UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of NATIONAL LEAD COMPANY, a corporation, EAGLE-PICHER LEAD COMPANY, a corporation, EAGLE-PICHER SALES COMPANY, a corporation, ANACONDA COPPER MINING COMPANY, a corporation, INTERNATIONAL SMELTING & REFINING COMPANY, a corporation, THE SHERWIN-WILLIAMS COMPANY, a corporation, and THE GLIDDEN COMPANY, a corporation	DOCKET NO. 5253

COMPLAINT

This complaint is filed to obtain relief against respondents because of their violations, jointly and severally, as hereinafter alleged in Count I herein, of Section 5 of an act of Congress entitled "An Act To create a Federal Trade Commission, to define its powers and duties, and for other purposes," commonly referred to as the Federal Trade Commission Act, as approved September 26, 1914, and amended March 21, 1938 (38 Stat. 717; 15 U.S.C.A. sec. 41; 52 Stat. 111), and because of their violations, as alleged in Count II herein, of Section 2(a) of an act of Congress entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly referred to as the "Clayton Act," as approved October 15, 1914, and amended June 19, 1936 (38 Stat. 730; 15 U.S.C.A. sec. 12, 49 Stat. 1526; 15 U.S.C.A. sec. 13, as amended).

COUNT I

The Charge Under the Federal Trade Commission Act

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

Nature of Charges

PARAGRAPH TWO: Respondent National Lead Company is charged in this Count I of the complaint with having monopolized and attempted to monopolize the interstate sale of white lead and with having acted unlawfully to secure a monopolistic control over the prices of white lead in the United States, and with having combined, conspired and cooperated with the other respondents to hinder, lessen and eliminate price competition in the sale of white lead in the United States. It and each of the other respondents are charged with using unfair, oppressive, discriminatory and deceptive acts, methods and practices in connection with the sale of white lead in the United States.

Description of Respondents

PARAGRAPH THREE: Each of the respondents is particularly named and described as follows: (a) National Lead Company, a New Jersey corporation with its principal offices at 111 Broadway, New York, N. Y. (sometimes hereinafter referred to merely as National). (b) Eagle-Picher Lead Company, an Ohio corporation with its principal offices at 901 Temple Bar Building, Cincinnati, Ohio, parent corporation of respondent Eagle-Picher Sales Company. (c) Eagle-Picher Sales Company, a Delaware corporation with its principal offices at 901 Temple Bar Building, Cincinnati, Ohio, the wholly-owned subsidiary of respondent Eagle-Picher Lead Company (sometimes hereinafter respondents Eagle-Picher Lead Company and Eagle-Picher Sales Company both are referred to merely as Eagle-Picher). (d) Anaconda Copper Mining Company, a Montana corporation with its principal office located at 25 Broadway, New York, N. Y., parent corporation of respondent International Smelting & Refining Company (sometimes hereinafter referred to merely as Anaconda). (e) International Smelting & Refining Company, a Montana corporation with its principal office at 25 Broadway, New York, N. Y., a wholly-owned subsidiary of respondent Anaconda Copper Mining Company (sometimes hereinafter referred to merely as International). (f) The Sherwin-Williams Company, an Ohio corporation, with principal offices at 101 Prospect Avenue Northwest, Cleveland, Ohio (sometimes hereinafter referred to merely as Sherwin-Williams). (g) The Glidden Company, an Ohio corporation with principal offices located at Union Trust Building, Cleveland, Ohio (sometimes hereinafter referred to merely as Glidden).

Definitions and Explanation of Terms

PARAGRAPH FOUR: Some of the terms hereinafter used are defined and explained as follows:

A. "White lead": White lead is a white, exceedingly fine powder known as basic lead carbonate. It is a chemical compound, analyzing, when carefully manufactured, about 69% carbonate of lead and 31% hydrate of lead. It is derived through processes of corroding metallic pig lead. White lead is frequently referred to in the lead and paint manufacturing industries, by dealers in paint and paint products and painters as "lead pigments," whether in powdered form or in the form of paste after a mixture with some linseed oil. In either of those forms it is usable by paint manufacturers and painters in preparing and producing white lead paint of the desired consistency by simply adding and thoroughly mixing therewith varying amounts of linseed oil and in some instances turpentine.

B. "Pig lead": Pig lead is a product derived from the smelting and refining of lead ore or lead "concentrates." The pig lead is secured after the smelting and refining has removed sulphur and other impurities from the lead ore and which are found in it as it is taken from the mines.

C. "Commerce": The term commerce as hereinafter used means "commerce" as defined in the Federal Trade Commission Act.

Description and History of Industry and the Commerce of Respondents

PARAGRAPH FIVE: The respondents herein, either directly or indirectly through subsidiary corporations or operating divisions, are engaged in the manufacture, sale and distribution of white lead in commerce, and some of them, including respondents National, Eagle-Picher, Sherwin-Williams and Glidden, are also engaged in the use of white lead in their manufacture of white lead paint. The white lead that is thus produced is an important item in commerce between and among ~~the several States. It is the principal~~ item used in the manufacture of white lead paint. It is used in the manufacture of white lead paint by the principal paint manufacturers in the United States, as well as by painters throughout the country. The white lead paint thus produced is held in high esteem by painters and users as of the highest possible quality for application to exteriors of buildings, ships and other structures.

For a part of the period covered by this complaint the respondent Eagle-Picher Lead Company directly sold and distributed white lead in commerce, but it has also indirectly sold and distributed white lead in commerce since the formation and incorporation in the State of Delaware of its wholly-owned subsidiary, respondent Eagle-Picher Sales Company, which now serves respondent Eagle-Picher Lead Company as a marketing medium for products of the parent company.

During a part of the period covered by this complaint white lead produced by respondent International Smelting & Refining Company was sold and distributed in commerce directly by respondent Anaconda Copper Mining Company through one of its operating divisions, namely, Anaconda Lead Products Company. However, about 1939, respondent Anaconda Copper Mining Company discontinued its sale and marketing of white lead in commerce through its operating division, the Anaconda Lead Products Company. It has since sold and distributed white lead in commerce through its Anaconda Sales Company, Pigments Division, and as the product of its wholly-owned subsidiary, International Smelting & Refining Company.

The production of the National Lead Company and the other producing respondents accounts for from 85% to 90% of all the white lead produced and sold in the United States, with the production of the National accounting for approximately 60-65%, Eagle-Picher approximately 15%, and the other respondents for approximately 10% of the total. Therefore, as a practical matter, in the aggregate the producing respondents are the manufacturers and primary sellers to whom purchasers and users of white lead must turn for supplies of white lead. The production and distribution of pig lead, from which white lead is produced, is also concentrated in the hands of a few corporations, which include respondents National and Eagle-Picher.

Offenses Charged

The Charges Generally Stated

PARAGRAPH SIX: Respondent National Lead Company has violated and is now violating the provisions of Section 5 of the Federal Trade Commission Act by monopolizing, attempting to monopolize and acting to control the sale of white lead and the prices thereof in commerce. Respondents National Lead Company, Eagle-Picher Lead Company, Eagle-Picher Sales Company, Anaconda Copper Mining Company, International Smelting & Refining Company, The Sherwin-Williams Company and The Glidden Company have violated and are now violating the provisions of Section 5 of the Federal Trade Commission Act by combining, conspiring and cooperating between and among themselves and with each other for the purpose and with the effect of restraining, hindering, suppressing and eliminating competition in price in the sale of white lead in commerce. Each of said respondents has ~~violated and is now violating the provisions~~ of Section 5 of the Federal Trade Commission Act by engaging in and continuing unfair, oppressive, discriminatory and deceptive acts, methods and practices in connection with sales and offers to sell white lead in commerce.

Charges Particularized

PARAGRAPH SEVEN: Respondent National Lead Company at the time of its inception, in 1891, embarked upon the execution of a plan and program to secure unto it a monopoly of and a monopoly power and control over the manufacture, pricing, sale and distribution of white lead in commerce. Pursuant to, in furtherance of, and in order to effectuate the purposes of that plan and program, respondent National has engaged in, continued and is now doing and performing and carrying on the following acts, methods and practices..

A. Bought, merged and otherwise acquired control over or confederated with and secured the cooperation of other producers, buyers and sellers of pig lead destined for use in the manufacture of white lead. In furtherance of that part of its plan and program to monopolize the white lead industry and to secure control over the pricing of white lead in commerce:

(1) National, on or about December 7, 1891, succeeded to the control which had prior thereto been exercised by the National Lead Trust over the operations and activities of approximately sixteen previously independent firms engaged in the manufacture, sale and distribution of white lead, linseed oil and kindred products, and thereafter continued its expansion by acquiring control over additional units in the lead industry.

(2) National, by 1904, became a party to cooperative action with industrial and financial leaders allied in common purposes and objectives, through common financial interests and otherwise. As a result of such cooperation and mutual assistance such leaders, including stockholders of respondent National, gained control of American Smelting & Refining Company (one of the largest corporations

in the mining, smelting and refining of metals, including lead, in the United States, and in other parts of the world), American Linseed Oil Company (previously known as Linseed Oil Trust), National Lead Company (respondent National Lead Company herein, which was also previously known as National Lead Trust), and the United Lead Company, all of which proceeded, beginning in 1904, to operate in close harmony and cooperation. The combined resources of said corporations included all lead smelting and refining plants in operation east of the Rocky Mountains and with sufficient capacity to smelt and refine the entire output of lead producing ores of all the mines east of the Rocky Mountains producing smelting ores. They also included all linseel oil producing plants in the United States which were then important factors in commerce.

(3) National, in 1906, acquired control of the United Lead Company which had previously been formed through the acquisition of what had been numerous independent producers and refiners of lead.

(4) National, in 1907, acquired all of the stock of the Magnus Metal Company (Magnus Company, Inc.).

(5) National, shortly thereafter, acquired control of the business of Heath & Milligan Manufacturing Company of Chicago, the largest paint manufacturer in the West, but in 1919 transferred the control of that paint manufacturer to The Glidden Company, respondent herein.

(6) National, thereafter, acquired all of the stock of the Carter White Lead Company of Chicago and Omaha, the Matheson Lead Company, the River Smelting & Refining Company, Bass-Huerter Paint Company (then the second largest manufacturer of linseed paints and varnishes on the Pacific Coast), San Francisco, Calif., the National Lead Company of Argentina, and Hirst & Begley Company (an Illinois corporation engaged in the crushing of linseed oil which was subsequently reorganized into an operating branch of the National Lead Company).

(7) National has also secured control over a substantial part of the capital stock of respondent Eagle-Picher Lead Company. Up to February 1943, a still more substantial part of the Eagle-Picher Lead Company stock was held by one Edward J. Cornish, who had served as president of respondent National.

(8) National asserts and represents that the price of pig lead f.o.b. New York, N. Y., is the principal factor in its determination and fixing of its price for white lead, since pig lead is the principal item used in the manufacture of white lead.

(9) National through its acts, methods, practices and the relationships it maintains with American Smelting & Refining Company and others, through its employees, agents, representatives, officers,

directors and owners, exerts a monopolistic influence upon and is an important factor in the determination and quotation of the "market" prices on pig lead in the United States and upon the pig lead prices that it incorporates as an element of and factor in computing its prices of white lead. American Smelting & Refining Company holds a dominant position in the sale and production of pig lead in the United States, as well as in other parts of the world and quotes prices on pig lead in terms of cents per pound f.o.b. New York City. The prices thus quoted are "accepted" and treated as the "market" prices of pig lead not only by American Smelting & Refining Company but also by respondent National Lead Company and are used by both corporations as a basis for trading in that important product throughout the United States.

B. Respondent National has also combined and conspired with the few remaining small and ostensibly independent manufacturers and primary sellers of white lead in the United States. In so doing, it has cooperated with and received assistance and cooperation from respondents Eagle-Picher Lead Company, Eagle-Picher Sales Company, Anaconda Copper Mining Company, International Smelting & Refining Company, The Sherwin-Williams Company, The Glidden Company, and the Lead Industries Association in which organization all respondents are members, in doing and performing the following acts and engaging in the following methods and practices:

(1) Agreed to adopt and have adopted and maintained a system of delivered price quotations which prevents reflection of any differences in the cost of delivery between the respective places of manufacture of respondent producers, the primary sellers and to the respective locations of intending purchasers of white lead;

(2) Agreed to adopt and have adopted and maintained a plan whereby the United States is divided into so-called zones whereby price offers made by the producing and primary selling respondents to all purchasers of a class throughout any one of such zones, regardless of location and the differences in freight rates from shipping point to destination, are matched, except that by prearrangement and understanding the offers made by respondents Glidden, Sherwin-Williams and International are permitted to be made and maintained at fixed differentials below the matched offers of respondents National and Eagle-Picher;

(3) Agreed to seek and secure and have sought and secured the advice, assistance and cooperation of the Lead Industries Association, its officers, employees and agents in fixing, adopting, publishing and using noncompetitive terms and conditions of sale in connection with sales and offers to sell white lead in commerce;

(4) Exchanged directly and through the office of the Lead Industries Association and with the cooperation of officials of that Association price factors and information concerning price factors expected by respondents to be used and which at times have been used by the primary sellers of white lead, including the respondents,

in calculating, determining and announcing their offers to sell white lead in commerce;

(5) Agreed to adopt and have adopted, maintained and used terms and conditions of sale embodied in so-called "consignment" or "agency" agreements under the leadership of respondent National Lead Company for the purpose of preventing dealers selling white lead and white lead paint from making offers to sell such products at levels lower than the offers made by the respective respondent producers whose names were affixed to such "consignment" or "agency" agreements;

(6) Agreed to fix, and have fixed and included in offers to sell, the prices, terms and conditions at which white lead is sold and offered for sale in commerce;

(7) Respondents National and Eagle-Picher have discussed and collaborated upon carefully considered ways and means to have written into Federal specifications provisions, designed by respondent Eagle-Picher to eliminate from bidding on Federal Government proposals to buy their industry's products, prospective bidders who were known to solicit Federal Government business through bids based upon specifications different from those applicable to the products of respondents National and Eagle-Picher; and

(8) Respondent National entered into contracts and understandings with E. I. du Pont de Nemours Company, Inc., a large paint manufacturer, for the purpose and with the effect of promoting maintenance of the levels of price fixed by National and other producing and primary sellers of white lead.

PARAGRAPH EIGHT: Each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, through its pursuit, adoption and use of a "ZONE DELIVERED PRICING METHOD AND PRACTICE" as a part of what they hold out to have been an individual and independent course of action is contributing to and furthering the hinderance, lessening, suppression and elimination of competition in price in sales of and in offers to sell white lead in commerce as made by it and other sellers. Each said respondent thereby encourages, supports and furthers the plan and program of respondent National Lead Company, described and set forth in Paragraph Seven of Count I of this complaint, to promote and maintain monopolistic and noncompetitive prices and conditions in the sale of white lead.

A. As a part of said common course of action each such respondent uses the "ZONE DELIVERED PRICING METHOD AND PRACTICE" in calculating, determining, making up, announcing, publishing, and distributing its price offers and prices on white lead to its respective customers in commerce. As a part of such method and practice the entire territory of continental United States has been and is now arbitrarily divided by each of such respondents into geographical "ZONES," as shown by the map inserted herein immediately following and made a part hereof:

B. Each such respondent has thus arbitrarily divided the United States into geographical "ZONES" for the purpose of calculating, determining and announcing what the delivered cost shall be as paid by each of its prospective customers for white lead laid down at any given destination in the United States. Within the limits of the "PAR" or "BASE" zone, as shown on the map immediately preceding this page and which covers the Northeastern part of the country, each of the respondents quotes, in its offers, a base figure in terms of cents per pound as a delivered cost on white lead of a given quantity to all of its prospective purchasers of a given class at each of all of the many locations throughout such "ZONE," disregarding differences in cost of delivery from its plant to the thousands of destinations within said zone. The figure thus quoted as a delivered cost is not reduced in offers to sell for delivery to customers at or near the factory door of any of the respondents but is the same figure applied in offers to sell the same quantity of white lead to other customers of such respondent located hundreds of miles away from its point of production in the said "PAR" or "BASE" Zone territory. Therefore, the said delivered cost figure does not reflect the substantial differences necessarily involved in the costs of sale and delivery to the customers of each of the respective respondents pursuant to the aforesaid offers. Figures quoted by each of the respondents to its customers in each of the other zones are the same at each and all of the destinations within the respective zones. They are arrived at by applying to destinations in what may be designated as Zone 2, an arbitrary mark-up of 12½¢ per hundred pounds above the level of the base figure used in the "PAR" or "BASE" Zone, and an additional arbitrary mark-up of 12½¢ per hundred pounds for each of the succeeding zones, so that the zones carrying the highest mark-ups of 50¢, 75¢ and $1.00 per 100 pounds are those covering the Rocky Mountain and other Western territory.

C. Each such respondent, when it makes, publishes and distributes "price cards" and other pricing information in printed, mimeographed, typed and other forms in their respective offers to sell white lead in commerce, uses several factors which, when arranged and computed in accordance with the instructions and directions included in such "price cards" and other so-called "pricing" information, causes to be presented to any given prospective purchaser of white lead of any class at any destination, MATCHED offers to sell over the names of respondent National and respondent Eagle-Picher in any given quantity and exactly MATCHED offers of National, Eagle-Picher, Glidden, International and Sherwin-Williams for their respective sales quotations in small quantities. For example, in their quotations and offers to sell painters in lots of less than 500 pounds, they have exactly matched their offers as follows:

Name of Respondent	100# Keg	50# Keg	25# Keg	12½# Keg
National	$12.75	$6.50	$3.32	$1.69
Eagle-Picher	12.75	6.50	3.32	1.69
International	12.75	6.50	3.32	1.69
Sherwin-Williams	12.75	6.50	3.32	1.69
Glidden	12.75	6.50	3.32	1.69

D. Such precise and exact MATCHING of offers to sell by such respondents is inherently and necessarily involved when each of them uses the aforesaid "ZONE DELIVERED PRICING METHOD AND PRACTICE" in calculating, making and announcing their quotations, and when in so doing each uses the same factors.

E. Inherently and necessarily involved in such precise and exact MATCHING of respondents' offers to sell white lead in commerce at an identical delivered cost to purchasers, whenever sales are effected thereby, is a discrimination against nearby customers and in favor of more distant customers. Such discrimination is reflected in terms of substantially different mill-net prices received by each of such respondents for white lead sold in commerce, with their respective customers located at or near the respective factory doors paying more to a given respondent for the same quantity and quality of white lead than customers of the same class located hundreds of miles distant from such respective factory doors. Such discrimination is not only inherent but an obviously necessary part of respondents' aforesaid method and practice of quoting the same figure as a delivered cost to a customer across the street as it quotes to its customer located hundreds of miles away for equal quantity and quality of white lead. That is because no freight charge is involved in any sale and delivery to the customer located across the street, while a substantial part of the total delivered cost represents cost of delivery of such a heavy product when transported to the distantly located customer.

F. Each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, has represented to its buyers and users of white lead and other paint products, to representatives of the Federal Government and to others that it and other sellers of white lead are engaging in active and vigorous price competition, when such is not the fact. Each respondent for the purpose of promoting the belief that it and other sellers of white lead are in active and vigorous price competition represents that the "ZONE DELIVERED PRICING METHOD AND PRACTICE" originated competitively, is maintained only through competition, and represents efforts of the respondents to compete with each other, when such are not the facts.

PARAGRAPH NINE: Each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, uses the aforesaid "ZONE DELIVERED PRICING METHOD AND PRACTICE," described in Paragraph Eight of this Count I, for the purpose and with the effect of enabling respondents National and Eagle-Picher to more easily MATCH their offers to sell white lead in commerce to any given prospective purchaser and to maintain such MATCHED offers at a prearranged differential above the respective offers of respondents Glidden, Sherwin-Williams and International, and so that each of the latter named three respondents is enabled to maintain its offers to sell white lead in commerce to any given prospective purchaser at a prearranged differential below the aforesaid MATCHED offers of respondents National and Eagle-Picher.

Effects of Respondents' Actions

PARAGRAPH TEN: The inherent and necessary effects of the adoption, use and maintenance by each of the respondents National, Eagle-Picher, Anaconda, International, Sherwin-Williams, and Glidden, of their "ZONE DELIVERED PRICING METHOD AND PRACTICE," as particularized in the allegations set forth in C of Paragraph Eight of this Count I, include the following, to wit:

A. The oppressive requirement that those who purchase and use white lead paint within the triangular territory bounded by Kellogg and Wallace, Idaho; Denver and Leadville, Colorado; St. Joseph, Missouri, and St. Paul and Minneapolis, Minnesota, eventually must pay as a part of what is collected by the American Smelting & Refining Company, by the respondents herein, and by others the equivalent of freight or other delivery charges for transportation of pig lead from the producing centers in such territory to New York City and transportation back to or near such producing centers, although such lead was never actually transported to or from New York City, the amounts so charged and exacted being equal to more than 25% of all that is paid by such purchasers for the white lead used by them in paint applied on their homes and barns;

B. The oppressive requirement that other users in other extensive territories, including farmers, manufacturing industries and shipbuilders (who use large quantities of white lead in the painting of homes, barns, factories and ships) pay phantom and fictitious freight on lead from various points of origin to New York City and from there to various destinations throughout the United States, when, in truth and in fact, the white lead used by such consumers was never actually transported to or from New York;

C. An undue, unjust and unlawful regional discrimination by respondents against farmers, miners, manufacturing industries and other consumers in the North Central, Rocky Mountain and far Western States producing the raw materials for white lead and white lead paints and in favor of persons similarly engaged in the Northeastern and other States comprising respondents' "PAR" or "BASE" Zone;

D. Unfair and oppressive discrimination by respondents against the white lead purchasing and consuming public in large areas of the United States by depriving such purchasers of the natural advantage otherwise accruing to them from proximity to the factories of respondents and by compelling such purchasers to pay increases over what the net price of white lead to such purchasers would have been if fixed by competition among respondents, such increment in net prices to respondents approximating the advantages in freight rates to which such purchasers are entitled over purchasers remote from such factories. Such nearby purchasers are thereby compelled to pay not only the actual freight rates on the products purchased by them respectively, but in effect also to pay portions of the cost of transportation of such products to other and more distant purchasers from the respective factories;

E. An undue concentration of white lead and white lead paint manufacturing industries in territories outside of and east of the Midwestern, Rocky Mountain and far Western States which produce the raw materials used in manufacturing said commodities;

F. A denial to prospective purchasers of white lead in commerce of the opportunity to bargain with any one of the respondents for a better price offer than made by the other respondents, thereby precluding purchasers from having any voice in determining the price they are to pay for the commodity;

G. A substantial lessening of competition among respondents in all parts of the United States, through action of each respondent voluntarily and reciprocally surrendering and cancelling the inherent advantage it has over all competitors within the territory nearer freightwise to its factory than to the factory of a competitor, in consideration of a similar surrender and cancellation by other respondents;

H. The fixation and control through respondents' concurrent and parallel action of an arbitrary and substantial portion of the delivered cost of the product to any and every purchaser upon a basis having no relation to differences in cost of production, in selling costs, and in actual transportation cost, on particular sales. Such arbitrary result is accomplished notwithstanding substantial differences in the delivered cost to the respective respondents of raw materials shipped to them and of white lead shipped by them to their respective customers;

I. An unnecessary and undue enhancement in costs of materials used by industries directly engaged in producing supplies for use in the war effort of the United States;

J. An increase in the costs of paint as paid by users thereof and an encouragement of users to utilize for painting purposes products inferior to white lead paint;

K. The exaction of arbitrary financial payments in varying sums from a large number of customers for the sole purpose of reimbursing respondents for concessions ~~voluntarily made to other customers and~~ of thereby accomplishing their unlawful purpose to destroy price competition in the sale of white lead and to create for themselves a monopoly therein and thereof;

L. The deception of buyers and users of paint into believing that respondents are engaging in active and vigorous price competition when in fact they are frustrating and suppressing it.

CONCLUSION

PARAGRAPH ELEVEN: The combinations, agreements and understandings of the respondents and their acts, practices, pricing methods, systems, devices and policies as hereinbefore alleged, all and singularly, are unfair and to the prejudice of the public; deprive the public of the benefit of competition; create discrimination against some buyers and users of white lead and white lead paint; have a dangerous tendency and capacity to restrain unreasonably commerce in said products; have actually hindered, frustrated, suppressed and eliminated competition in such products in commerce; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

The Charge Under the Clayton Act

PARAGRAPH ONE: Pursuant to the provisions of Section 2 of an act of Congress approved October 15, 1914, entitled "An Act To supplement existing laws against unlawful restraints and monopolies, and for other purposes," commonly known as the Clayton Act, as amended by an Act of Congress approved June 19, 1936, commonly known as the Robinson-Patman Act, the Commission, having reason to believe that the parties named in the caption hereof, and more particularly described and referred to hereinafter as respondents, have violated the provisions of said act of Congress as so amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, the Commission hereby issues its complaint, stating its charges in such respect as follows:

Nature of Charges

PARAGRAPH TWO: The charges hereinafter contained in this Count II are that each of the respondents has been and is now unlawfully discriminating as between its customers in the prices it charges, demands, accepts and receives in connection with the sale of white lead in commerce.

Description of Respondents; Definitions and Explanations of Terms; Description and History of Industry and the Commerce of Respondents

PARAGRAPHS THREE TO FIVE, INCLUSIVE: As Paragraphs Three to Five, inclusive, of Count II, the Commission incorporates Paragraphs Three to Five, inclusive, of Count I of this complaint to precisely the same extent and effect as if each and all of them were set forth in full and repeated verbatim in this Count II, except the definition of the term "commerce." The term "commerce" as hereinafter used means "commerce" as defined and set forth in the Clayton Act.

Offenses Charged

PARAGRAPH SIX: Since June 19, 1936, and while engaged as aforesaid in commerce among the several States of the United States and the District of Columbia, each of the respondents National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, has been and is now, in the course of such commerce, discriminating in price between purchasers of said commodities of like grade and quality, sold for use, consumption or resale within the several States of the United States and the District of Columbia, in that each

0000-NLI-000020470

of the respondents has been and is now systematically selling such commodities to many purchasers at a price higher than the price at which commodities of like grade and quality are sold by it to other purchasers and users, including purchasers competitively engaged with others who pay either the lower or the higher discriminatory prices.

PARAGRAPH SEVEN: Each of the respondents uses a "ZONE DELIVERED PRICING METHOD AND PRACTICE" in calculating, determining, making up, announcing, publishing, and distributing its offers to its respective customers to sell them white lead in commerce. As an incident to and a part of such method and practice, the entire territory of continental United States has been and is now divided by each of such respondents for pricing purposes into geographical "ZONES," as shown by the map appearing at page 8 of Count I of this complaint. By this allegation and by such reference said map is hereby inserted as a part of Count II hereof as fully as though it had been physically reproduced at this point.

PARAGRAPH EIGHT: In using its aforesaid "ZONE DELIVERED PRICING METHOD AND PRACTICE," each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, so quotes prices in its offers to sell that when it sells white lead in commerce in accordance and in connection therewith, the delivered cost on a specified quantity of white lead as paid by any one of its customers located at or near the factory door of such respondent, amounts to as much as the delivered cost on the same quantity of white lead as paid to such respondent by any one of other customers located hundreds of miles away in the same "ZONE," although substantial differences are involved in the costs of delivery to such nearby customer and the more distantly located ones.

PARAGRAPH NINE: Systematic discriminations in net prices against nearby customers and in favor of their more distantly located customers are inherent in the use of the aforesaid "ZONE DELIVERED PRICING METHOD AND PRACTICE" when sales are effected and the buyers pay in accordance with quotations of MATCHED delivered costs as made by each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, to their respective customers.

PARAGRAPH TEN: When sales are made to customers located at or near the borders of adjoining or contiguous "ZONES" pursuant to the aforesaid "ZONE DELIVERED PRICING METHOD AND PRACTICE," each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden, charges, demands, accepts and receives higher prices from some purchasers than from other and competing purchasers in different zones and there is discrimination in the delivered costs of white lead to different purchasers by each of such respondents in addition to substantial differences in the mill net prices received by each of them.

PARAGRAPH ELEVEN: Each of the respondents, National, Eagle-Picher, Anaconda, International, Sherwin-Williams and Glidden has been and is now classifying its customers to receive from such respondents quantity, trade and regional discounts from quoted prices so that, by virtue of such classifications and action pursuant thereto by each such respondent, it charges, demands, accepts and receives higher prices in connection with sales of white lead in commerce from some of its customers than from other customers, even though said customers who pay such higher prices are competitively engaged with the customers who pay such lower prices.

PARAGRAPH TWELVE: Each of the respondents, National, Eagle-Picher, International, Sherwin-Williams and Glidden practices the aforesaid systematic discriminations in price, for the purpose and with the effect of enabling respondents National and Eagle-Picher to exactly MATCH their offers to sell white lead in commerce to any given prospective purchaser and to maintain such MATCHED offers at a prearranged differential above the respective offers of respondents Glidden, Sherwin-Williams and International, so that each of the latter named three respondents may maintain identical offers to sell white lead in commerce to any given prospective purchasers at a prearranged differential below the aforesaid MATCHED offers of respondents National and Eagle-Picher.

Effects of Price Discriminations Practiced by Respondents

PARAGRAPH THIRTEEN: The discriminations in price practiced by respondents, as particularized and alleged in Paragraphs Six, Seven, Eight, Nine, Ten and Eleven of this Count II, include the results and effects set forth as follows:

A. The allegations of the results and effects that are made and set out in subparagraphs A, B, C, D, E, F, G and H of Paragraph Ten of Count I hereof are hereby alleged as results and effects of respondents' price discriminations alleged in Paragraphs Six, Seven, Eight, Nine, Ten and Eleven of this Count II, and are hereby incorporated in this subparagraph of this Paragraph Thirteen of Count II to precisely the same extent as though each said subparagraph A, B, C, D, E, F, G and H of Paragraph Ten of Count I were set forth in full and repeated verbatim as a part hereof;

B. A further effect of the aforesaid discriminations in price by said respondents may be substantially to lessen competition in the sale and distribution of white lead between said respondents and their competitors, tend to create a monopoly in the line of commerce in which the respondents are engaged; and to injure, destroy and prevent competition between said respondents and their competitors in the sale and distribution of white lead;

C. Further effects of the aforesaid discriminations in price by said respondents may be substantially to lessen competition between the buyers of white lead receiving the lower discriminatory prices from respondents and other buyers competitively engaged with such favored buyers and who pay higher discriminatory prices; tend to create a monopoly in the lines of commerce in which buyers from respondents are engaged; and to injure, destroy and prevent competition in the lines of commerce in which purchasers from respondents engaged as between the beneficiaries of said discriminatory prices and competing buyers who are required to pay the higher discriminatory prices.

CONCLUSION

PARAGRAPH FOURTEEN: Therefore the aforesaid discriminations in price by each of the respondents constitute violations of the provisions of subsection (a) of Section 2 of the Clayton Act, as amended by the Robinson-Patman Act, approved June 19, 1936 (49 Stat. 1526; 15 U.S.C.A., sec. 13, as amended).

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this 25th day of November, A. D., 1944, issues its complaint against said respondents.

NOTICE

Notice is hereby given you, National Lead Company, a corporation, Eagle-Picher Lead Company, a corporation, Eagle-Picher Sales Company, a corporation, Anaconda Copper Mining Company, a corporation, International Smelting & Refining Company, a corporation, The Sherwin-Williams Company, a corporation, and The Glidden Company, a corporation, respondents herein, that the 29th day of December, A. D., 1944, at 2 o'clock in the afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, at 45 Broadway, in the city of New York, N. Y., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

> In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.
>
> * *   * *   * *
>
> Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.
>
> If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may

consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true.

Contemporaneously with the filing of such answer the respondent may give notice in writing that he desires to be heard on the question as to whether the admitted facts constitute the violation of law charged in the complaint. Pursuant to such notice, the respondent may file a brief, directed solely to that question, in accordance with Rule XXIII.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 25th day of November, A. D., 1944.

By the Commission.

(SEAL)

Otis B. Johnson,
Secretary.