that the effect of price discriminations by manufacturers which make it possible for chain stores consistently to undersell their independent competitors "may be to substantially lessen competition" between them and "tend" to the creation of a monopoly. Advantages whose effect "may tend" partially to offset the effect denounced by the statute have no logical bearing upon the legal status of the practice prohibited. In this connection it may be observed that to whatever extent retailing by chain stores is held not to constitute interstate commerce, to that extent Federal jurisdiction is made more difficult over a monopoly thereof or a substantial lessening of competition therein.

One difficulty with the above line of reasoning is that it takes no account of the provisos of the section. If the discrimination is "on account of differences in the grade, quality, or quantity of the commodity sold", or makes "only due allowance for difference in the cost of selling or transportation", or is "made in good faith to meet competition", it is not unlawful, even though the effect "may be to substantially lessen competition or tend to create a monopoly in any line of commerce." Discriminatory price concessions given to prevent the loss of a chain store's business to a competing manufacturer, to prevent it manufacturing its own goods, or to prevent it from discouraging in its stores the sale of a given manufacturer's goods, may be strongly urged by the manufacturer as "made in good faith to meet competition."

If this be regarded as an inadequate defense, the question remains whether the discrimination is "on account of" differences in grade, quality, or quantity, or makes "only due allowance" for difference in cost of selling or transportation. Quantity and cost of selling are the only factors among these which give trouble in considering the legal status of discrimination in favor of chain stores. Cost of selling is generally in inverse ratio to the quantity sold to a given customer. This means that both quantity and cost of selling tend to support a lower price to chains than to small competitors of the chains. If the section be taken to mean that any difference in quantity justifies any amount of discrimination, it is obvious that the section may be readily evaded and gives no substantial protection against the evil denounced. If it be taken to mean that the discrimination must make "only due allowance" for difference in quantity, it involves a preliminary decision that a given discrimination does not make "due allowance" before a proceeding under the section can be justified on practical grounds.

The Commission is giving further study to the question whether any of the special price concessions given by manufacturers to chain stores are made "on account of" quantity or make "only due allowance" for cost of selling and quantity. It is now prosecuting a case in an entirely different industry under section 2 of the Clayton Act in which case one of the points involved is whether the discrimination is "on account of" quantity or whether it makes "only due allowance" for quantity (*F. T. C.* v. *Goodyear Tire & Rubber Co.*, docket 2116).

It may very well be that a violation of section 2 of the Clayton Act is *ipso facto* an unfair method of competition and therefore a violation of section 5 of the Federal Trade Commission Act. It does not follow, however, that a discrimination in price which falls short of violating the first may be attacked under the second. If the discrimination is actually within the provisos and exceptions of section 2, those same defenses would doubtless be interposed to a proceeding under section 5, with perhaps controlling effect. The wiser course seems to be to treat the price discriminations in favor of chain stores only as a possible violation of section 2, and not as a possibly unfair method of competition. The point cannot be overlooked that if price discrimination was included under the general prohibition of unfair methods of competition when the Federal Trade Commission Act was passed, the later expression of legislative will in the Clayton Act dealt specifically and in detail with the subject and would therefore seem to take precedence over the more general statutory prohibition.

On the same principle it appears that the general terms of the Sherman Act can hardly be applied to the price discrimination of manufacturers in favor of chain stores. An interesting question, however, might be presented by a proceeding on the theory that price discrimination in favor of chain stores involves contracts in restraint of trade under section 1 of the Sherman Act, which provides that:

> Every contract, combination in the form of trust, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.

While price discrimination was one of the methods used to build up the monopoly which the Supreme Court held unlawful in the Standard Oil dissolution suit, it has never been held to be a violation of the Sherman Act in and of itself.

The suggested theory would involve interpreting "restraint of trade or commerce" as used in section 1 above to cover commerce among the seller's customers as was done in the Van Camp case under the Clayton Act (supra). So far as commerce and competition on the part of manufacturers are concerned it does not appear that the discrimination has resulted in any tendency to monopoly.

There seem to be no other statutes to consider as possibly prohibiting price discrimination in favor of chain stores, except the numerous State enactments on the subject. The question whether any State statute is applicable is one, of course, for the respective State authorities.

CHAPTER V

ECONOMIC FACTORS IN GROWTH AND DEVELOPMENT OF CHAIN-STORE MERCHANDISING

The Senate resolution directs the Commission to inquire into and report, among other things, "The advantages or disadvantages of chain-store distribution in comparison with those of other types of distribution as shown by prices, costs, profits, and margins, quality of goods, and services rendered by chain stores and other distributors or resulting from integration, managerial efficiency, low overhead, or other similar causes."

The economic advantages of chain stores as to lower selling prices, lower costs of merchandise, and integration of the functions of manufacturer, wholesaler, and retailer are so important that they have received special and separate treatment in the foregoing chapters of the report, because they involve, or possibly involve, some question as to their legality under existing law. Advantages or disadvantages such as manifest themselves in profits, margins, quality of goods, services rendered, managerial efficiency, and low overhead, are purely economic in character. Under a competitive system such advantages and disadvantages are presumably not subject to removal by law and it is to be expected that the type of distribution which gives the greater sum total of advantages to the consuming public will increasingly prevail.

In general, it appears that chain-store merchandising has substantial economic advantages which under existing law are clearly legal. If, aside from lower cost of its goods, the system is characterized by a lower cost of distribution in proportion to volume of sales, that is not open to attack on legal grounds. If, by eliminating certain services rendered by independents, the cost of doing business is lowered, the consuming public is the judge whether it is willing to forego those services or pay for them elsewhere in the form of higher prices. When it comes to reducing costs of doing business by reducing wages and salaries, however, it is becoming widely recognized that the law may impose limitations upon employers in the public interest.

The economic advantage of chain stores in the way of lower selling prices is illustrated by the fact that in the smaller towns, at least, people of lower means patronize chain stores to a greater extent than do those with larger incomes. Those who state that they purchase more than half from chains amount to 17 percent of the persons with larger means replying to the Commission's inquiry, 22 percent of the medium-income group, and 35 percent of those with smaller means. The most frequently stated reason for patronizing chain stores is lower prices, and no other one reason for buying from chains approaches it in importance. The reason most often advanced for buying from independents is credit, followed by delivery service, and by loyalty to local enterprise.

Section 1. Gross margins of chain stores and independents

A most important economic question connected with chain-store distribution is whether its cost of doing business per dollar of sales is less than that of independents A comparison of the gross margins of competing types of distribution is one measure of their relative efficiency. The Commission was unable to make the study necessary to permit conclusions on that subject to be drawn for all kinds of chains in comparison with independent distributors in the same lines. It did, however, make such a study for the grocery trade in Washington, D. C., Detroit, Mich., Cincinnati, O., and Memphis, Tenn. It also made a similar study for the drug trade in Washington, Cincinnati, and Memphis. In general it was found that the chains were passing goods into the hands of consumers at a smaller gross margin and a smaller percentage of the sales price than were either the independents or the cooperative chains. This was after eliminating special discounts and allowances. This showing is all the more significant when coupled with the fact that the total sales price of the chains was less, providing a smaller base on which to calculate the percentages.

Grocery store gross margins.—In order to compute the gross margins of chain and independent grocery distributors, it was necessary also to secure their purchase costs on the items for which retail selling prices were obtained.

In presenting the results of the comparative study for chains and independent distributors, the statistics of selling prices and costs are weighted in such a manner as to give effect, as far as practicable, to the relative importance of the several items covered; that is, to the relative volume of the items handled both by the chains and by the independent dealers. The quantities used as weights were secured from the same sources as the cost figures.

In August 1929, statistics of retail selling prices were secured by agents of the Commission from 570 independent and cooperative grocery stores in Washington. The total number of items listed for pricing was 448, representing 42 commodity groups. Naturally, the number of these items priced in particular stores varied widely from store to store according to the relative completeness of their stocks. The list was made up on the principle of confining it practically to brands carried both in chain stores and in stores of other retailers, on account of the difficulty of establishing the comparability of other brands.

The chain gross margin, after special discounts and allowances were deducted, was $12.57 and that of the independent dealers $15.23. Expressed as a percent of sales the unweighted chain margin was 23.25 percent and that of the independents 26.24 percent. When weighted by chain volume the chain gross margin was 18.99 percent of sales and that of the independents 23.01 percent. Comparable figures after applying independent volume were 17.70 percent and 20.88 percent.

The gross margin, after special discounts, of the largest chain was 21.73 percent of sales, that of the intermediate sized company 21.28

percent, while the smallest chain showed the highest gross margin of the 3 chains, 21.77 percent. The gross margin of the independent and cooperative distributors combined was 23.98 percent, while that of the independent distributors, excluding cooperatives, was 24.23 percent. This difference is explained by the fact that the margin of the larger cooperative (22.84 percent) was lower than that of any of the other independent distributors.

In January and February 1931, agents of the Commission procured statistics of selling prices from 2,264 retail grocery stores in the Detroit metropolitan area. The entire number of such stores within this area was so great that it was necessary to limit the number to be priced. A sample of 40 percent of the stores properly distributed over the entire area and over the different types of stores seemed adequate to secure reliable results, and approximately this proportion of the independent and the chain stores was priced. The items priced covered a wide range of commodities selected with the object of making the list representative of the stocks carried in chain and independent stores in the area covered.

The chain gross margin, after the deduction of special discounts and allowances from costs, on an unweighted basis, was $8.73 and that of the independent distributors $10.31. Expressed as a percent of sales, the unweighted chain margin was 26.25 percent and that of the independents 28.91 percent. When weighted by chain volume, the chain gross margin was 18.96 percent of sales and that of the independents 25.93 percent. Comparable figures after applying independent distributor weights were 20.11 percent and 25.02 percent.

The gross margins of the four chains on the 69 items, computed after the deduction of special discounts and allowances from costs, ranged from 20.68 percent of sales to 23.18 percent. The margin for the independents was 26.57 percent when the figures for cooperatives were excluded, and 26.20 percent when they were included. The margin of the retailer cooperative group was 25.14 percent and that of the wholesaler-retailer cooperative group 24.47 percent. The chain which showed the lowest selling price had the highest cost and narrowest gross profit margin, and this chain was not the largest of the four.

Statistics of retail selling prices were procured from 608 independent and cooperative grocery stores in Cincinnati. The list of items priced in these stores was similar to that used in Washington, but it was modified to meet local conditions. Prices for the selected items were also obtained from four grocery chains, so far as these items were carried by each of them.

The gross margin of the independent distributors, after the deduction of special discounts and allowances from costs, on an unweighted basis, was $5.94, as compared with $4.81 for the large chains and $4.75 for the smaller chains. Expressed as percentages of sales, the corresponding figures were 25.45 percent, 21.90 percent, and 21.53 percent. When weighted by the volume of independent distributors, the margin of that type of distributors was 25.26 percent, as compared with margins of 18.28 percent for the large chains and 18.78 percent for the smaller chains. On the basis of large-chain weights, the margin of the independent distributors was 23.33 percent, and that of the large chains 16.97 percent, while on the basis of small-chain weights the independent margin was 24.88 percent and that of the small chains 17.37 percent.

The gross margins of the four chains on the 73 items, computed after the deduction of special discounts and allowances from costs, ranged from 21.32 percent to 22.07 percent. The margins of both the smaller chains, when expressed as percentages of sales, were slightly narrower than the margins of either of the large chains. The margins of both cooperative groups were wider than the margin for any one of the chains, the figures being 25.28 percent and 26.51 percent. The highest gross margin (26.93 percent) was that of the independents, excluding the cooperatives. It was decreased slightly (to 26.24 percent) by the inclusion of the figures for the cooperatives. The difference between the lowest chain margin and that of the independent distributors, exclusive of cooperatives, was 5.61 points percent.

In October 1930, agents of the Commission procured statistics of selling prices from 433 retail grocery stores in Memphis, the items priced covering a wide range of commodities representative of the stocks carried in chain and independent grocery stores of that city. Not only were the stores of independent and cooperative dealers priced, as in Washington, but also those of chains.

The chain gross margin, after the deduction of special discounts and allowances from costs and on an unweighted basis, was $9.10 and that of independents $10.27. Expressed as a percent of sales, the unweighted chain margin was 25.3 percent and that of the independents 26.96 percent. When weighted by independent distributor volume, the chain gross margin was 22.3 percent of sales and that of the independents 25.23 percent. Comparable figures after applying chain weights were 22.91 percent and 27.73 percent.

The two large chains covered by this study were grocery and meat chains. For 1930, the gross-profit margin of all grocery and meat chains was 20.02 percent after discounts and allowances. This gross margin compares with 22.91 percent in this price-comparison study for Memphis, as weighted by chain volume and after the deduction of special discounts and allowances.

The total cost of 95 items, after deduction of special discounts and allowances, was $11.85 for the larger of the two chains and $12.07 for the smaller, while the corresponding figure for the cooperative organization was $11.99. The total of the costs for independent dealers, $12.13, was reduced by the inclusion of the figures for cooperative stores to $12.11.

The two principal chains showed scarcely any difference in gross margins computed after special discounts and allowances were deducted from the costs, the figures being 24.73 percent of sales for the smaller chain and approximately 25.3 percent for the larger. The margin for the independents, namely, 28.62 percent, was increased only slightly by the inclusion of the figures for all the cooperative stores, namely, to 28.71 percent.

The independents, excluding the small chains, showed the highest margin, namely 29.03 percent of sales, and the small chain which had the lowest total selling price also had the lowest margin, namely 20.81 percent. The margin for the other small chain for which separate figures are shown was 23.39 percent. The large chains had somewhat higher margins, the figures for the one with two groups of stores averaging 25.94 percent, while that for the other was 24.77 percent. The inclusion of the figures for all small chains with those for the independents reduced the margin of the latter from 29.03 percent to 28.15 percent.

Drug store gross margins.—Similar studies of the drug business produced similar results. Statistics of retail selling prices were procured from 180 retail drug stores in Washington. The items priced were carefully selected, and the list consisted of 193 drug items, 233 toilet-goods items, and 37 miscellaneous items, a total of 463 items, of which total 226 were usable for these comparisons.

In order to compute the gross margins of chain and independent distributors, it was necessary also to procure their purchase costs on the items for which retail selling prices were obtained. These were procured from the three principal chains and from the Washington Wholesale Drug Exchange.

In presenting the results of the comparative study for chains and independent distributors, the statistics of selling prices and costs were weighted in such a manner as to give effect to the relative importance of the several items and to the relative volume of goods sold as between different chains and between chains and independent dealers. Statistics of the quantities used as weights were obtained from the same sources as the cost figures.

The chain gross margin on the 226 items, after the deduction of special discounts and allowances from costs, on an unweighted basis, was $37.67 as compared with $48.57 for the independent distributors. Expressed as percentages of sales, the unweighted chain margin was 32.06 percent and that of independent distributors 37.33 percent. When weighted by chain volume, the chain gross margin was 22.60 percent of sales, and when weighted by independent distributor volume the margin of the independents was 37.66 percent.

The totals of the costs of the 226 items for the 3 chains were $79.33, $80.06, and $80.26, as compared with $81.52 for the independent distributors, the latter figure being about 2.8 percent higher than the lowest total cost of the 3 chains. The totals of the gross margins for the 3 chains were $37.39, $37.44, and $39.68, or, stated in ratio to sales, the figures were 31.83, 32.06, and 33.08 percent, respectively. The total margin for the independent distributors was $48.57, or 37.33 percent of sales.

Statistics of retail selling prices were procured from 262 retail drug stores in Cincinnati. The items priced were carefully selected, and the list consisted of 200 drug items, 239 toilet-goods items, and 39 miscellaneous items, a total of 478 items, of which 268 were usable for these comparisons.

The chain gross margin on the 268 items, after the deduction of special discounts and allowances from costs, on an unweighted basis, was $43.31 as compared with $55.02 for the independent distributors. Expressed as percentages of sales, the unweighted chain margin was 33.18 percent and that of independent distributors 38.38 percent. When weighted by chain volume, the chain gross margin was 23.99 percent of sales, and, when weighted by independent distributor volume, the margin of the independents was 36.76 percent.

The total of the costs of the 266 items for each of the chains was $86.58, as compared with $87.59 for the independent distributors, the latter figure being about 1.2 percent higher than the total chain cost. The totals of the gross margins for the chains were $38.75 and $43.26, or stated in percentages of sales, the figures were 30.92 percent and 33.32 percent, respectively. The total margin for the independent distributors was $54.54, or 38.37 percent of sales.

Statistics of retail selling prices were procured from 166 independent and small chain drug stores in Memphis. The items priced were carefully selected, and the list consisted of 179 drug items, 200 toilet-goods items, and 37 miscellaneous items, a total of 416 items, of which total 212 were usable for the comparisons.

The chain gross margin on the 212 items, after the deduction of special discounts and allowances from costs, on an unweighted basis, was $37.20 as compared with $49.61 for the independent distributors. Expressed as percentages of sales, the unweighted chain margin was 35.09 percent and that of independent distributors 41.63 percent. When weighted by chain volume, the chain gross margin was 28.77 percent of sales, and when weighted by independent distributor volume the margin of the independents was 41.18 percent.

The total costs for the two larger chains were $67.06 and $67.19, and for the small local chain $68.65. The corresponding total for independent distributors was $68.25, and this figure was used also for the group of small chains, since their purchases were doubtless made largely from the wholesale dealers. The totals of the gross margins for the two larger chains were $34.45 and $39, and for the small local chain $32.54. In terms of percentages of sales the corresponding figures were 33.94 percent, 36.73 percent, and 32.16 percent. The total margin of the group of small chains was $47.07, or 40.82 percent, and that of independent distributors 41.58 percent, excluding the figures for small chains, and 41.48 percent, when the latter were included.

Sec. 2. Relation of store rentals to gross margins

The Commission made no comprehensive study of this subject. However, in a study of chain-store operations in 30 small towns, it was found that in the food lines of business average chain-store rent exceeds by more than 75 percent the average rent paid by independent stores. In the variety field, chain rents are more than double the average reported by the few independent stores in the field. Dry goods and apparel chain-store rentals exceed the average of independent stores by about 50 percent, while chain department stores pay almost twice as much rent as independent stores. Comparison of the average chain and independent rent, together with the sales data, however, shows that, because of their higher average sales per store, the chains can pay distinctly higher rents than independents without incurring a disproportionate expense burden. This means they have generally superior locations and several instances were reported of chain stores displacing independent tenants because of the rent paid.

Sec. 3. Relative wages in chain and independent stores

Chain-store wages data are of considerable significance in relation to the Senate resolution, because salaries and wages in retail establishments constitute the largest single item of operating expense. If, for example, certain kinds or sizes of chains pay wages to employees which are materially below those of other competing types of retailers, the competitive position of the latter is unfavorably affected thereby. Furthermore, data relative to chain-store wages are pertinent to the question often raised as to whether certain kinds of chains, or chains located in certain sections of the country, pay wages which are below a socially desirable standard of living.

Fifteen hundred and sixty-two chains operating 63,657 stores and doing a business of about $4,600,000,000 for 1928 reported $20.60 as the average weekly wage of 292,172 store employees for the week ending March 30, 1929. As of the week ending January 10, 1931, the average weekly wage of 279,746 store people employed by 1,219 chains operating 64,680 stores with 1930 sales of about $5,250,000,000 was $20.48. The aggregate of annual wages for both 1929 and 1931 is influenced greatly by dollar-limit variety chains, grocery and meat chains, and chains of department stores, which collectively employ well over 50 percent of the total store employees reported and pay over 50 percent of the total wages for the 26 kinds of chains.

The average weekly wages reported for store managers as of the weeks ending March 30, 1929, and January 10, 1931, were $46.91 and $44.57, respectively. Three kinds of chains, grocery, grocery and meat, and dollar-limit variety, account for about 75 percent of the managers and 75 percent of the total annual compensation in both years.

Only 455 and 269 chains reported the average weekly wages of supervisors in 1929 and 1931, respectively. These chains, however, operated 56,222 stores on March 30, 1929, and 56,091 stores on December 31, 1930. A total of 4,735 supervisors for the week ending March 30, 1929, received an average weekly salary of $76.75, while, for the week ending January 10, 1931, a total of 4,372 supervisors averaged $78.41. Grocery and meat chains account for nearly two-thirds of the number of supervisors and more than one-half their total estimated annual compensation for both periods.

For the year 1929, only 8 of the 26 kinds of chains report average weekly wages for store employees below the general average of $20.60, but among the 8 are the grocery ($19.73), grocery and meat ($19.28), and dollar-limit variety ($16.13) chains. In contrast with the foregoing, seven kinds of chains, including meat, men's ready-to-wear, women's shoes, and furniture reported average weekly wages per store employee of $30 or more in 1929.

Comparable data on chain-store and "independent" dealer wages for full-time store selling employees are available for the following eight kinds of business: Grocery, grocery and meat, drug, tobacco, ready-to-wear, shoes, hardware, and combined dry goods, dry goods and apparel, and general merchandise. The weighted average weekly wage of 3,933 independent store selling employees in these eight kinds of business for the week ending January 10, 1931, was $28.48, as compared with $21.61 for 107,035 chain-store selling employees. A simple average of the eight lines of business shows a narrower spread between the two figures ($28.10 for independents and $23.82 for chains, respectively) but leaves the same distinct conclusion, namely, that, for the period studied, the independents paid their store employees more than did the chains.

In addition, 15 independent department stores, reporting, accounted for 4,688 store selling employees, or over 750 more independent store selling employees than did all the other 1,549 independent stores combined. Because of the heavy weighing, the chain and independent department store figures have not been included in the foregoing comparison.

When department store selling employees are included, the weighted average wage of all independent-store employees is reduced from $28.48 to $23.45, while the figure for chains falls from $21.61 to $21.22. The simple averages, however, which, of course, do not give weight to the large number of independent department-store employees, are $27.12 for independents and $23.37 for chains. Even including department-store employees, the average wages of independents were higher than those for chains.

Independent-store wages in each of the eight kinds of business furnishing comparable data were higher than those reported for chains, the difference varying from $6.92 for grocery and meat to only 65 cents for hardware. The employees of department-store chains averaged 56 cents per week higher than did those of independent department stores, both, however, being considerably below the averages of most of the other eight kinds of business.

The indicated tendency for independents to pay higher wages than chains is substantiated by information obtained in the study of the general social effect of chain stores in 30 selected smaller towns and cities with populations ranging from 1,737 to 5,106. Comparable data are available for the following 10 lines of business: Grocery, grocery and meat, drug, variety, shoe, furniture, hardware, ready-to-wear, dry goods and apparel, and department store. No data were reported for chain general-merchandise stores. With the exception of the furniture group, independent wages were higher than those reported for chains. The number of selling employees in independent variety and chain drug stores, however, is very small as is also the number for both independent and chain shoe, ready-to-wear, department, furniture, and hardware stores.

The full-time selling employees of both grocery and grocery-and-meat independents averaged higher weekly wages by slightly over $3 than did those of the chains. The combined ready-to-wear, dry goods and apparel, department store, and general merchandise group shows the independents paying their full-time store employees $1.70 more per week, on the average, than did the chains.

Chains in a number of the 26 trades for which wages information is available employ varying but substantial proportions of women as salespeople, cashiers, or otherwise. For this reason wages data for 146,123 store employees reported for the week ending January 10, 1931, were broken down for male and female, combining both selling and nonselling employees. Of this total, only 44 percent were men while 56 percent were women.

Chains reporting relatively low average weekly wages as of January 10, 1931, employed larger proportions of women than those reporting relatively high weekly wages. The four classes of chains reporting the lowest store employee average wages in 1931 (confectionery and the three types of variety chains) all report that more than 75 percent of their store employees are women. At the other extreme, women comprise less than 25 percent of the employees in 8 of the 10 kinds of chains reporting the highest average weekly wages.

The kinds of chains showing the smallest sales per full-time store employee show the highest ratios of wages payments to sales. Confectionery, millinery, and musical instruments, all reporting annual sales of less than $10,000 per store employee, show a store employee wages cost equal to 14 percent or more; while grocery, grocery and meat, and men's shoes, with average annual sales per store employee of over $30,000, report wage ratios of less than 4 percent.

Kinds of business averaging three or less full-time store people per store tend to show dollar sales per employee which are larger than the average and consequently ratios of wages cost to sales which are lower than the average. For example, in men's shoes, grocery, and grocery and meat chains, employing on the average 0.9, 1.3, and 1.4 full-time store employees per store, the ratio of wages to sales is less than 3.5 percent. At the other extreme, department-store chains with 58.2 store employees per store, dollar-limit variety with 15.8, musical instruments chains with 13.1, women's ready-to-wear with 11.7, and furniture with 11.5, all report ratios of wages to sales of over 8 percent.

Sec. 4. Services rendered or eliminated by chain stores

The resolution also directs a report upon the advantages or disadvantages of chain-store distribution, as shown by "services rendered." Well-known advantages of chain-store operation lie in their policies as to cash, credit, store, and delivery service. Store service policy may involve either the customer waiting on himself without assistance and lack of provision for taking telephone orders. The advantages which inhere in a cash business with no credit losses and in savings on clerk hire and delivery expense are bound to be reflected in the lower cost of doing business which the inquiry shows characterizes chain-store operation.

Over one-half (53.5 percent) of the chains stated that all stores sold for cash, while slightly less than one-third (32.8 percent) reported all stores allowing credit to all customers considered good credit risks. The chains selling only for cash operated 87.5 percent of the total stores and accounted for 72.9 percent of the total volume of business of all reporting chains.

All unlimited-price variety and nearly all dollar-limit variety, and the hat and cap chains operated all their units on a strictly cash basis. In addition, 80 to 86 percent of the chains in $5-limit variety, confectionery, men's shoes, women's accessories, and men's furnishings reported all stores on a cash basis. Approximately three-fourths of the grocery chains and about two-thirds of the men and women's shoes, tobacco, dry goods, and the grocery and meat chains also sold only for cash. On the other hand, all chains reporting in the musical instruments and furniture groups extended credit in all stores to all good credit risks, while about 80 percent of the chains in the hardware and general merchandise fields, 75 percent of the men and women's ready-to-wear and department-store chains, and one-half of the chains in the drug group reported all stores on a full-credit basis.

The larger chains tend to operate all stores on a cash basis or to offer credit in some stores only. Chains on any other credit basis are, in general, materially below average size.

On the basis of proportions of their sales made on a cash basis, as reported by a large number of chains, an estimated distribution of the sales of all reporting chains was made for each of 26 kinds of chains. For all kinds combined, it was estimated that cash sales were 90 percent of the total sales, and credit sales 10 percent.

Unlimited-price variety chains indicate that all goods were sold for cash, while for dollar-limit variety practically all sales were on this basis. In 11 additional lines of business, including grocery, grocery and meat, drug, and dry goods and apparel, over 95 percent of the sales apparently were for cash. Furniture chains, on the other hand, show the greatest use of credit, 85.2 percent of the total net sales of these chains being estimated as on this basis. In addition, over one-half of the total volume of business for three other kinds of chains appears to have been transacted on credit—musical instruments (74.5 percent), men and women's ready-to-wear (65 percent), and hardware (50.2 percent).

Shopping goods predominate in most of the 10 kinds of chains, indicating substantial proportions of their goods are sold on credit basis. Installment sales presumably contribute to the high credit percentages for musical instruments and furniture chains.

The proportion of chains selling for cash in all their stores varies directly with the number of stores per chain, ranging from 43.4 percent for the smallest size group of chains (2–5 stores) to 100 percent for the largest size group (1,001 and over stores).

The ratio of cash sales to total sales likewise varies directly with the size of chain. The range of the sales on a cash basis is from 63.7 percent for chains operating 2–5 stores to 100 percent for chains operating over 1,000 stores. The opposite tendency, of course, holds true for credit sales.

Of the 1,689 chains reporting for the year 1928, over one-half (54.9 percent) either stated that no stores made deliveries to customers or reported such deliveries to be of negligible proportions; while slightly over 30 percent of these chains reported all stores giving full delivery service. The chains reporting all stores on a nondelivery basis accounted for four-fifths (80.8 percent) of the stores and over two-thirds (69.2 percent) of the total sales made by the 1,689 reporting chain-store systems. Chains on a full-delivery basis, while operating only 9.9 percent of the stores of all reporting chains in 1928, accounted for 22.7 percent of the total net sales.

While almost half of the chains rendered some delivery service, such chains operated less than one-fifth of the stores and accounted for less than one-third of the total sales of all chains reporting. These differences are primarily attributable to grocery and meat chains; although more than two-fifths of these chains gave some delivery service, the stores and sales of such chains were less than 7 percent of the total for this predominating kind of chain business.

In general, for a majority of the kinds of chains, higher proportions of stores and of sales, than of chains are in the nondelivery category. While it is obvious that the character of the merchandise has much to do with the result, and in spite of numerous probable exceptions, it appears that, in general, delivery service is more widely extended by the smaller chains than by the larger.

Slightly less than one-half of the chains operating 2–5 stores are on a nondelivery basis while 9 of the 10 chains operating in excess of 1,000 units do not extend free-delivery service. On the other hand, the ratios for chains which gave full-delivery service indicate, in general, an inverse correlation with size of chain, the 2–5 store chains showing the highest proportion (37.5 percent) of chains on this basis and the 101–500 store organizations, the lowest (13 percent) although here again the 501–1,000 store group is out of line. No chain with over 1,000 units offered full-delivery service in all of its stores.

In general, the ratio to total sales, of sales on which no free-delivery service was given, varies directly with the number of stores per chain. The proportion of total sales on which no delivery service was given ranges from 62 percent in the 6–10 store group to 99.5 percent for stores with over 1,000 stores.

Seven hundred and twenty-three, or nearly 80 percent of all reporting cash chains, gave no free-delivery service, and they accounted for about 90 percent of all stores and sales reported by chains on a cash basis.

All of the general merchandise chains, on a cash basis, reported no free deliveries. Following, in order of the proportions of chains which sold for cash and did not deliver, are dollar-limit variety (93.9 percent), women's accessories (92.3 percent), tobacco (90.9 (percent), men's furnishings (89.3 percent), and men and women's shoes (86.6 percent).

A little over one-half (51.2 percent) of the reporting chains stated that none of their stores accepted telephone orders in 1928. These chains account for slightly less than one-half of the stores (49.4 percent) and sales (47.3 percent) reported by the 1,499 chains. A somewhat smaller proportion (41.4 percent) of all the chains reporting (stores 12.1 percent and sales 25.4 percent) stated that all stores took telephone orders while 111 chains, or 7.4 percent of all reporting chains, took telephone orders in some of their stores. This latter group of companies operated nearly 40 percent of the total stores and accounted for about 27 percent of the total volume of business.

It would appear that the policy of taking telephone orders in all stores is more general among the smaller chains than the larger and that the larger chains appear to limit the taking of telephone order to some of their units.

The proportion of chains taking telephone orders in all stores shows a general tendency to decrease as the number of stores increases. Slightly less than one-half of the 804 chains in the 2–5 store group take telephone orders in all stores while only 1 of the 8 chains in the 501–1,000 group follow a similar practice. None of the chains with over 1,000 units accepts telephone orders in all stores, but nearly 20 percent of the 51 chains in the 101–500 stores group did do so.

A comparison of these differences in the proportions of chains, stores, and sales indicates that it is primarily the smaller chains which accept telephone orders.

Of the 10,474 stores operated by the 149 grocery chains, 1,198, or 11.4 percent, were self-service stores, while of the 32,330 stores of the reporting grocery and meat chains, 1,811, or only 5.6 percent. were operated on the self-service principle.

Sec. 5. Comparative quality of goods

The resolution directs a report on the advantages or disadvantages of chain-store distribution as shown by "quality of goods." Reductions in appropriations made it impossible to make any comprehensive study of this question. However, in connection with its study in 5 cities of the comparative buying and selling prices of chain and independent grocery stores, the Commission, in 3 of the 5 cities—Des Moines, Memphis, and Detroit—purchased samples of certain brands of canned fruits and canned vegetables to determine their relative quality. In all, samples were obtained in the 3 cities for 511 items of canned fruits and canned vegetables. Each sample consisted of 3 cans, 2 of which were graded by the warehouse division of the United States Department of Agriculture, the standards used being those promulgated by the department or those customarily employed by it in commercial grading. The merchandise purchased represents the brands of chains, manufacturers, both national advertisers and others, wholesalers, and cooperative chains.

In all, 396 cans of vegetables were graded. Of these, 85 were canned spinach and pumpkin, which do not have the same standards as other vegetables. The results of the grading showed that excluding these two kinds of vegetables, the brands of the chains were only slightly below those of nationally advertising manufacturers in the proportion of their cans grading "fancy", "extra standard", and "standard", respectively. They make a slightly better showing than non nationally advertising manufacturers in the "fancy" grade and show a materially higher proportion for "extra standard." Compared with wholesalers, the chains show a distinctly higher proportion in "fancy" and a somewhat lower proportion in "extra standard." Chains lead the cooperatives slightly in proportions of their brands of canned vegetables grading "fancy", but for the "extra standard" grade the brands of the cooperatives had a much higher ratio.

For canned spinach and pumpkin, the cooperative chains made the outstanding showing, three-fourths of their cans grading "fancy." All of the chain brands of these canned vegetables graded "standard." The non nationally advertising manufacturers have a higher proportion of "fancy" than do the nationally advertising manufacturers.

A total of 621 cans of fruit was graded. The proportion of the chain brands of fruits which graded "fancy" was slightly higher than the average, although below the proportions for brands of both wholesalers and nationally advertising manufacturers. In the proportion of brands grading "choice", the chains substantially exceeded the figures shown by any other group. None of the chain brands of canned fruits graded "seconds."

As with canned vegetables, there were marked differences in the grades of manufacturers who advertise nationally and those who do not, the former being the higher in quality. There was also the same general close correspondence in the grades of the chains and the nationally advertising manufacturers. Furthermore, the comparisons of the grade scores indicate that the chains compare favorably with these and other distributors in the quality of their private brands of canned vegetables and fruits.

CHAPTER VI

PUBLIC POLICY OF STATES REGARDING CHAIN STORES

While most of the States have long had statutes aimed at monopoly and combinations in restraint of trade, or which prohibit price discrimination, so far as known to the Commission no cases thereunder have been prosecuted by States officials against chain stores of the types covered by the Commission's investigation. There has been a wide recognition, however, of the economic problem involved in the growth and threatened dominance of chain distribution, which is but one phase of the problem of monopoly. This recognition is evidenced by the increasing efforts of the States to find a solution by legislation specially designed for the purpose. Early State legislative attacks against chain stores took the form of prohibiting further extension thereof,[35] but such laws having been declared by the lower courts to be discriminatory,[36] efforts along this line were discontinued.

Section 1. Taxation as a Method of Regulating Chain Stores

In more recent years State attempts to control the development of chain stores took the form of special license fees and taxes. These, being held by the lower courts to be unconstitutional because excessive, were followed by laws providing for the imposition of moderate fees and taxes. This latter method having been sustained by the courts, the present tendency of State legislatures is to be guided by this principle.

The reason assigned, in most instances, for the enactment of such laws is the increasing of revenue, but their main purpose is to obstruct the development of chain-store operations in the various States which have enacted them.

In Georgia the amount to be raised from taxing chains at a certain rate to meet estimated expenses of the State has been publicly stated as the purpose. In Missouri it has been stated to be the raising of the amount payable by chains to the level of taxes paid by independent merchants. In Wisconsin, according to the Governor's message to the legislature,[37] the purpose is to obtain additional revenue and to make chains pay their fair share of the tax burden.

A member of the Maine Legislature, however, in discussing the 1933 tax law, frankly stated that "the object of this bill is not so much for income as it is to assist in the correcting of an unbalanced situation that has arisen in this country."

[35] Maryland, Acts of 1927, ch. 1927.

[36] *Keystone Grocery & Tea Co.* v. *Huster* (Apr. 21, 1928), Circuit Court, Alleghany County, Md.

[37] Message to legislature dated June 1, 1933:

There is abundant evidence that chain stores escape their fair share of the tax burden. Further, there is a clear evidence that they can afford to pay their fair share of the tax burden and they should not be allowed to escape any longer. * * * The Supreme Court of the United States has stated very plainly that the taxation of the chain stores cannot be made a device for putting them out of business. A chain-store tax which attempts to do this is certain to be held unconstitutional and has the effect only of permitting the chain stores to escape all special taxation.

In announcing his intention to sign the chain-store tax bill passed by the Legislature of Maryland in 1933, the Governor stated that while it was contended the measure would raise needed revenue, he was not approaching the bill as a revenue measure; that he considered the real issue as social and economic; that the bill undertakes to restore to the independent merchants and business men equality of opportunity by subjecting the chain store, whose operations are imperiling those opportunities, to the burden of graduated license fees.

In the case of *Louis K. Liggett Company* vs. *J. M. Lee, Comptroller of the State of Florida* (288 U. S. 517), decided in March 1933, the Supreme Court upheld the power of the State to levy a privilege tax on chain stores, with the tax per store increasing according to the number of stores operated. The judgment of the State Supreme Court, however, was reversed insofar as the State attempted to "increase the tax if the owners' stores were located in more than one county." The social and economic purposes of the legislation were emphasized by Justice Brandeis. In a dissenting opinion that the State Court judgment should have been affirmed in toto he stated in part as follows:

> Against these plaintiffs, and other owners of multiple stores, the individual retailers of Florida are engaged in a struggle to preserve their independence—perhaps a struggle for existence. The citizens of the State, considering themselves vitally interested in this seemingly unequal struggle, have undertaken to aid the individual retailers by subjecting the owners of multiple stores to the handicap of higher license fees. They may have done so merely in order to preserve competition. But their purpose may have been a broader and deeper one. They may have believed that the chain store, by furthering the concentration of wealth and of power and by promoting absentee ownership, is thwarting American ideals; that it is making impossible equality of opportunity * * * and that it is sapping the resources, the vigor and the hope of the smaller cities and towns. (P. 568.)
>
> * * * * * * *
>
> The purpose of the Florida statute is not, like ordinary taxation, merely to raise revenue. Its main purpose is social and economic. The chain store is treated as a thing menacing the public welfare. The aim of the statute, at the lowest, is to preserve the competition of the independent stores with the chain stores; at the highest, its aim is to eliminate altogether the corporate chain stores from retail distribution. (Pp. 569–570.)

Likewise, Justice Cardozo dissenting in the same case, with Justice Stone concurring in his opinion, said:

> It will not do to shut one's eyes to the motive that has led so many legislatures to lay hold of this difference (between chains and independents) and turn it into a basis for a new system of taxation. The system has had its origin in the belief that the social utility or inutility of one group is less or greater than that of others, and that the choice of subjects to be taxed should be adjusted to social gains and losses. Courts would be lacking in candor if they were not to concede the presence of such a motive behind this chain-store legislation.

Until 1927, the various States made no distinction between chain stores and other merchants in the imposition of taxes. During that year, the legislatures of two States, North Carolina and Georgia, enacted tax laws based on the number of units operated; these were, however, promptly declared unconstitutional.[37a]

[37a] *Great Atlantic & Pacific Tea Co. et al.* v. *Doughton*, 196 N. C. 145 (Supreme Court of N. C.); *F. W. Woolworth Co.* v. *Vandivear*, Supreme Court, Fulton County, Ga., Sept. 4, 1929.

In the years 1929, 1930, and 1931, legislatures of various States had under consideration an increasing number of bills providing for taxation of chain-store companies, basing the amount of tax upon the number of units operated. The exactions were in the nature of privilege taxes for the right to do business. In 1929, the legislatures of the States of Georgia, Indiana, and North Carolina enacted such laws. The law of Georgia was declared unconstitutional by the State Supreme Court.[38] Cases involving the validity of both the Indiana and North Carolina laws were carried to the United States Supreme Court where the laws were declared to be constitutional.[39] These license tax laws provided for a very considerable difference in the amounts imposed on single store operators and on chain-store operators; and in general, the validity of the measures was contested on the ground that no sound basis existed for such differentiation. In the Indiana case, the court ruled that there is a substantial difference between the operation of the singly owned independent store and the chain-store unit and that this difference justified the variation in the tax rate.

The laws mentioned above and most of the bills introduced took one of two forms. The first, and most generally used, imposed an initial amount for one store—or the first store taxed—with increased amounts for additional stores operated; the other, infrequently used, imposed the same rate per store on all stores operated by the chain. In the bills introduced in 1932 and 1933, however, this definition has been made sufficiently broad in some instances to bring cooperative organizations and voluntary chains within its scope.

In 1930, a different form of taxation was introduced, and enacted into law in two States.[40] It was aimed particularly at chain stores. While the tax was based on the total gross sales and applied to all merchants, chain or otherwise, the rate was graduated, increasing as the gross sales increased, with the result that the larger businesses, including chain stores, were required to pay the higher rates of taxes.

The Mississippi law [41] was attacked in the Federal court but was held to be constitutional.[42] The case was pending on appeal in the United States Supreme Court in 1932 when the law was repealed. With this repeal, a new law was enacted which imposed a uniform rate of taxation upon gross sales of all retail merchants, including single store operators, and had no special application to chain store companies.

The year 1933 saw increased activity in the efforts of States to levy fees and taxes on chain stores. The legislatures of all but four [43] of the States were in session and chain store tax measures were under consideration in all of these except Nevada and Alabama. The latter already had a law on the subject. Some 132 bills were introduced in these legislatures, 118 proposing graduated fees based on the number of stores, and 14 proposing graduated percentages of gross receipts or gross sales.

At the end of 1933, chain-store graduated license tax laws, based on number of stores operated, were in force in 13 States. These

[38] *F. W. Woolworth Co.* v. *Harrison*, 172 Ga. 179.
[39] *State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527 (Indiana); *Great Atlantic & Pacific Tea Co.* v. *Maxwell*, 284 U. S. 575 (N. C.).
[40] Kentucky and Mississippi.
[41] Mississippi Laws of 1930, ch. 90.
[42] *Penny Stores* v. *Mitchell*, 59 Fed. (2d) 789.
[43] Kentucky, Louisiana, Mississippi, and Virginia were not in session.

laws varied widely in the rate of the tax, no two providing the same amount.[44] In 5 of the States the first store is exempt from taxation, and in the other 8 the tax on the first store is small, varying in the different States from one to five dollars. Most of the laws provide for a fixed tax per store, in groups of five or ten stores, increasing with the aggregate number of stores. By the South Carolina law, however, the tax increases $5 with each added store up to 30, stores beyond that number each paying $150, the same tax as the thirtieth store.

The Idaho law, with graduated tax, according to number of stores, provides that all stores of any chain shall pay the tax as determined by the total number of its stores. The variations in amount of the tax under various State laws is well illustrated by the following tabulation showing the aggregate tax for 25, 50, and 75 stores:

State	Aggregate tax on—			State	Aggregate tax on—		
	25 stores	50 stores	75 stores		25 stores	50 stores	75 stores
Alabama	$741	$2,616	$4,491	Michigan	$2,570	$8,820	$15,070
Florida	515	1,665	3,540	Minnesota	370	2,245	6,120
Idaho	12,500	25,000	37,500	Montana	625	1,375	2,125
Indiana	1,193	4,943	8,693	North Carolina	1,850	4,850	8,600
Louisiana	785	2,785	7,785	South Carolina	1,625	5,325	9,075
Maine	396	1,646	2,896	West Virginia	497	2,672	7,672
Maryland	1,870	5,620	9,370				

In addition to the foregoing States, Wisconsin enacted an emergency chain store tax law in 1932, setting a limitation for its enforcement at January 1, 1934. In the Wisconsin legislature session of 1933 (Session Laws, chapter 469), there was enacted a chain store gross income tax law, which provided that in the event it should be held to be invalid, a chain store license tax should become effective as of July 1, 1933, fixing the rate of tax as follows: On the second to fifth stores, $10 each; sixth to tenth stores, $25 each; eleventh to twentieth stores, $50 each; on each store above twenty, $100 each.

Four other States have tax laws based on graduated gross sales.[45] While these do not apply solely to chain-store companies, as does the Wisconsin statute, they have special application to chains because of the increased rate in the higher sales brackets.

In addition to their taxes on stores or on sales, some States, namely, Virginia, Delaware, Tennessee, Maine, and North Carolina, have imposed special taxes on warehouses. Such taxes are usually based on provisions requiring separate licenses for distributing houses of chain companies.

A number of the State laws permit, in addition to State taxes, the imposition of fees and taxes by municipalities; and a number of cities and towns have levied additional taxes on concerns operating chain stores therein.

In the drafting of the various tax laws directed at chain stores, a definition of a chain is usually included and, until recently, this

[44] Appendix exhibit 2.
[45] Appendix exhibit 3.

definition specified only those stores owned or controlled by a majority stock ownership or those under the same general management or supervision.

If the main purpose of graduated taxes on chain stores is to protect the independent merchant and offset the advantages of the chain by heavier taxation, that purpose can be fully accomplished only through increasing the tax by the full amount of the chain's advantages. Otherwise the effect is merely to slow down the rate of chain-store development and postpone the date of chain-store supremacy. Theoretically, it is possible to so graduate the tax as to more than offset the chain's advantages and thus force a reversal of the evolution which brought about its present challenging position. Such a policy, however, would involve destruction of the chain's ability to make lower prices than independents and would provoke wide protest from consumers. Pro tanto, any tax on chain stores which substantially lessens their ability to undersell independents is open to the same practical objection. If ability to undersell based on greater efficiency or on elimination of credit and delivery costs is destroyed by taxation, it is the consuming public which will really pay the tax and not the chain.

While the legal path to control of chain stores and prevention of their further growth through the taxing power is clear, the question of how far and how fast to pursue such path is fraught with economic and competitive contradictions.

Sec. 2. Other State laws applicable to chain-store problem

The possibility that Federal jurisdiction over chain stores is limited under the commerce clause of the Constitution was recognized in the preamble to the chain-store resolution of the Senate by the recital that "many of the concerns, though engaged in interstate commerce in buying may not be engaged in interstate commerce in selling." Whatever doubt there may be regarding Federal jurisdiction because of lack of interstate commerce would seem to be offset by a corresponding certainty that the States have jurisdiction in such instances. The laws created by the Federal Government for the prevention and control of monopoly and combinations in restraint of trade have been paralleled by constitutional declarations in many of the States and legislative enactments in nearly all of them. Most of the States have laws forbidding price discrimination. A number of States prohibit acquisition of competitors. Many States have laws against false and misleading advertising and all but one have statutes penalizing short weights and measures. It is a striking fact that only a negligible use of the above State laws has been made in dealing with the chain-store problem. This has involved an overreliance upon the Federal Government to enforce laws of similar import. The situation is suggestive of lack of effective desire for the rigorous enforcement of such laws.

At the time that the American Colonies wrested independence from Great Britain, prohibitions against the evils of monopoly had long been enforced under the common law of England. This doctrine was so firmly embedded in the fabric of English law that two of the Original Thirteen States incorporated specific declarations against monopolies into their constitutions,[46] and three others declared in

[46] Maryland Declaration of Rights, 1776, art. XXXIX, and North Carolina Declaration of Rights, 1776, art. XXII.

general terms that no man or set of men are entitled to exclusive public emoluments or privileges from the community.[47] At the present time approximately one-half of the 48 States have constitutional prohibitions against monopolies, and every State in the United States has provided some measure of protection, either by its constitution or by its enacted laws, against the impairment of free competition in trade.

Under the general head of "anti-trust laws" both constitutional and legislative inhibitions in nearly all cases include not only prohibition of monopolies but also provisions for the suppression of pooling, price control, limitation of output, division of trade territory, restraint on resales, misbranding, short weights and short measures, and other general and specific forms of unfair methods of competition.

Early State law bearing on trusts and monopolies follows the common law with but slight variation. Comparatively little of the State legislation relating to trade abuses had been enacted before the development of transportation and communication facilities had rendered the regulation of interstate commerce a major problem in the American economic system. Upon the rise of the modern trusts, however, and the resultant enactment of Federal legislation regulating them, the several States began to enact similar laws. The object of these laws was to make criminal many of the contracts and agreements which at common law were probably void only, and to prohibit certain specific practices which were held to be violations of the common law.

Pursuant to the directions contained in the constitutions of many of the States, or in acquiescence to popular demand, 41 States enacted laws relating to monopolies, some of which provide penalties for violations.[48] The statutory provisions are exceedingly numerous, and range from the broad generalities of a statute which denounces agreements and combinations, whether reasonable or unreasonable,[49] to the narrower application made by States which have singled out particular industries or products for special protection against monopolies. The Federal antitrust laws have served in many instances as models for the antitrust laws in the several States.

Thirty-one States have enacted laws making it unlawful to discriminate in price between different sections, communities, or cities of the State in the sale of any commodity. In nearly all cases, however, these laws specifically allow for differences in cost of transportation or differences in grade, quantity, or quality; or the consideration of competitive conditions. Penalties for violations of these laws range as high as a maximum of 10 years' imprisonment and $10,000 fine. In most cases in which the State has an unfair-discrimination law, provision is made, in case of violation, for the punishment of corporations by the assessment of a fine, and in addition thereto for ouster from the State of a foreign corporation, or cancelation of the charter of a domestic corporation. In some cases corporations are assessed more severely than individuals in

[47] Connecticut Constitution, 1818, art. I, sec. 1. (The Colonial Charter of 1662 continued to be the basis of government of the State of Connecticut after the Revolutionary War until it was superseded by the Constitution of 1818) ; New Hampshire Bill of Rights, 1783, article X, and Virginia Declaration of Rights, 1784, sec. 4.

[48] See Appendix, p. 95.

[49] Michigan Compiled Laws, 1929, sec. 16667.

money penalties. In addition to all other penalties and punishments provided by statute, contracts made in violation thereof are void.

While in most States price-discrimination laws relate only to the sale of commodities, some of the States extend the law to prohibit unfair discrimination in buying, either by its inclusion in general terms or by special provision.

While 17 of the States do not have statutes which directly prohibit discrimination between different localities in the sale or purchase of commodities, most of the 17 have laws prohibiting combinations or conspiracies to fix prices or restrict the sale and distribution of commodities. Eight States have followed the lead of the Federal Government in the enactment of laws similar to Section 7 of the Clayton Act, by which a corporation is prohibited from acquiring the capital stock of a competitor. In some instances, however, these State laws prohibit the acquisition of assets as well as of capital stock, where the tendency is toward monopoly. The laws of many States define false and misleading advertising in great detail. Others are very short and, although they cover the same general ground, do not attempt to enumerate all of the various types of advertising which are to be covered. In all cases, penalties are imposed for violations of these laws. Every State in the Union, except Kentucky, has a statute prohibiting the use of false or insufficient weights or measures in selling or distributing merchandise.

The appendix contains a more detailed description of the various State laws upon the above subjects, together with excerpts from the constitutions and statutes which are applicable.

CHAPTER VII

CONCLUSIONS AND RECOMMENDATIONS

The resolution directs the Commission to report not only on the facts and conclusions of fact relating to matters specified in the resolution, but as to the present legal status of those factual conditions. It further directs a report upon "what legislation, if any, should be enacted for the purpose of regulating and controlling chain-store distribution"; also "what legislation, if any, should be enacted with reference to such quantity prices."

The theory of the resolution under which the investigation was conducted is that chain-store merchandising has developed or is developing to a point where it threatens to monopolize the field of retail distribution and thus end the existence of the independent retailer. It directs ascertainment of the factors which have brought or are bringing about that development, the relative influence of each such factor, and their relation to existing law. The particulars of each such matter have already been presented, either in the preceding chapters or in the reports submitted from time to time during the progress of the investigation. It remains here to make a final diagnosis of the situation and suggest whatever remedies appear likely to ameliorate it.

Summarizing the facts set forth in the preceding chapters II, III, IV, and V, it may be stated that the chief advantage enjoyed by the chain store is its lower selling prices to consumers. These lower selling prices are largely due to a variety of factors, which may be divided into two classes: First, those which appear to be amenable to ordinary governmental regulation, and, second, those which would be amenable only to extraordinary governmental measures. Among the former class may be mentioned:

1. The usually lower buying prices of chains as compared with independent wholesalers or retailers, much of which is often the result of special discounts and allowances to chains. These discounts are sometimes based upon specified quantity purchases or definite quotas of increase in purchases or to reimburse the chains for newspaper-advertising expenditures on the manufacturers' products. In other cases, however, they may masquerade as brokerage fees or advertising allowances.

2. The extensive use by the chains of large proportions of leader and loss leader merchandise sold at prices which are below the average cost of doing business plus the cost of the merchandise and which are sometimes below the latter;

3. More extensive short and less extensive overweighing by chains in some localities than by independent stores on commodities sold by weight.

Among the second class, those factors which would be amenable only to extraordinary measures, may be mentioned:

(*a*) The less service given to customers by chain stores as compared with independents on the average;

(*b*) The indicated lower wages paid by the chains in some localities at the time of the inquiry;

(*c*) Elimination by the chains of most of the wholesale selling expense commonly involved in the wholesaler-retailer system of distribution;

(*d*) The wider profit margins on chain-store purchased and especially manufactured private-brand merchandise as compared with standard brands, which advantage may at times contribute to the ability of the chains to reduce prices through loss leaders or otherwise, particularly on standard-brand goods, private brands being seldom used as leaders;

(*e*) Profits from wholesaling operations in the case of a number of both the larger and smaller chains which have engaged in this kind of business, which profits may likewise contribute to the lower prices on merchandise sold through retail stores.

(*f*) In addition, chains in many lines possess an important advantage through their ability to use newspaper advertising where the independent retailer cannot afford to do so. Moreover, the newspaper advertising of the chains tends to be much more effective than that of the independents owing to the multiple outlets of the chains in those cases where the chain has more than one store in the area which is covered by the newspaper advertising.

(*g*) A final and very important advantage of the chain consists in its ability to average the profit results obtained from its stores in various localities, the low prices obtained in one or more areas being offset by the higher prices obtained at one or more other points. This ability of the chain to average its prices and profits may contribute materially to its ability to use leaders and loss leaders effectively.

Section 1. Discussion of legal remedies available under present Federal statutes

Should the trend of the past 20 years and particularly of the last decade continue for a like period, we shall have a condition in some lines of chain-store merchandising that few will dispute is monopolistic. Here account must be taken of two conflicting conceptions of proper public policy. One would prohibit and destroy monopoly at all hazards on the ground that its very existence either involves past absorption of independent businesses or precludes future diffusion of ownership of industry. In this view monopoly is an important phase of the problem of maldistribution of wealth and purchasing power which creates and prolongs economic crises and depression. The other conception is that monopoly is not necessarily an evil, but becomes so only when its power is abused and that we must concern ourselves with the prevention of abuses and not with prevention of the power to abuse.

Whatever the merits of these conflicting views, we may as well recognize that the latter has become public policy under decisions of the Supreme Court that mere size and power do not constitute unlawful monopoly. To the extent that chain stores consistently undersell independents we may expect a steady trend toward final chain-store supremacy and dominance in distribution which is apparently uncheckable if we hold to the above mentioned public policy on the one hand and desire the advantages of price competition on the other. A third viewpoint that has hitherto received only academic consideration is to retain the advantages of price competition as long as there is any such competition and substitute public ownership or drastic monopoly regulation when price competition ceases. A fourth viewpoint is to subsidize the more expensive methods of retail distribution by fixing margins or prices. Fixing minimum margins above a varying cost base does not even purport to check whatever monopolistic trend may grow out of competitive price cutting. And to fix a uniform price based on high cost units loads the consumer with a burden that in effect gives the less efficient units a monopoly in the sense of a franchise to remain in business.

These collateral considerations should not divert attention from the fact that monopolistic domination by one legal entity is no longer unlawful in itself; the Sherman Law is no protection against that form of monopoly. As to whether the anti-trust laws should be amended so as to reach this type of monopoly is a question of policy for the determination of the Congress. The recent legislative attempts of many States to check the growth of chain stores by special taxation indicate the existence of a strong and widespread sentiment to the effect that there is a monopolistic aspect which warrants the adoption of preventive measures.

The Supreme Court's interpretation of monopoly under the Sherman Law is somewhat analogous to its interpretation of the Clayton Act's prohibition of corporate stock acquisitions and consolidations under certain specified conditions. The Clayton Act is entitled "an act to supplement existing laws against unlawful restraints and monopolies." The courts have held that its purpose was to check certain forms of trade restraint in their incipiency before a violation of the antitrust laws could be consummated. As the Circuit Court of Appeals said, construing section 7 of the act in *Swift & Co.* v. *Federal Trade Commission* (8 Fed. (2nd) 595), "if competing corporations may not consolidate, it naturally follows that it will be difficult for one corporation ever to monopolize an industry." Section 7 of the Clayton Act reads:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or to tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extension thereof, or from owning and holding all or a part of the stock of such subsidiary corporation when the effect of such formation is not to substantially lessen competition.

Nor shall anything therein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the antitrust laws, not to exempt any person from the penal provisions thereof or the civil remedies therein provided.

Apparently the theory of the section as passed is that certain forms of acquisition and consolidation may produce a monopoly based wholly on size and power. Six years after the passage of the Clayton Act, however, the Supreme Court held that size and power do not of themselves constitute a monopoly under the Sherman law (*U. S.* v. *United States Steel Corporation*, 251 U. S. 417). This presents the anomaly of trying to prevent particular forms of acquisition and consolidation among competing corporations because the effect "may be" to tend to create a monopoly only to find, perhaps, that there is no legal limitation upon the size and power of the consolidation thus created.

Not only this, but section 7 does not purport to prohibit acquisitions and mergers of physical assets as distinguished from capital stock. So this obvious method of accomplishing the forbidden results by unforbidden means has frequently been resorted to. In a number of instances the fact that the section has no application to physical assets has led corporations to acquire stock in apparent violation of the section, vote the stock so as to accomplish merger of the assets, and then claim they were entitled to retain the fruits of their unlawful stock transactions.

The Commission instituted proceedings in three such cases and in the lower Federal courts succeeded in maintaining the theory in two of the cases that if the original stock acquisitions were unlawful any subsequent, ancillary acquisitions of the assets were also unlawful and might be reached by the Commission's order. When these three cases were taken to the Supreme Court they were argued and decided as one in 1926. In one case it happened that the corporation had not voted the stock so as to acquire the assets when the Commission filed its complaint. Under those circumstances the power of the Commission was sustained to order such divestiture of the stock as would prevent merger of the assets, the court stating that "the purpose which the lawmakers entertained might be wholly defeated if the stock could be used for securing the competitor's property" (*Federal Trade Commission* v. *Western Meat Co.*, 272 U. S. 554).

In the other two cases it happened that the stock acquired was used to complete merger of the assets before the Commission filed its complaint. The court thereupon held, with four justices dissenting, that it was beyond the power of the Commission to order divestiture of the physical properties (*Thatcher Mfg. Co.* v. *Federal Trade Commission*, and *Swift & Co.* v. *Federal Trade Commission*, 272 U. S. 554).

Since there is necessarily a lapse of time between the institution of the Commission's preliminary inquiry and its issuance of formal complaint, offending corporations may readily use this time to acquire the physical assets of companies whose stock they have previously acquired in violation of law. As the Commission pointed out in its 1927 annual report, the effectiveness of the section to fulfill the purpose of Congress was materially lessened by these decisions. Subsequent decisions have further limited the scope of section 7.

In a case against the International Shoe Co. the Commission's order of divestiture of stock was upheld in the lower Federal court and petition for review on certiorari was denied by the Supreme Court (29 Fed. (2d.) 518; 279 U. S. 849). On rehearing certiorari was granted (279 U. S. 832). Reviewing the case on its merits in 1930 the Supreme Court, with three justices dissenting, reversed the decision of the lower court. It held that there must be actual and substantial competition between the acquiring and acquired corporations, that the percentage of their sales made in actual competition was the test of its substantial character, and that their sales of different quality shoes to different classes of consumers in the same marketing areas were not competitive (280 U. S. 291). This view seems not to recognize the fact that consumers of one quality shoe are potential consumers of the other depending on price and other considerations, and that a small percentage of sales may represent a very substantial amount of commerce.

The latest pronouncement of the Supreme Court regarding section 7 is found in the case of *Arrow, Hart and Hegeman Electric Co.* v. *Federal Trade Commission*, decided in March 1934. There the Commission had filed its complaint while the stock was in the hands of an acquiring holding company before it had been used to effect a merger of the physical assets of the two competing corporations. While the complaint was pending the holding company caused two new holding companies to be created, transferred the stock of one competing corporation to one of them and the stock of the other competing corporation to the other holding company and then brought about a merger of the physical assets. The lower court upheld the Commission's right to order divestiture of the assets under the principle of the Western Meat Co. case. The Supreme Court, with four justices dissenting, held that the Commission had no power to make such an order and that its power was limited strictly to divestiture of the stock originally acquired (291 U. S. 587).

It is apparent that section 7 has become a virtual nullity and that it is an easy matter for corporations desiring to acquire the stock of competitors to do so without subjecting themselves to an effective order of divestiture from the Commission. The Supreme Court does point out, however, that if any unlawful status results it may be attacked in the courts which are not limited in the nature of the relief they may administer. The decisions above discussed naturally affected not only the ability but the disposition of the Commission to institute proceedings for violation of section 7 during a period when mergers of competing corporations were being consummated on an extensive scale.

As to enforcement of Section 2 of the Clayton Act the situation is not much more favorable. Section 2 reads:

That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia, or any insular possession, or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

In cases against the National Biscuit Co. and Loose-Wiles Biscuit Co., the Commission sought to prevent price discrimination in favor of chain-store purchasers as against purchasers of similar quantities acting for pools or cooperative associations of individual stores. It failed in this effort because on review by the Circuit Court of Appeals for the Second Circuit it was held in 1924 that the section had no application to a lessening of competition in the resale of a commodity (299 Fed. 733). Certiorari to review this decision was denied by the Supreme Court but the unsoundness of that view of the law was established by the Supreme Court in a private suit which reached it 5 years later (*Van Camp* v. *American Can Company et al.* (278 U. S. 245). This case also established the unsoundness of the second circuit's decision to the same effect in *Mennen Co.* v. *Federal Trade Commission* (288 Fed. 774) decided in 1923.

Thus it appears that prior to the Van Camp decision, during a period when chain stores were enjoying an extensive growth based largely upon special price concessions from manufacturers, the Commission was prevented by court decisions from applying section 2 of the Clayton Act to ameliorate the resultant competitive situation between the chains, the cooperatives, and the independents. Such decisions naturally discouraged the Commission with respect to the institution of further proceedings. As pointed out in the discussion of the legal status of price discrimination by and in favor of chain stores (ch. IV, sec. 4) the principal difficulties of enforcement grow out of the provisos regarding quantity, cost of selling, and meeting competition. There is also the question whether monopoly or substantial lessening of competition in intrastate retail distribution is within the scope of the statute.

Aside from the question whether the section requires that prices shall be made with "only due allowance" for differences in quantity, it may be that the effect of price discrimination which makes only such allowance will be to give chain stores and other quantity buyers powerful advantages which may produce quite similar results, the only difference being that a longer period of time will be needed to appraise the effect. Even with favorable interpretation and vigorous enforcement of section 2, serious economic and social problems grow out of price concessions made to large chain-store organizations with resources vastly in excess of most individual independents. Such concessions may be regarded as lawful because bearing a reasonable relationship to the far larger quantity of the chain's purchases. Whether the resulting competitive advantage should be curbed by new legislation may ultimately prove to be an important social and economic question.

Sec. 2. Proposals for new legislation considered but not recommended

If, as a matter of policy, the Federal Government wishes to check the growth of chain-store merchandising on the theory that ultimate injury to the public interest outweighs any temporary benefits, it has been suggested that the course marked out by recent State legislation suggests a possible solution, provided no constitutional barrier were successfully interposed. The Federal Government might conceivably impose a graduated tax on chain stores similar to those imposed by the States and upheld by the Supreme Court. While a graduated Federal tax on chain stores might be made to produce substantial revenue, it is well to bear in mind the words of Justice Brandeis in the Florida chain-store tax case (*Liggett Co. et al.* v. *J. M. Lee, Comptroller*, 288 U. S. 517).

> The chain store is treated as a thing menacing the public welfare. The aim of the statute, at the lowest, is to preserve the competition of the independent stores with the chain stores; at the highest its aim is to eliminate altogether the corporate chain store from retail distribution.

And as Justice Cardozo said in the same case:

> The system (of special chain-store taxation) has had its origin in the belief that the social utility or inutility of one group is less or greater than that of others, and that the choice of others to be taxed should be adjusted to social gains and losses. Courts would be lacking in candor if they were not to concede the presence of such a motive behind this chain-store legislation.

As pointed out in the discussion of State laws on the subject, judicial affirmance of the principle of the graduated tax opens the way theoretically to an enlargement of the tax until it attains the social ends which underlie such legislation. It may be doubted that any of the State laws on the subject has done more than reduce somewhat the competitive advantages of chains over independents. Such a tax may fail in its minimum social purpose until it is so graduated as to entirely offset those advantages, and as Justice Brandeis said, " at the highest, its aim is to eliminate altogether the corporate chain store from retail distribution."

However, there are involved serious problems. To tax out of existence the advantages of chain stores over competitors is to tax out of existence the advantages which the consuming public have found in patronizing them, with a consequent addition to the cost of living for that section of the public. That portion of the public which is able to pay cash and is willing to forego delivery service in return for the advantage of lower prices will be deprived of that privilege, generally speaking, although there are exceptions both ways. It will also tend toward an arbitrary frustration of whatever saving in cost of production and distribution results from integration of the functions of producer, wholesaler, and retailer. So on the whole the number of people adversely affected by such a tax would constitute a very substantial percentage in comparison with the number adversely affected by present conditions. The graduated tax on chain stores cannot accomplish fully the social ends aimed at by such legislation without producing incidentally these results.

The suggestion has been made that cooperative stores be given exemption from the antitrust laws so as to legalize agreements among them on selling prices. The advantage to independent dealers which advertise jointly of being able to advertise prices which each can be depended on to maintain, is apparent. Selling at more than the advertised price is hardly possible on any extended scale and if done other members of the cooperative chain would not be likely to object. To sell at less than the advertised price, however, would no doubt be objected to by members as out of harmony with the cooperative purposes and might well threaten continuation of its joint advertising and possibly of other cooperative features. To legalize agreements on prices, even though confined to advertised articles, would facilitate agreements on practically all items handled by the cooperatives. If the only condition precedent to agreement on prices of given articles be to advertise them, it is a condition easily met by them.

From an economic standpoint the suggestion seems open to certain objections. Cooperative chains are organized to meet the competition of the regular consolidated ownership chains. The Commission's inquiry has shown that they are now generally undersold by the latter in the grocery and drug trades. To give the cooperatives the legal right to agree on prices carries with it the general tendency of all such agreements to raise prices. But to the extent that here and there cooperatives are in a position to take advantage of that tendency, they would be placed at a further disadvantage in competition with regular chain stores than they are now. If to the attractions already possessed by cooperative chains over independents in the cooperative purchase of goods there be added the legalization of price agreements among cooperative chain members, it may be expected to accelerate substantially the trend away from independent ownership and conduct of retail distribution. Price agreements among sellers have seldom if ever had beneficial effects upon the ultimate consumer.

Moreover Federal legislation exempting cooperatives from the application of the antitrust laws would involve serious constitutional questions.

Another solution or partial solution for the chain-store problem which has been suggested is to exempt cooperative chains from taxation along lines similar to that extended to farm cooperatives. It might be a means of promoting the growth of cooperatives and encouraging independents to affiliate with that type of organization. It seems to have no value as a means of promoting the growth of independents as such. It would further increase the disparity of advantage in favor of such cooperative chains over the independents and amount to virtual recognition that the future is to be a contest between the two types of chains rather than between them and the independents. If special governmental aid is to be given to any one of the three groups, it would be more consistent to give it to that group in whose behalf other special aid has been given as illustrated by the graduated tax legislation against chains.

Furthermore, it is not clear what exemption from Federal taxes could be granted that would be beneficial to the cooperatives. They are not supposed to be organized for corporate gain. Probably the only form of Federal taxation that would reach the cooperatives in any case would be income taxes (except perhaps the Federal tax on tobacco and intoxicating liquors), and as they are not operated for profit, they probably pay no income taxes and consequently such exemption would be of no benefit to them.

Still another suggestion has been made aimed at prevention of price discrimination by manufacturers in favor of chain stores. It is that manufacturers be required to file their special prices and special discount schedules with the Federal Trade Commission, which would then be authorized to order discontinuance or modification of them if unfair or unreasonable as measured by the savings in cost of production or distribution. This would carry with it power to make the special allowances public in the Commission's discretion and to institute inquiries upon its own motion or complaint as to whether they reflected only due allowance for differences in cost. The proponents of this idea suggest that such filing be required only as to prices, discounts, and allowances which are not generally and publicly offered to the entire trade, but that the name of each company receiving them should be reported, together with the terms and conditions in each case. This suggestion is made irrespective of the present powers of the Commission under section 6 to require reports or its powers under section 2 of the Clayton Act or section 5 of the Federal Trade Commission Act.

The proposed power to order discontinuance or modification under the condition stated is nothing more than the Commission already has under Section 2 or which it may be given by an amendment thereof hereafter discussed and recommended. This leaves to be considered only that portion of the suggestion which requires reports to be filed covering special allowances and making them public in the Commission's discretion. As to making public information so gathered the Commission already has such power under section 6 (*f*) of its organic act. Section 6 (*b*) now confers discretionary power on the Commission by general or special orders to require corporations engaged in interstate commerce "to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective corporations filing such reports or answers in writing."

Under the provision just quoted, the Commission attempted, during 1919 and 1920, to collect reports from concerns in the coal and steel industry which would have shown the facts regarding prices and costs. Litigation ensued which prevented the action of the Commission for several years during which the unusual need for the data disappeared. When the Supreme Court finally disposed of the test case which had been prosecuted, the decision was not on the merits of the question. In *Federal Trade Commission* vs. *Claire Furnace Co. et al.* (274 U. S. 160) the Supreme Court merely held that injunction would not lie against the Commission to prevent it from obtaining special reports from concerns in the coal, steel, and related industries. This was on the ground that the concerns affected would have an adequate opportunity to raise all the legal and constitutional questions if and when the Commission undertook to enforce penalties for failure to furnish the reports demanded and that such proceedings could be initiated only through and with the approval of the Attorney General. The administration of the suggested system of reporting so as to make it of real value in the enforcement of section 2 of the Clayton Act would require the organization of a special force and the making of additional appropriations. The Commission has not been able, with due regard for its other specifically imposed duties, to attempt any large scale development of this discretionary power conferred by the statute. For the above reasons the Commission hesitates to make a recommendation that such a substantial extension of its functions be required by legislative mandate.

While the way theoretically seems to be open for the Commission to require from manufacturers selling to chain stores reports such as suggested and for judicial determination of the issues involved upon application of the Attorney General, without further legislation, there are some distinct advantages in new legislation which would make mandatory the filing of such reports. It would clarify the legal questions involved and provide a better foundation for handling the administrative and fiscal aspects of the matter. A legal point which might well be clarified would be to remove whatever doubt may now exist that reports can be regularly and periodically required for periods of less than a year.

One possible legislative method of effectuating the suggestion above discussed would be the passage of a statute declaring in substance as follows:

> That for the purpose of facilitating the administration and enforcement of section 2 of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes", approved October 15, 1914, all corporations which sell merchandise in interstate commerce to chain stores, or which in such commerce sell to intermediaries in contemplation of the merchandise being resold to such stores, shall report to the Federal Trade Commission, at such times and in such form as the said Commission may direct, the facts concerning prices, terms, discounts, allowances, quantities, grades, costs of production, selling and service, and other considerations underlying such sales, and similar facts as to customers who are not dealt with on the same basis.
>
> Violation of this statute shall be subject to the penalties prescribed in section 10 of an act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914.

Sec. 3. Recommendations for legislation

If the public policy thought to have been expressed in section 7 of the Clayton Act is to be revived and pursued to any real accomplishment, it is obvious that the act requires substantial amendment. The amendments indicated under the circumstances fall into two categories: First, such as would make section 7 effective to the extent of its original intent; second, such as would extend it beyond its original intent in order to make it a more effective obstacle to the trend toward monopoly. If the first course be adopted, it could be accomplished by an amendment of section 11 authorizing the Commission to order the divestiture of physical assets acquired as the result of an unlawful stock acquisition and regardless of whether complaint is filed before or after the assets are acquired. Such an amendment would restore to the section something of its supposed original intent and effectiveness and would but establish what a strong minority of the Supreme Court on several occasions have stated is already a correct interpretation of the law. The Commission recommends such amendment in the event its recommendation for amendment of section 7 is not acceptable.

The fact that important consolidations of competing corporations have been consummated through acquisition of physical properties rather than stock suggests the second type of amendment. To the extent that acquisition or consolidation of assets tends to create monopoly or substantially lessen competition it might logically be prohibited to the same extent that stock acquisitions and consolidations are prohibited and on the same grounds.

Section 7 now declares that stock acquisitions are unlawful

> where the effect of such acquisition may be to substantially lessen competition *between the corporation whose stock is so acquired and the corporation making the acquisition*, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

A vital part of the section is in the words above *underlined.* As previously quoted from the opinion of one of the Federal Circuit Courts of Appeal,

> if competing corporations may not consolidate, it naturally follows that it will be difficult for one corporation ever to monopolize an industry.

Unless that portion of the section be made effective, the remaining effects prohibited may be interpreted as substantially equivalent to those forbidden by the Sherman Act, though the words " may be " and " tend to create " import a different intention on the part of Congress which the courts have previously recognized. The theory that size and power alone do not constitute monopoly under the Sherman Act seems bound, however, to affect interpretation of another statute aimed at tendency toward monoply, on the legal doctrine of *pari materia.*

The Supreme Court seems to narrow construction of the word " competition " between the acquiring and the acquired corporation. In *International Shoe Co.* v. *Federal Trade Commission* (280 U. S. 291) the court held that the competition between the corporations must be substantial and that the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree. This last decision may possibly be interpreted to make the effect on competition in general the test and not the effect on competition between the two corporations. The court also, in its requirement of substantial competition, incidentally held that the competition must be actual as distinguished from potential. However, in numerous other cases, construing laws against monopoly and restraint of trade, the courts have held potential competition a legitimate object of legislative protection.

U. S. v. *Patterson*, 59 Fed. 280 at 283; *U. S.* v. *Colgate & Co.*, 250 U. S. 300 at 307; *Aluminum Co. of America* v. *F. T. C.*, 284 Fed. 401

at 408; *F. T. C.* v. *Klesner*, 280 U. S. 19 at 28; *F. T. C.* v. *Raladam Co.*, 283 U. S. 643 at 649, and 651.

We respectfully recommend amendments to sections 7 and 11 of the Clayton Act as follows:

1. That the first two paragraphs of section 7 be amended to read:

That no corporation engaged in commerce shall acquire, directly or indirectly, the whole, or a controlling interest in the voting stock or other share capital or the whole of, or a major part of the assets of another corporation engaged also in commerce and in competition with the acquiring corporation.

No corporation engaged in commerce shall acquire, directly or indirectly, any part of the stock or other share capital or any part of the assets of another corporation engaged also in commerce where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock or asests is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.

No corporation shall acquire, by merger, consolidation or otherwise, directly or indirectly, the whole of, or a controlling interest in the voting stock or other share capital, or the whole of, or a major part of the assets of two or more corporations engaged also in commerce and in competition with each other.

That no corporation shall acquire, by merger, consolidation or otherwise, directly or indirectly, any part of the stock or other share capital or any part of the assets of two or more corporations engaged in commerce where the effect of such acquisition, or of the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital or assets is so acquired, or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.

2. That there be inserted as the fifth paragraph of section 7 the following:

After the issuance of a complaint charging a corporation with having violated the provisions of paragraphs 1, 2, 3, or 4 of this section, as amended, and prior to the dismissal of such complaint or the entry of an order as provided for in Section 11 of this Act, no other corporation shall acquire from such corporation all or any part of the capital stock or assets charged in such complaint to have been acquired in violation of paragraphs 1, 2, 3, or 4 of this section as amended.

3. That the second paragraph of section 11 be amended by inserting in the twenty-first line thereof after the word "stock" the words "or assets."

In the discussion of the legal status of special prices to chain stores by manufacturers (chap. IV, sec. 4) the uncertainties and difficulties of enforcing section 2 of the Clayton Act were pointed out at some length. The conclusion was reached that most of those uncertainties and difficulties grew out of the various provisos which narrowed the scope of the original prohibition to an indeterminate degree. A simple solution for the uncertainties and difficulties of enforcement would be to prohibit unfair and unjust discrimination in price and leave it to the enforcement agency, subject to review by the courts, to apply that principle to particular cases and situations. The soundness of and extent to which the present provisos would constitute valid defenses would thus become a judicial and not a legislative matter.

The Commission therefore recommends that section 2 of the Clayton Act be amended to read as follows:

It shall be unlawful for any person engaged in commerce, in any transaction in or affecting such commerce, either directly or indirectly to discriminate unfairly or unjustly in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States.

In the discussion of the legal status of special prices to chain stores by manufacturers (chap. IV, sec. 4) it was also stated that unless the price discrimination permitted "on account of" quantity shall make "only due allowance" therefor, section 2 of the Clayton Act may be readily evaded by making a small difference in quantity the occasion for a large difference in price. If the section is to have any vitality it must either be interpreted and enforced to that effect or it should be amended to that effect.

The Commission further recommends that at the end of section 11 a new paragraph be added to read as follows:

If any clause, sentence, paragraph, or part of the amendments herein contained to sections 2, 7, or 11 of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said separate and several amendments to said sections, but shall be confined in its operation to the clause, sentence, paragraph, or part of said separate and several amendments to said sections directly involved in the controversy in which such judgment shall have been rendered.

A recommendation for amendment of the Federal Trade Commission Act seems essential as shown by results of the chain-store investigation; namely, first, that the prohibition of unfair methods of competition in section 5 of the act be broadened so as to include unfair or deceptive acts and practices in interstate commerce, and, second, so that unfair methods, acts, and practices may be reached when they unfairly affect interstate commerce, regardless of whether the offender is engaged in commerce or the acts are done in the course of commerce.

Wherefore, we respectfully recommend that the first two paragraphs of section 5 of the Federal Trade Commission Act be amended so as to read as follows:

Unfair methods of competition in *or affecting* commerce *and unfair or deceptive acts and practices in or affecting commerce* are declared unlawful.

The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition *in or affecting commerce and unfair or deceptive acts and practices in* or affecting commerce.

The Commission is giving consideration to still other amendments of its organic act and of other statutory provisions committed to it for enforcement, but since these do not grow out of the chain-store investigation as such they are reserved for presentation in another connection.

By direction of the Commission.

EWIN L. DAVIS, *Acting Chairman.*

DECEMBER 14, 1934.

APPENDIX

State Constitutional and Statutory Provisions Relating to Monopoly, Restraint of Trade, Price Discriminations, Acquisition of Competitors, and False and Misleading Advertising

PROVISIONS REGARDING STATE CONSTITUTIONAL TRUSTS AND MONOPOLIES

The wide-spread denunciation that has long been leveled at monopoly is forcefully expressed in many of the State constitutions. That monopolies are " odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered " is declared by the Constitution of Maryland.[1]

The declaration in the North Carolina Constitution,[2] which reads, " Perpetuities and monopolies are contrary to the genius of a free state and ought not to be allowed ", is substantially similar to those found in the constitutions of four other States, viz, Arkansas (art. II, sec. 19), Tennessee (art. I, sec. 22), Texas (art. I, sec. 26), Wyoming (art. I, sec. 30). These four States, however, positively prohibit monopolies by the use of the words, " shall never be allowed " instead of " ought not to be allowed."

The constitutions of the following 14 States either prohibit trusts and monopolies and provide for the imposition of penalties for violations of antitrust laws which the respective legislatures are directed to enact, or they impose general restrictions on monopolies and combinations in restraint of trade: Arizona (art. XIV, sec. 15), Connecticut (art. I, sec. 1), Georgia (art. IV, sec. 2), Idaho (art. XI, sec. 18), Kentucky (sec. 198), Louisiana (art. XIX, sec. 14), Maryland (art. XLI), Montana (art. XV, sec. 20), North Dakota (art. VII, sec. 146), Oklahoma (art. V, sec. 44), South Dakota (art. XVII, sec. 20), Utah (art. XII, sec. 20), Washington (art. XII, sec. 22), and Wyoming (art. I, sec. 30).

The constitutional provisions in Arizona, which is typical of many of those in the constitutions of the other 13 States named, reads as follows:

> Monopolies and trusts shall never be allowed in this State, and no incorporated company, copartnership, or association of persons in this State shall directly or indirectly combine or make any contract, with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of such persons, or, in any manner whatever, to fix the prices, limit the production, or regulate the transportation of any product or commodity. The legislature shall enact laws for the enforcement of this section by adequate penalties, and in the case of incorporated companies, if necessary for that purpose, may, as a penalty, declare a forfeiture of their franchises.

---

[1] Maryland Constitution, art. XLI.
[2] North Carolina Constitution, art. I, sec. 31.

The Connecticut constitutional provision is very broad, declaring that "no man or set of men are entitled to exclusive public emoluments or privileges from the community"; while the constitution of Georgia provides that the general assembly shall have no power to authorize any corporation to buy shares of stock in any other corporation, or to make any contract or agreement whatever with any such corporation which may have the effect or be intended to have the effect to defeat or lessen competition, or to encourage monopoly.

Idaho and Montana prohibit by constitutional provisions any corporation, association of persons, or stock company, from directly or indirectly forming a trust, or combining or contracting with any corporation for the purpose of fixing the price or regulating the production of any article of commerce or of the product of the soil for consumption by the people.

The Constitution of Kentucky requires the legislature to enact laws to prevent pools and to prevent other organizations "from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value."

The State of Louisiana adopted a new constitution in 1921 in which the prohibitions against monopoly were repeated verbatim from earlier constitutions. It has provided that it shall be unlawful for persons or corporations or their legal representatives—

To combine or conspire together, or to unite or pool their interests for the purpose of forcing up or down the price of any agricultural product or article of necessity, for speculative purposes; and all combinations, trusts, or conspiracies in restraint of trade or commerce, and all monopolies or combinations to monopolize trade or commerce, are hereby prohibited in the State of Louisiana.

It has further provided for the forfeiture of charters of offending corporations incorporated under the laws of the State of Louisiana and for the ouster from the State of foreign corporations.

The Constitutions of North Dakota and Utah prohibit and declare unlawful and against public policy any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any product of the soil or of any article of manufacture or commerce or of the cost of exchange or transportation.

The Constitution of Oklahoma directs the legislature to define an unlawful combination, monopoly, trust, act, or agreement in restraint of trade and to enact laws to punish persons engaged in any such combinations, etc., in restraint of trade.

South Dakota has a constitutional provision similar to those of Idaho and Montana except that it prohibits fixing the price or limiting the production or regulating the transportation of "any product or commodity so as to prevent competition in such prices", or to establish excessive prices for such products or commodities.

The constitutional provision of the State of Washington prohibits corporations, copartnerships, or associations of persons in the State either from combining or making any contract with any incorporated company, copartnership, etc., or in any manner whatever to fix prices of any product or commodity or to limit production so as to prevent competition in such products or commodities.

The Constitution of Wyoming prohibits the consolidation or combination of corporations to control or influence the production of any commodities or the prices thereof.

The constitutions of a number of States do not directly prohibit monopolies, but the legislatures in these several States are given authority to regulate or prohibit monopolies and combinations in restraint of trade, and to provide such penalties as may be deemed necessary. These States are Alabama (sec. 103), Kentucky (sec. 198), Mississippi (art. VII, sec. 198), New Hampshire (art. 82), New Mexico (art. IV, sec. 38), South Carolina (art. IX, sec. 13), and Virginia (sec. 165).

This section of the Constitution of Alabama, which reads as follows:

> The legislature shall provide by law for the regulation, prohibition, or reasonable restraint of common carriers, partnerships, associations, trusts, monopolies, and combinations of capital, so as to prevent them or any of them from making scarce articles of necessity, trade, or commerce, or from increasing unreasonably the cost thereof to the consumer, or preventing reasonable competition in any calling, trade, or business—

was construed by a Federal court, in an interesting opinion,[3] as not restricting the law of competition as defined by the common law.

The Constitution of Mississippi provides that—

> The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

The Constitution of New Hampshire declares that—

> free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.

The New Mexico constitution directs the legislature to enact laws to prevent monopolies and combinations in restraint of trade.

In South Carolina the constitution directs that—

> the general assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties to the extent, if necessary for that purpose, of forfeiture of their franchise.

The Constitution of Virginia commands the legislature to prevent "monopolies inimical to the public welfare."

In the Constitution of Minnesota combinations to monopolize the markets for food products in the State or interfere with or restrict the freedom of such markets are declared to be criminal conspiracies.

Most of the remaining States in the United States have statutory provisions against monopolies, and while the seven States of Delaware, Nevada, New Jersey, Oregon, Pennsylvania, Rhode Island, and West Virginia have neither constitutional provisions against monopolies nor statutes prohibiting them, every State has some form of legislation dealing with trade restraints and unfair methods of competition.

[3] *Citizens' Light Heat & Power Co.* v. *Montgomery Light & Water Power Co.*, 171 Fed. 553.

STATE STATUTES RELATING TO TRUSTS AND MONOPOLIES

A form of antitrust law commonly used is that contained in the Code of the State of Ohio. It involves an elaborate definition of a trust. The exact language of the Ohio statute is:

A trust is a combination of capital, skill, or acts by two or more persons, firms, partnerships, corporations, or associations of persons, or of any two or more of them, for either, any, or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production, or increase or reduce the price, of any commodity or merchandise.
3. To prevent competition in manufacturing, making, transportation, sale, or purchase of merchandise, produce, or commodity.
4. To fix at any standard of figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce, or commerce intended for sale, use, or consumption in this State.
5. To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated number, or by which they shall in any manner establish or settle the price of any article, commodity, or transportation between themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchaser or consumer in the sale or transportation of any such article or commodity, or which they shall agree to pool, combine, or directly or indirectly unite in any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any way be affected. Every such trust as is defined herein is declared to be unlawful, against public policy, and void.[4]

Sixteen States have laws similar to that enacted in Ohio, viz: Arizona (R. S. 1928, secs. 3212–3219), California (General Laws, 1923; act 8702), Colorado (C. L. 1921, secs. 4036–4043), Florida (Compt. Gen. Laws, 1927; secs. 7944–7954), Kansas (R. S. 1923, secs. 50–101 to 50–120), Louisiana (Comp. Laws, secs. 15013–15026), Mississippi (Code, 1930; secs. 3436–3443), Montana (R. C., secs. 10901–10903), Nebraska (C. S. 1922; sec. 3420), New Hampshire (P. L. 1925; ch. 168), North Dakota (C. L. 1913; secs. 9950–9963), Ohio (Revised Code, 1930; sec. 6391), South Dakota (Rev. Code 1919; secs. 4352–4364, and sec. 8914), Texas (Rev. Civ. Stat. 1925; arts 5426–7438, 1632–1644), Virginia (Ex. Sess. Laws, 1910; ch. 54 as amended by L. 1926; ch. 171).

The statute of Idaho, which has followed closely the wording of the Sherman Act, reads as follows:

Every contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce, within this State is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 1 year or by both said punishments in the discretion of the court.

Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce within this State shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding 1 year, or by both said punishments, in the discretion of the court.

[4] Ohio Revised Code (1930), sec. 6391.

The following States have statutes similar to that above quoted: Idaho (C. S. 1919; secs. 2531–2532; Laws, 1890; Act No. 86), Louisiana (Laws, 1915; Act No. 11; sec. 182), Maine (R. S. 1930; ch. 138; sec. 28), Nebraska (Comp. Stats., 1922; secs. 3448 and 3449), New Mexico (Code, 1915; secs. 1685–1687), New York (Donnelly Act of 1899; secs. 340 and 341), Wisconsin (Stats. 1929; sec. 133.01).

Many States prohibit in general terms monopolies or attempts to monopolize but vary greatly in the form of the statutes. They all, however, seek to restrain and prohibit combinations, pools, or contracts between corporations or individuals which have for their purpose the control or enhancement of prices, the limitation of production or interference with the free movement of manufactured articles or agricultural products. The following States have such laws: Alabama (Code, 1923; secs. 5212–5215 and 5697–5698), Arkansas (C. and M. Digest, 1921; secs. 7368–7379), Illinois (Hurd's Stats.; secs. 269a to 269j), Indiana (Burn's Stats. 1926; secs. 4636–4662), Iowa (Code 1924; secs. 9906–9919 and 11267–11268), Massachusetts (General Laws, 1920; ch. 93), Minnesota (General Stats., 1923; secs. 10463–10480), Missouri (Rev. Stats. 1919; secs. 9655–9696), North Caroline (Laws, 1911; ch. 167; Laws 1913; ch. 41), Oklahoma (Rev. Laws, 1910; secs. 11017–11045), South Carolina (Civil Code, 1922; secs. 3530–3549), Tennessee (Laws of 1903; ch. 140 as amended by Laws 1927, ch. 60; Laws 1925, ch. 49), Utah (Comp. Laws, 1917; secs. 4475–4485), Vermont (General Laws, 1918; sec. 4485), Wisconsin (Stats., 1928; secs. 133.01–133.04; 133.17–133.24; 226.07–226.09).

STATE STATUTES RELATING TO PRICE DISCRIMINATION

The law of the State of Delaware is typical of the provisions in most of the State statutes dealing with price discrimination. It reads as follows:

> Any person, firm or corporation, foreign or domestic, doing business in this State and engaged in the production, manufacture, or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who, in good faith, intends or attempts to become such dealer, discriminate between different sections, communities, or cities of this State, by selling such commodity at a lower rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity in another section, communty, or city after making due allowance for the difference, if any, in the grade or quality and in the cost of transportation from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination which is hereby prohibited and declared unlawful.
>
> Any person, firm, company, association, or corporation, and any officer, agent, or receiver of any firm, company, association, or corporation, or any member of the same, or any individual violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $200 nor more than $5,000 for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.[5]

The Legislature of Minnesota enacted a law in 1927 prohibiting unfair competition in the purchase of farm products,[6] and the Iowa Code provides a typical example of such a law covering the pur-

[5] Delaware Code, sec. 141 (A).
[6] Minnesota Stat. (Mason, 1927), sec. 6106.

chasing and selling of commodities in general. The Iowa provision reads as follows:

Any person, firm, association, company, or corporation, foreign or domestic, doing business in the State and engaged in the business of purchasing for manufacture, storage, sale, or distribution, any commodity of commerce that shall, for the purpose of destroying the business of a competitor or creating a monopoly, discriminate between different sections, localities, communities, cities, or towns in said State by purchasing said commodity at a higher rate or price in one section, locality, community, city, or town than is paid for such commodity by such party in another section, locality, community, city, or town after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, distribution, or storage, shall be deemed unfair discrimination which is hereby prohibited and declared to be unlawful; *Provided*, That prices made to meet competition of such section, locality, community, city, or town shall not be in violation of this section.[7]

The Mississippi law on unfair discrimination covers both sales and purchases and declares that any corporation, partnership, or association of persons guilty of price discrimination as defined "shall be deemed and held to be a trust and combination" and "liable to the pains, penalties, fines, forfeitures, judgments, and recoveries denounced against trusts and combinations."[8]

The Missouri statute is very similar in wording to the Delaware law but contains a provision that "giving or paying, or promising to give or pay, a secret or private rebate or bonus in connection with the purchase, sale, or distribution of any commodity or article of commerce"[9] is unfair discrimination.

The law of North Carolina[10] which provides primarily for the protection of competitors regardless of the means employed, includes in its condemnation, agreements, or understandings, express or implied, which have for their purpose the prevention of competition or the fixing of prices in buying or selling.

Pursuant to the provisions of its constitution[11] the Legislature of the State of Oklahoma enacted a statute[12] making it "unlawful for any person, firm, corporation, or association engaged in the production, manufacture, distribution, purchase, or sale of any commodity of general use or rendering any service to the public, to discriminate" in price.

The Wisconsin price discrimination statute[13] is unique in that it punishes discrimination between persons, firms, associations, or corporations in the same locality as well as discrimination between different cities, towns, or communities. The Wisconsin statute makes no exception for differences in grade, quantity, quality, or cost of transportation.

The purpose of the antidiscrimination laws of California, which are generally similar to those of other States already discussed, has been declared by the California Legislature to be—

to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented.[14]

---

[7] Iowa Code (1924), sec. 9886.
[8] Mississippi Code (1930), sec. 3437.
[9] Missouri Revised Statutes (1919), sec. 9662.
[10] North Carolina Laws, 1911, ch. 167, sec. 1e; Laws, 1913, ch. 41, sec. 5e.
[11] Oklahoma Constitution, art. IX, sec. 45.
[12] Oklahoma Revised Laws, 1910, sec. 11024, as amended by Laws of 1923, ch. 29.
[13] Wisconsin Statute, 1929, secs. 133.17 and 133.18.
[14] California Laws, 1913, ch. 276, sec. 7.

These antidiscrimination laws have been subjected to numerous court tests, but have withstood repeated attacks made on the ground of alleged unconstitutionality, as recent litigation involving chain stores in California reveals.

STATE STATUTES RELATING TO ACQUISITION OR CONSOLIDATION OF COMPETITORS

Louisiana has followed almost exactly the wording used in the Clayton Act in prohibiting the acquisition of competitors. Under this law likewise the acquisition of assets is not illegal.

The Mnnesota statute prohibiting the formation of any pool, trust agreement, or understanding which tends to restrain trade or to fix or maintain prices or to limit the production or to restrain competition in the purchase and sale of any article of commerce in Minnesota is qualified by the provision that it shall be lawful for any person, firm, or corporation to purchase the property and business of a competitor if before such purchase the attorney general of the State shall find that such consolidation will not be detrimental to the public interest.

The wording of the Clayton Act is followed generally also by a Mississippi statute wherein a corporation is prohibited from acquiring the capital stock of any competing corporation. The prohibition also, however, extends to cover franchises, plant, or equipment of any competing corporation where such acquisition may substantially lessen competition or restrain trade in the State or community or tend to create a monopoly in any line of commerce or be inimical to the public welfare.

The State of New York permits corporations to purchase and hold the stock of other corporations but prohibits combinations for the creation of a monopoly or for restraint of trade or the prevention of competition in the necessaries of life.[15]

Oklahoma [16] prohibits any corporation from owning or controlling in any manner whatever the stock of any competing corporation located either within or without the State and provides that if any corporation shall violate the provisions of this statute it shall forfeit its charter or license to do business in the State and shall be subject to a money penalty.

A Texas statute of import similar to that of Arkansas defines a monopoly as being—

> a combination or consolidation of two or more corporations when effected in either of the following methods:
>
> "* * * Second, where any corporation acquires the shares or certificates of stock or bonds, franchises or other rights, or the physical properties or any part thereof of any other corporation or corporations for the purpose of preventing or lessening, or where the effect of such acquisition tends to effect or lessen, competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise." [17]

STATE STATUTES RELATING TO ADVERTISING

The following law quoted from the Alabama Code is typical of State laws dealing with false and misleading advertising:

> Untrue advertising is prohibited. If any person, firm, corporation, or association, or agent or employee thereof, with intent to sell or any way dispose

[15] New York Consolidated Laws, S. C. L., secs. 14, 52.
[16] Oklahoma Revised Laws, 1910, sec. 110.30.
[17] Texas Revised Laws, 1925, At. 7427.

of merchandise, real estate, securities, service, or anything offered by such person, firm, corporation, or association, or agent or employee thereof, directly or indirectly, offers to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto or an interest therein, knowingly makes, publishes, disseminates, circulates or places before the public or causes directly or indirectly to be made, published, disseminated, circulated or placed before the public in this State, in a newspaper, magazine or other publication, or in the form of a book, notice, circular, pamphlet, handbill, letter, poster, bill, sign, placard, card, label or tag, or in any other way an advertisement, announcement or statement of any sort regarding merchandise, securities, service or anything so offered to the public which contains any assertion, representation or statement that is untrue, deceptive or misleading; such person, firm, corporation or association or the members of such firm, also the agent and employee shall be guilty of a misdemeanor, punishable by a fine of not less than $25 nor more than $1,000, or by imprisonment for more than one year, or by both such fine and imprisonment.[18]

While neither Maine,[19] Massachusetts,[20] nor Georgia have laws relating to false advertisements in general, Maine and Massachusetts have laws dealing with this subject in its relation to specific lines of business and Georgia has a law for the protection of any person, association, or union which adopts a label or trade mark or form of advertisement for the purpose of designating goods made by that person, association, or union. The courts are given jurisdiction to restrain the wrongful use of such trade marks or forms of advertising and anyone found guilty of infringement is required to pay to the person, association or union the profit derived from the wrongful manufacture, use, display or sale of such label or form of advertising and is required to deliver all counterfeits or imitations in his possession to the owner of the trade mark or form of advertisement. In addition to the above, the use of a genuine label, trade mark, or form of advertisement in an unlawful manner or the use of a counterfeit is made a misdemeanor.[21]

The States of Pennsylvania, Maryland, and Wisconsin each have general laws relating to false and misleading advertising, and in addition, Pennsylvania [22] and Maryland [23] have statutes dealing specifically with the false advertisement of distinctions, rewards or prizes conferred on merchandise; and Wisconsin [24] has an additional statute relating specifically to the false advertisement of food products.

The States which have no laws prohibiting false advertising are Arkansas, Georgia, Maine, Mississippi, New Mexico and Wyoming. Some of the States, namely, Maryland, Massachusetts, North Carolina, Pennsylvania, South Carolina, Texas, and West Virginia have provided in their laws prohibiting false advertising that, to constitute a violation, the advertiser must be aware of the untrue and misleading nature of the statement, or, that it should be possible, by the exercise of reasonable care, for him to have informed himself.

---

[18] Alabama Code, sec. 4133.
[19] Maine Rev. Stat. 1930, ch. 41, sec. 20.
[20] Massachusetts Code, ch. 266, secs. 89 and 90.
[21] Georgia Penal Code, 1926, secs. 254–256.
[22] Pennsylvania Code, title 18, sec. 2321.
[23] Maryland Annotated Code, sec. 20.
[24] Wisconsin Code, sec. 352.085.

EXHIBITS

EXHIBIT 1. CONTRACT

Form of contract between shipper and the Atlantic Commission Co., Inc.

Shipper's copy

This contract for the marketing of fresh fruits and vegetables, made and entered into this ---- day of ------------ 193--, by and between ------------ a ------------ formed under the laws of the State of ------------, hereinafter referred to as "shipper" and the Atlantic Commission Co., Inc., a corporation organized under the laws of the State of New York, hereinafter referred to as "distributor," witnesses as follows:

That the shipper agrees:

(1) To appoint the distributor its exclusive marketing agent to handle the sale and distribution of the entire shipment of fruits and vegetables owned, controlled or otherwise handled by the shipper for and during the season of ------------.

(2) To carefully harvest and pack such fruits and vegetables at the proper state of maturity, packing same in accordance with the rules and regulations of the United States Department of Agriculture and ------------ and to obtain at shipping point such inspections as may be requested by the distributor.

(3) To load such merchandise in accordance with the requirements of the carriers and ship same in accordance with the instructions of the distributor, delegating to the distributor the right of diversion in transit.

(4) To ship such merchandise in its own name and guarantee to the carriers all freight and other charges and, if required, furnish such bond or surety as may be required by the carriers.

(5) To furnish promptly to the distributor all documents and information requested by it in connection with shipments.

(6) To assume and pay all freight, icing, demurrage, storage, inspection and other charges incurred by the distributor for the account of the shipper, as well as any deficits in sales resulting from the sale of merchandise for the account of the shipper.

(7) To permit, in order that the distributor may take care of the requirements of The Great Atlantic & Pacific Tea Co., the distributor to buy and sell to the terminal offices of the distributor any portion of the offerings of the shipper such merchandise to be purchased and sold at the average market the shipper agreeing to pay the same selling charge on such sales as on all other sales.

(8) To pay the distributor for his services and to permit the distributor to deduct from proceeds of sales a selling charge on each sale as follows:

(a) Sales f. o. b. shipping point or delivered------------------------------
(b) Sales at auction------------------------------
(c) Cash sales to spot buyers at shipping point------------------------------
(d) Sales for cash to buyers by wire------------------------------
(e) After-arrival sales ------------------------------
(f) Consignments or jobbing sales------------------------------
(g) Price-arrival sales ------------------------------
(h) Sales to or through associate brokers------------------------------
(i) Export sales------------------------------

Sales as used herein shall include sales to the Great Atlantic & Pacific Tea Co. and to the distributor as herein before provided.

(9) To keep the distributor fully informed as to loadings, inspections, shipments, and all offers for merchandise received by the shipper.

(10) To furnish distributor, as requested, with estimates of respective crops and amounts of crop liens held on these crops, also to furnish inventory of fruits and vegetables on hand at shipping point or otherwise available for sale.

The distributor agrees:

(1) To use its best efforts to sell said products to the best advantage of the shipper, selling as much as possible free on board cars at shipping point.

(2) To keep the shipper informed from time to time as to market condition and at request to advise and counsel with the shipper.

(3) To assume the credit risk for the collection and remittance to the shipper for all sales made through the distributor except that the distributor shall not be liable for damages sustained by strikes, delays in delivery, bad quality, or other causes beyond its control, or for loss occasioned by improper packing,

crating, or handling by the shipper or for adjustments in price necessary in marketing such products.

(4) To assume and pay selling expenses including communication expenses, incidental to marketing of such products except those previously excepted herein and except those incurred by the shipper in collecting and furnishing the distributor with necessary information requested by the distributor.

(5) To furnish the shipper, if desired by him, with the services of its claim department for the handling and prosecution of claims against transportation companies for the shipper, it being agreed that the distributor shall retain fifteen (15%) percent of the proceeds of its collections, plus any legal fees incurred for its services.

(6) To maintain full and complete records of its sales and to permit the shipper at any time during business hours and during the period of this contract to examine its records in connection with the handling and sale of the shipper's merchandise.

It is mutually agreed that—

(1) All shipments shall be shipped in the name of the shipper.

(2) This contract shall continue in effect and shall cover crops and shipments of succeeding years unless on or before ____________ either party hereto shall notify the other party by written notice to the other party of a desire to terminate this contract at the end of said shipping season and such notice shall constitute termination at said season ending, except that the shipper may not terminate this contract unless all indebtedness which may be owing the distributor has been paid.

Witness____________________

Shipper.

By ______________________________________

By ______________________________________

____

Distributor.

Witness____________________

By ______________________________________

(Endorsement):

Standard form shippers contract Atlantic Commission Co., Inc., with ____________________

EXHIBIT 2. CHAIN-STORE LICENSE TAXES BASED ON NUMBER OF STORES

Alabama—Session Laws, 1931, No. 369.—Rate of tax: First store, $1; second to fifth stores, $10 each; sixth to tenth, $15 each; eleventh to twentieth, $25 each; twenty-first and over, each $75.

Florida—Session Laws, 1933, Chap. 16071.—Rate of tax: First store, $5; second to fifteenth stores, $15 each; sixteenth to thirtieth, $30 each; thirty-first to fiftieth, $50 each; fifty-first to seventy-fifth, $75 each; in excess of seventy-five, $100 each. The law also provides for the taxation of stores by counties and municipalities, each in an amount of 50 percent of the State tax on stores within their respective boundaries.

Idaho—Session Laws 1933, Chap. 113.—Rate of tax: First store, $5; 2 stores, $10 each; 3 stores, $20 each; 4 stores, $35 each; 5 stores, $55 each; 6 stores, $80 each; from 6 to 20 stores, each added store increases the tax $30 per store; reaching at 20 stores, a tax of $500 for each store, and continuing at $500 for each store in excess of 20.

Indiana.—Session Laws 1933, Chap. 271, Amending Sec. 5, Chap. 207 of Session Laws, 1929.—Rate of tax: First store, $3; second to fifth stores, $10 each; sixth to tenth, $20 each; eleventh to twentieth, $30 each; all in excess of 20, $150 each.

Louisiana—Session Laws, 1932, Act No. 19.—Rate of tax: Second to fifth stores, $15 each store; sixth to tenth, $25 each; eleventh to fifteenth, $30 each; each additional group of five stores increases $10 per store, to forty-sixth to fiftieth stores, $100 each; and each store in excess of 50 at $200.

Maine—Session Laws, 1933, Chap. 260.—Rate of tax: First store, $1; second to fifth stores, $5 each store; sixth to tenth, $10 each; eleventh to fifteenth, $15 each; sixteenth to twenty-fifth, $25 each; in excess of 25 stores, $50 each.

Maryland—Session Laws, 1933, Chap. 542.—Rate of tax: Second to fifth stores, $5 each store; sixth to tenth stores, $20 each; eleventh to twentieth stores, $100 each; all in excess of 20 stores, $150 each.

Michigan—Session laws, 1933, No. 265.—Rate of tax: Second to third stores, $10 each store; fourth to fifth stores, $25 each; sixth to tenth stores, $50 each; eleventh to fifteenth stores, $100 each; sixteenth to twentieth stores, $150 each; twenty-first to twenty-fifth stores, $200 each; all in excess of 25 stores, $250 each.

Minnesota—Session Laws, 1933, Chap. 213.—Rate of tax: Second to tenth stores, $5 each store; eleventh to twentieth stores, $15 each; twenty-first to thirtieth stores, $35 each; thirty-first to fortieth stores, $65 each; forty-first to fiftieth stores, $105 each; in excess of 50 stores, $155 each store.

Montana—Session Laws, 1933, Chap. 155.—Rate of tax: First to second stores, $2.50 each store; third to fourth stores, $15 each; fifth to sixth stores, $20 each; seventh to tenth stores, $25 each; in excess of 10 stores, $30 each.

North Carolina—Session Laws, 1933, Chap. 445, Sec. 152.—Rate of tax: Second to fourth stores, $50 each store; fifth to eighth stores, $60 each; ninth to twelfth stores, $70 each; thirteenth to sixteenth stores, $80 each; seventeenth to twentieth stores, $90 each; twenty-first to thirtieth stores, $100 each; thirty-first to fiftieth stores, $125 each; all in excess of 50, $150 for each store.

South Carolina—Session Laws, 1930, Act No. 829.—Rate of tax: First store, $5; the tax increases $5 on each store up to and including the thirtieth for which the tax is $150, and continues at that amount for each additional store above 30.

West Virginia—Session Laws, 1933, Chap. 36.—Rate of tax: First store, $2; second to fifth stores, $5 each; sixth to tenth stores, $10 each; eleventh to fifteenth stores, $20 each; sixteenth to twentieth, $30 each; twenty-first to thirtieth, $35 each; thirty-first to fiftieth, $100 each; fifty-first to seventy-fifth, $200 each; all in excess of 75 stores, $250 each.

EXHIBIT 3. GRADUATED STATE TAX LAWS, BASED ON GROSS SALES

	$100,000 or less	$100,000 to $200,000 (excess)	$200,000 to $300,000 (excess)	$300,000 to $400,000 (excess)	$400,000 to $500,000 (excess)
Kentucky Acts of 1930, chap. 149.	One-twentieth of 1 percent	One twentieth of 1 percent	One-twentieth of 1 percent	One-twentieth of 1 percent	One tenth of 1 percent.
Minnesota, Laws of 1933, chap. 213.	One-twentieth of 1 percent	One-tenth of 1 percent	Three-twentieths of 1 percent	One-fifth of 1 percent	One-fourth of 1 percent.
New Mexico, Laws of 1933, chap. 73.	$10 to $125	$250 to $650	$1,250	$1,950	2½ percent.
Vermont, Laws of 1933, no. 24.	One-eighth of 1 percent (over $50,000).	One-fourth of 1 percent	One-half of 1 percent	One-half of 1 percent	One-half of 1 percent.
Wisconsin, Laws of 1933, chap. 469.	Six-twentieths of 1 percent	Seven-twentieths of 1 percent.	Seven-twentieths of 1 percent.	Seven-twentieths of 1 percent.	Seven-twentieths of 1 percent.

	$500,000 to $600,000 (excess)	$600,000 to $700,000 (excess)	$700,000 to $800,000 (excess)	$800,000 to $900,000 (excess)	$900,000 to $1,000,000 (excess)	Over $1,000,000 (excess)
Kentucky Acts of 1930, chap. 149.	One-fourth of 1 percent	Two-fifths of 1 percent	Eleven-twentieths of 1 percent.	Seven-tenths of 1 percent.	Seventeen-twentieths of 1 percent.	1 percent.
Minnesota, Laws of 1933, chap. 213.	Three-tenths of 1 percent.	Two-fifths of 1 percent	One-half of 1 percent	Three-fifths of 1 percent	Three-fourths of 1 percent.	1 percent.
New Mexico, Laws of 1933, chap. 73.	2½ percent	2½ percent	2½ percent	2½ percent	2½ percent	2½ percent.
Vermont, Laws of 1933, no. 24.	1 percent	1 percent	1¼ percent	1½ percent	1½ percent	2 to 4 percent.[1]
Wisconsin, Laws of 1933, chap. 469.	Eight-twentieths of 1 percent.	Eight-twentieths of 1 percent.	Eight-twentieths of 1 percent.	Eight-twentieths of 1 percent.	Nine-twentieths of 1 percent.	Nine-twentieths to thirteen-twentieths of 1 percent.[2]

[1] Rate increases from 2 percent for $1,000,000, one-half of 1 percent for each $250,000 to 4 percent for $2,000,000 or over.
[2] Rate increases one-twentieth of 1 percent for each million from one-half of 1 percent for $2,000,000 to thirteen-twentieths of 1 percent for over $5,000,000.