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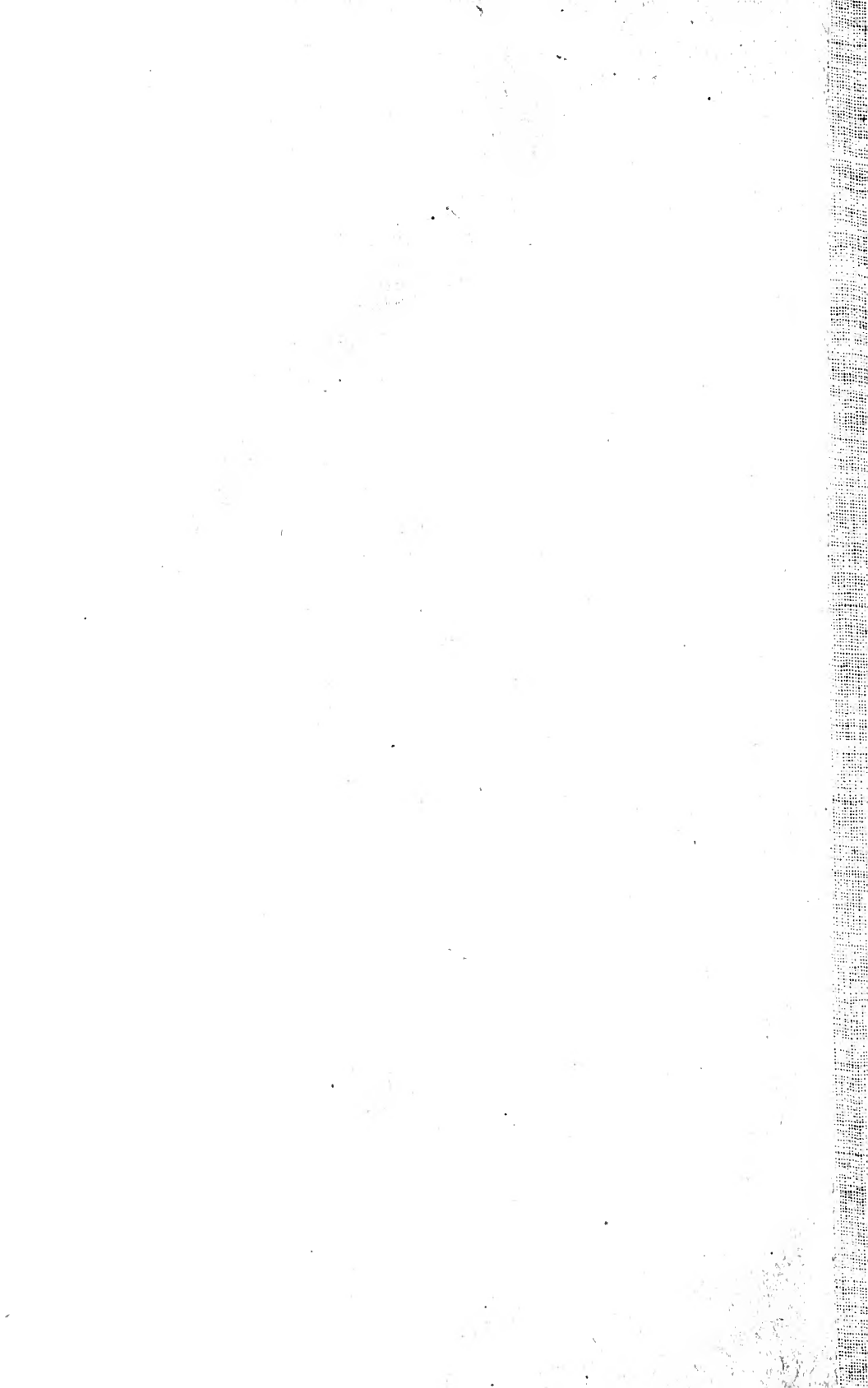
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# OPEN PRICE ASSOCIATIONS

BY

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## PREFACE

The dissertation which follows must be looked upon as an introductory study of the open-price movement rather than an exhaustive one. The movement being of comparatively recent origin, the accumulated data, based on observation and experience, are necessarily inconclusive on many points. In consequence it has been found necessary in many instances to base conclusions mainly on theoretical considerations. There remains for future investigators the obvious task of testing out these conclusions in the light of a more adequate fund of data.

The writer desires to express his obligation to officers of open price associations, too numerous to mention by name, for their cooperation in furnishing data. Special acknowledgments are due to Professor Maurice H. Robinson of the University of Illinois, who suggested the topic and under whose supervision the work has been brought to completion. Appreciation is also expressed to members of the Economics Seminar (1920-1921) of the University of Illinois for permission to read and offer for their criticism certain chapters of the dissertation.

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CHAPTER I  
TERMINOLOGY, DEFINITION, PREVALENCE,  
PURPOSES, AND HISTORIC ORIGIN

TERMINOLOGY

It is not easy to identify an open price association by its name. They are most commonly designated as "associations" or "bureaus" or "institutes" or "societies" or "exchanges".<sup>1</sup>

The terms most commonly used to designate the kind of activity engaged in by open price associations are "New Competition", "Open Door Competition", "Open Price Cooperation", and "Cooperative Competition". Perhaps the last named term is the most expressive because it invites attention to the fact that members of an open price association aim to coöperate in such a manner that competition between themselves will not be impaired. The use of such a term as "Open Price Coöperation" is open to the objection that it lays undue stress on the price feature of the open price plan. Many supporters of the plan take the ground that this activity occupies a position of lesser importance than other activities involved in the operation of the plan. That there is some weight to this assertion will be shown in another connection.<sup>2</sup> Of course the same criticism applies to the use of the term "Open Price Association". However, it has merit in that it calls attention to an activity that is peculiar to this type of association as distinct from that of the ordinary trade association, namely, price reporting.

DEFINITION

The open price association is an organization which provides a medium for the exchange of business information among members of a given industry whereby they may arrive at an intimate

<sup>1</sup>Illustrations: American Hardwood Manufacturers' Association; Lumbermen's Statistical Bureau; National Bar Iron Institute; Manganese Steel Founders' Society; Steel Locker and Shelving Manufacturers' Exchange.

<sup>2</sup>Cf. ch. 5, p. 80.

acquaintance with competitive conditions as they exist among themselves and in the whole industry. The business facts most commonly exchanged are those relating to prices actually quoted or charged, terms of payment, manufacturing and selling costs, purchases, stocks, production, orders, shipments, inquiries, bids, contracts, returned goods, cancellations, advertising, and credits.

There are discernible several points of difference between an open price association and the ordinary trade association. The ordinary trade association is very loosely organized and serves only certain general purposes. There is little or no attempt to systematically assemble, compile, and disseminate complete and accurate business statistics. Meetings are infrequent; members do not come much in personal contact at these meetings because the membership is usually large. Divergence of interests is more or less great, making it difficult to secure harmony of action. It is often found that the members of such an association do exchange price information. In so far as this is done, the association may be considered a kind of open price association, but it is not a typical one.

The typical open price association is a small, closely knit organization. Its members place heavy emphasis on the importance of assembling, compiling, and disseminating among themselves complete and accurate statistics. These statistics serve the purpose of putting each member in possession of business facts which will provide him with a basis for the intelligent direction and control of his business. If anything, even more emphasis is put upon the importance of securing frequent personal contact between members. This is accomplished by having frequent meetings. Where membership is relatively large, or where it is spread over a wide area of territory, it is customary to have group meetings. In these meetings members freely discuss all matters of interest bearing on the problems of their industry, including prices that have been received in past transactions. Discussions relating to future prices are not permitted.

#### PREVALENCE

The open price association is an American institution.<sup>3</sup> How many of these associations exist in the United States is very

<sup>3</sup>Eddy, Arthur J., Address, *American Lumberman*, Dec. 20, 1913.



difficult to determine. One estimate places the number at 250.<sup>4</sup> A prominent counsel for several open price associations, whose opinion bears weight, states, "It is probably true that no great industry in this country is entirely without some form of coöperation that meets at some point some principle of the so-called open price work. I have no doubt at all that there are as many as three hundred and possibly three times three hundred."<sup>5</sup> The writer is informed by one of the representatives of a prominent bureau doing open price work that the bureau in question has collected a list of four hundred and twenty-nine open price associations, and the opinion was expressed that there are in existence some four hundred and fifty of these associations.<sup>6</sup> However the informant did not know what percentage of this number represented associations which had adopted the open price plan in its entirety. Probably the number falling in the latter class would be considerably less.

There is no doubt that the late war gave an impetus to the spread of this association movement. In supplying its needs, the Government made a practise of dealing with associations of manufacturers rather than with individuals. Many associations that were hastily thrown together for war purposes were kept up after the advent of peace.<sup>7</sup> Requests made by the Government for statistical data relating to such matters as stocks of goods on hand in any given industry, productive capacity of individual manufacturers, et cetera, provided associations with a strong incentive for gathering and compiling statistics relating to their industry.<sup>8</sup> Many associations, organized to do open price work, sprang up. Ordinary trade associations added certain features of the open price system to their other functions. Shortly after the close of the war, as a part of its avowed purpose of determining the reasons for the high cost of living, the Department of Justice of the United States began a searching investiga-

<sup>4</sup>Rohrbach, C. R., *Printer's Ink*, Feb. 5, 1920.

<sup>5</sup>McKercher, Clark, *Letter*, Nov. 22, 1920.

<sup>6</sup>Armstrong Bureau of Related Industries, Chicago, Illinois.

<sup>7</sup>Rohrbach, C. R., *Printers' Ink*, Feb. 5, 1920.

<sup>8</sup>New York *Journal of Commerce*, May 11, 1917; May 16, 1918.

tion into the workings of certain of the so-called open price associations. Early in the year 1920 a Bill of Complaint<sup>9</sup> was filed against the largest open price association in the country, the American Hardwood Manufacturers' Association. A month later, the Federal Court for the Western District of Tennessee<sup>10</sup> granted an injunction restraining the members of this association who were members of the open price plan from engaging in any open price activity whatever. Subsequently an announcement was made by one of the assistants to the Attorney General that he considered the law as applied in this case firmly established and that any other associations operating similarly would be proceeded against.<sup>11</sup> These events naturally reacted on the rapid spread of associations of this kind and resulted in the suspension of open price activity on the part of many of them,<sup>12</sup> at least temporarily, pending the outcome of the appeal that the members of the hardwood open price plan had made to the Supreme Court. The open price movement is therefore now (1921) at a standstill.

Open price associations may be found in all parts of the United States. A large number of them, if not the largest, appear to have their headquarters in New York and Chicago. A glance at the appended list of associations reputed to be doing open price work<sup>13</sup> will indicate how widely different are the lines of trade in which they flourish. The list, which is believed to be a representative one, also points to the conclusion that the open price movement in its most highly developed form is spreading most rapidly in lines of trade wherein the number of competitors is relatively small.<sup>14</sup>

The reasons for this would appear to be, in the first place,

<sup>9</sup>*Bill of Complaint*, American Column & Lumber Co. et al vs. U. S.; Bill filed in Federal Court for Western District of Tenn., Feb. 1920.

<sup>10</sup>*American Lumberman*, Mar. 20, 1920. Decision rendered in March, 1920.

<sup>11</sup>*American Lumberman*, Mar. 20, 1920. Statement of Judge C. B. Ames, Assistant to the Attorney General.

<sup>12</sup>For instance, National Coal Assn., Hollow Building Tile Assn., National Warm Air Heating and Ventilating Assn. Several in lumber industry.

<sup>13</sup>*Appendix Exh. I.*

<sup>14</sup>One of the largest, if not the largest, open price association of the fifteen or sixteen organized by Mr. Eddy, i. e., The National Association of Finishers of Cotton Fabrics, has sixty-seven members. The average number seems to be no

that groups of competitors in the smaller lines, not having the benefit of trade papers, feel a peculiar need of some medium for learning of conditions of trade. The open price system meets this need. In the second place it is, generally speaking, true that the more numerous the competitors in a given line are the more difficult it is to bring about effective coöperation between them. This is particularly true when the coöperation required is of a most intimate and unprecedented kind. Even the most intelligent of business men find it difficult to grasp the spirit of coöperation which makes men willing, for example, to lay bare before competitors vital statistics pertaining to their own businesses. Filled, as he is, with distrust and suspicion of the motives and actions of his competitors, the ordinary business man is not easily reconciled to a program which involves coöperation with them in this very intimate way. A long campaign of education must ensue before these barriers can be cleared away. Even when he has reached the point where he is willing to coöperate, there is the difficult task of teaching him to be accurate, punctual, and regular in reporting such information as may be requested of him by the bureau gathering, compiling, and disseminating the information.

The open price plan has been in existence for about nine years only.<sup>15</sup> It would seem almost impossible, then, for lines of trade with large numbers of competitors to have arrived at a very high stage of development in open price work. Some industries, like the textile industry, do have open price associations that are highly developed in their structure and functional activities, but it will generally be found that their activities are limited to certain lines of trade in the industry wherein competitors are relatively few and processes are more or less simple and therefore comparatively easy to standardize.

The lumber industry, perhaps, offers the most conspicuous example of the attempt to secure coöperation of a large body of competitors in its entirety under the open price plan. Even in

greater than twenty-five. Cf. Testimony of Wm. J. Mathews before the Joint Legislative Committee on Housing, Legislature of New York, Dec. 29, 1920, pp. 4602-4603.

<sup>15</sup>This statement is written in 1921.

the most successful association of the many in the lumber industry doing open price work—the American Hardwood Manufacturers' Association—it was found well nigh impossible to secure sufficient coöperation among competitors to make the plan entirely successful. Early in the year 1919, after an existence of about two years as a consolidation of two associations that had existed for several years previous, the membership had nearly reached the four hundred mark. This membership controlled but twenty-eight per cent of the total hardwood production of the industry.<sup>16</sup> Thousands of small sawmill owners scattered over practically the entire United States east of the Mississippi River and west of the Mississippi River, in the States of Missouri, Arkansas, Louisiana, and Texas were not members. The United States census for 1910 gives between 12,000 to 15,000 independent hardwood sawmills.<sup>17</sup> Such statistics of stocks, production, et cetera as were reported by the members would not give totals which could be considered representative of the hardwood industry, except in a very crude, inaccurate way. Enough competitors must coöperate in furnishing information to make it possible to at least reduce the operations of the remaining ones to a calculable basis. Those who did join the association were very dilatory in furnishing information. It was found necessary to give up the plan of having all members make monthly reports of their production, because members failed to do so.<sup>18</sup>

In the coal industry an attempt has been made to cope with the problem of getting coöperation among large numbers of competitors by having several local bureaus for the gathering, compiling, and dissemination of statistics, each one of them being located in a coal operating center. Each local bureau then keeps the operators in its vicinity lined up, obtains the necessary statistics from them, compiles them and relays them to the association headquarters, where they receive further treatment in

<sup>16</sup>American Column & Lumber Co. et al vs. U. S., *Argument of L. C. Boyle before the Supreme Court*, p. 6.

<sup>17</sup>*Ibid.*, p. 35.

<sup>18</sup>American Column & Lumber Co. et al vs. U. S., *Transcript of Record*, Vol. II p. 1107.

the way of tabulations and compilations, after which they are returned to the various local exchanges, where they are again disseminated among the local operators.<sup>19</sup> Fearing legal consequences, the association ceased issuing market reports in July, 1920. How successful this scheme was in getting the desired cooperation is not known.

Probably open price associations occupy as important a place in the lumber industry as they do anywhere else. The recent report on the lumber industry rendered by the Federal Trade Commission to the Senate and the House<sup>20</sup> discloses that all ten of the lumber manufacturers' associations affiliated with the National Lumber Manufacturers' Association have been engaged in open price activity. There are only two large associations devoting themselves principally to the interests of manufacturers that are not affiliated with the National Lumber Manufacturers' Association, namely, the National Hardwood Lumber Association and the American Hardwood Manufacturers' Association. Of these only the National Hardwood Lumber Association has not been doing open price work. The Southern Pine Association ceased doing open price work when the United States Attorney General filed a bill of complaint against the American Hardwood Manufacturers' Association. The latter association, prior to the cessation of its open price activities, was not only the most notable example of an open price association in the lumber industry, but it was the largest open price association in existence.<sup>21</sup>

The Yellow Pine Wholesalers' Association having recently ceased operation under the open price plan, it appears that no associations of wholesalers are now engaged in open price work.

As far as can be ascertained, only one retail lumber association is doing open price work, that being the Chicago Lumber Dealers' Association.<sup>22</sup>

Open price associations seem to occupy a position of nearly as great importance in textiles as they do in lumber. A chronic

<sup>19</sup>Editorial, "How National Association Reports Sales." *The Black Diamond*, Oct. 11, 1919.

<sup>20</sup>*Preliminary Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 1, p. 1.

<sup>21</sup>For further discussion, see ch. 7, pp. 137-148.

<sup>22</sup>*Preliminary Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 2, p. 101.

condition of cut-throat competition characteristic of the textile industry has tended to abet the movement;<sup>23</sup> however, the secretiveness of competitors, explained in large degree by the importance to them of securing individuality and originality of styles, has impeded the movement,<sup>24</sup> as has a certain determined opposition manifested by buyers against these associations, particularly in the knit goods line.<sup>25</sup> Close to a dozen open price associations are said to be in operation.<sup>26</sup> All of these exist among manufacturers, with the exception of one or two to be found among jobbers.<sup>27</sup>

The first to adopt the open price plan were the important finishing firms (bleachers, dyers, printers). In 1914 they united to form the National Association of Finishers of Cotton Fabrics. Mr. Eddy organized it and was its counsel from the beginning.<sup>28</sup> It is said that by the end of 1916 all of the cotton finishers had joined the association.

Its success in helping the finishers to weather the depression that hit the textile industry in 1914 stimulated mill owners in other centers to adopt the plan. By the end of 1915 such associations existed in Boston, among knit goods manufacturers there, among mill owners at New Bedford and Fall River, and among certain of the mill owners in Southern cotton centers.

Late in 1915 a joint council composed of representatives from the two national associations—the National Cotton Manufacturers' Association and the American Cotton Manufacturers' Association—met to consider the feasibility of joining in the open price movement. As a result of their deliberations it was concluded that because of the complicated and involved nature of the dry goods trade it would probably not be practicable for the national associations to attempt to do open price work, and that such work could best be outlined and developed in each line of trade taken as a unit.<sup>29</sup>

<sup>23</sup>*New York Journal of Commerce*, Sept. 18, 1916.

<sup>24</sup>*Textile World Journal*, Jan. 20, 1917.

<sup>25</sup>*New York Journal of Commerce*, Mar. 19, 1920.

<sup>26</sup>*Ibid.*, Mar. 19, 1920.

<sup>27</sup>*Ibid.*, Mar. 19, 1920.

<sup>28</sup>*Ibid.*, Nov. 11, 1915. Mr. Eddy is called the "father" of the open price plan.

<sup>29</sup>*Ibid.*, Nov. 11, 1915.

In the woolen industry open price work was inaugurated in 1917, when the so-called "Woolen Exchange" came into existence under the auspices of the National Association of Woolen Manufacturers.<sup>30</sup> Its membership represents a considerable percentage of the wool manufacturing machinery of the country.<sup>31</sup> This is now the only open price association to be found in the woolen and worsted industry.

For a few months the Pennsylvania division of the National Association of Hosiery and Underwear Manufacturers operated an open price plan, but an investigation into its affairs by the Federal Trade Commission became the signal for its abandonment.<sup>32</sup> Among the knit goods manufacturers there now is operated an open price exchange called "The Knit Goods Manufacturers of America." Its members control about one-third of the entire production of the industry.<sup>33</sup> Other associations are in operation among the gingham, duck, blanket, silk, and blouse and shirt manufacturers.<sup>34</sup>

As a center of open price activity, the iron and steel industry is also deserving of special mention. How extensive the movement is in this industry may be partially revealed by examining the list of associations reputed to be engaged in open price activity which may be found in the appendix.<sup>35</sup> There is the Institute of Tool Manufacturers, the National Bar Iron Institute, the Tool Steel Society, the Cold Roll Strip Steel Institute, the Bolt, Nut, and Rivet Institute, the Hoop Band Strip Steel Association, the Rolling Steel Door Society, the Steel Barrel Manufacturers' Association, the Architectural Iron and Bronze Manufacturers, Steel Lockers and Shelving Manufacturers' Exchange, the Tap and Die Institute, Steel Founders' Society of America, National Association of Sheet and Tin Plate Manufacturers, Range Boiler Exchange, Pressed Metal Association, National Association of Steel Furniture Manufacturers, Pipe

<sup>30</sup>*Textile World Journal*, Aug. 5, 1916.

<sup>31</sup>*Ibid.*, Jan. 13, 1917.

<sup>32</sup>*Textile World Journal*, May 20, 1918.

<sup>33</sup>*Ibid.*, May 25, 1918.

<sup>34</sup>Gingham Assn.; Duck Assn.; Blanket Assn.; Silk Association of America; National Boys Blouse & Shirt Manufacturing Assn. All in New York City.

<sup>35</sup>This list is not thought to be complete. See *Appendix*, Exh. 1.

Fittings and Valve Exchange, Manganese Steel Founders' Society, Manganese Track Society, the Associated Manufacturers of Metal Lath, Drill and Reamer Society, and Bridge Builders and Structural Society. It is in the iron and steel industry that the greatest number of typical open price associations seem to be found. Inquiry develops that, with a few possible exceptions,<sup>36</sup> the associations here listed were either organized by Mr. Eddy or by men who came under his influence, directly or indirectly. The majority of them are in small industries, relatively speaking, and even the larger industries have relatively few competitors. It may be worthy of note that the United States Steel Corporation is not a member of any open price association. All of the independent makers of iron and steel, however, are understood to be members.

With respect to the relative distribution of open price associations among manufacturers, wholesalers and retailers, it may be said that the movement is almost exclusively confined to the manufacturing class. One or two associations are known to be operating among jobbers in the textile industry,<sup>37</sup> and one among a group of retailers in the lumber industry.<sup>38</sup> Until recently one was in operation among yellow pine lumber wholesalers. Wholesalers and retailers generally carry so many different lines of commodities that they find it impracticable to associate themselves in open price work. Retailers do not especially need to exchange information with respect to prices, because they are in the habit of marking their goods so that everyone, including competitors, may know what prices are being asked. Furthermore, it is to be remembered that, since wholesalers are engaged principally in buying and selling, they have built up an organization which is highly efficient in obtaining its own market information, and they are therefore as a class less dependent on such aid as might be furnished to them by an open price association than are the manufacturers.

<sup>36</sup>Steel Barrel Assn.; Associated Manufacturers of Metal Lath; National Association of Steel Furniture Manufacturers.

<sup>37</sup>New York *Journal of Commerce*, Mar. 19, 1920.

<sup>38</sup>I.e. The Chicago Retail Lumber Dealers' Assn. See *Report*, Federal Trade Commission, Jan. 10, 1921, Pt. 2, p. 101.



## PURPOSES ✓

The ultimate aim of all open price associations is to effect greater stability in business conditions, in order that profits may be made, if not greater, at least more steady, dependable, and calculable from year to year.<sup>39</sup>

As for the immediate objects of these associations, it appears that among the associations that attribute their existence directly or indirectly to the influence of Mr. Eddy, there exists a very close harmony. On the other hand there appears to be little uniformity among associations that have worked out open price activity for themselves, or that have simply annexed open price work to other functions previously in existence.

The Eddy associations usually emphasize as their objects:

1. The promotion of publicity in the transaction of business;
2. The promotion of cordial and friendly relations among members;
3. The absence of secrecy at meetings, or in the operations of the association;
4. The non-existence of penalties of any kind in connection with operations;
5. The freedom of members to quote at all times such prices and terms as they please;
6. The collection and dissemination of statistics of importance to the industry, including prices actually quoted or charged, but excluding reference to future prices either in reports or meetings;
7. The correction by legitimate means of all "unintelligences", faulty standardization, and abuses in the trade. Some of them also specifically have for an object the devising of cost accounting systems suitable for the industry, and coöperation in the standardization of sizes and dimensions.<sup>40</sup> Other objects are sometimes mentioned but they are not peculiar to the operation of an open price association.

Open price associations that do not fall in the Eddy class show considerable variation in the number and nature of the objects set forth. The Ohio Millers' State Association, for example, expresses its objects in a sentence, to wit: "The object of

<sup>39</sup>E. H. Gaunt states that the aim is not only to stabilize prices, but to increase the margin of profit. Cf. *Textile World Journal*, Apr. 8, 1916, p. 1709.

<sup>40</sup>*Constitution*, Leather Belting Exchange; American Hardwood Manufacturers' Assn.; Salt Producers Assn.; Tap and Dye Institute; Society of Manufacturing Confectioners; The National Coal Assn.; Knit Goods Manufacturers of America.

this association is the cultivation of commercial good will and fellowship among millers, the encouragement and protection of their trade, the promotion by every expedient and lawful means of the interests of their business, and to legally acquire and disseminate valuable mercantile and economic information of interest to its members, thus securing by fair and lawful means the benefit of coöperation."<sup>41</sup> There is very little hint here of the existence of open price activity. In fact, open price work in this instance is confined to a weekly report of prices received which members mail to the secretary, who in turn tabulates these prices and mails them in mimeograph form to the contributing members.

Another constitution, typical of the lumber industry,<sup>42</sup> sets forth nine objects, but only one of these mirrors to any extent the purposes usually associated with open price work. This is the second object and reads as follows: "To gather, compile, and disseminate data reports, statistics, and information relative to the properties, uses, values, production, transportation, distribution, and consumption of and markets for lumber and other forest products in all markets, and the best and most economical methods of manufacturing, handling, transporting, and disposing of said forest products; to gather, compile, and disseminate information as to the taxation of forest products and of timber lands and the cultivation, protection, and conservation of forests."<sup>43</sup>

Returning to a more detailed consideration of the objects as set forth by the typical Eddy association, it is found that no one object receives more emphasis than that which aims to promote cordial and friendly relations among members. The ordinary trade association also makes this one of its objects, but the open price association aims to make its accomplishment more certain by having meetings at frequent intervals. Members of the ordinary trade association usually meet once or twice a year. The motive in promoting cordial and friendly relations among members is to remove so far as possible misunderstandings and

<sup>41</sup>*Constitution*, Ohio Millers' State Assn.

<sup>42</sup>*Constitutions* of the Southern Pine Assn. and the American Hardwood Manufacturers' Assn. resemble more those of the Eddy Associations.

<sup>43</sup>*Constitution*, West Coast Lumber Manufacturers' Assn.

ill feelings due to the spreading of false reports and baseless charges and ignorance of conditions prevailing in the industry.<sup>44</sup>

A second object, of little less importance, is that which refers to the collection and dissemination of accurate information relating to the industry, including statistics of prices. The National Association of Finishers of Cotton Fabrics puts it this way: "To collect and disseminate accurate information relating to the finishing of cotton fabrics, to the end that each finisher, however small his output, may be placed, in so far as data for the intelligent conduct of his business goes, on a footing of equality with other finishers."<sup>45</sup> It may be worth noting, in passing, that it is here considered a valuable object to help put the small competitor on a footing of equality with the larger competitor in the matter of knowledge of business conditions. The fifth object of the Bridge Builders' Society is "to establish frankness regarding terms, bids, prices actually made."<sup>46</sup> With reference to prices, nearly always there is to be found a provision which prohibits members from discussing what their future prices are to be. This provision is intended to make it clear that there is to be no attempt to control the trend of future prices, but merely to record past prices. To attempt to control future prices would be illegal.<sup>47</sup>

In this connection the following quotation is found to be typical: "To bring out in the open all existing competitive conditions and to introduce an open price policy, to the end that whatever price information is distributed will be absolutely accurate and confined to purely statistical information regarding sales and prices that have been actually made. Nothing herein stated permits any member to file or otherwise give any information regarding any price he expects to make or would like to obtain."<sup>48</sup>

Provisions that there are to be no penalties of any kind in

<sup>44</sup>*Constitution*, Society of Manufacturing Confectioners.

<sup>45</sup>*Constitution*, National Association of Finishers of Cotton Fabrics, quoted by H. R. Tosdal, "Open Price Associations." *Economic Review*, June 17, 1917.

<sup>46</sup>*Constitution*, Bridge Builders' Society, quoted by H. R. Tosdal, "Open Price Associations." *Economic Review*, June 17, 1917.

<sup>47</sup>This is discussed in ch. 8, pp. 161-162.

<sup>48</sup>*Constitution*, Society of Manufacturing Confectioners.

connection with the operation of the plan are of course put in in order to show the clear line of separation that exists between open price associations and combinations that attempt to enforce agreements to control output or prices by means of penalties. The only penalty usually provided, if it may be called such, is that those who do not file the information called for by the reporting plan get no information. Those who file only part of the information called for get like information in return, and no more. One association has an additional penalty to the effect that a failure to report for twelve days in six months will cause the member failing to be dropped from membership.<sup>49</sup> The laxness shown in reporting has made provisions of this kind necessary.

The further provision, that members are to be free at all times to quote such prices and terms as they please, also aims to show clearly that the open price association has nothing in common with illegal combinations of one kind or another that attempt to put price restraints upon members. It may be said in this connection that some open price associations, at least, expect members who have made a particularly low price to explain in meeting the reasons that prompted them to make this low price.<sup>50</sup> Others merely provide the opportunity for such explanations to be made. As a rule no one but the secretary knows the identity of the persons that have made this price. Without actually making their identity known he will invite such persons to make an explanation if they care to do so.<sup>51</sup>

The promotion of publicity in all business transactions and absence of secrecy in meetings and in association operations is insisted on by those associations that endeavor to follow strictly the principles laid down by Mr. Eddy. Mr. Eddy writes as follows: "There is no reason why the American manufacturer should not throw his shop open to customers, why he should not mark everything he makes in plain figures and let everybody know what those figures are, changing them as he pleases, but

<sup>49</sup>*Reporting Plan*, American Hardwood Manufacturers' Assn., *Transcript of Record*, American Column & Lumber Co. vs. U. S., Vol; I, p. 86.

<sup>50</sup>Lord, F. W., *Ethics of Contracting and Stabilizing of Profits*, p. 174.

<sup>51</sup>The National Association of Box Manufacturers follows this procedure.

changing them to all alike, making such discounts as he pleases on large orders, but making them openly."<sup>52</sup> Inquiry develops that few of the open price associations are willing to go to the length of inviting buyers to utilize information that has been collected in the central office. The Hardwood Manufacturers' Association is a notable exception. In this case the Manager of Statistics encouraged buyers to make inquiries, for example, regarding the location of items of stocks of lumber and the quantities available.<sup>53</sup> Some of the associations permit members to invite customers to attend meetings;<sup>54</sup> others do not.<sup>55</sup> The American Hardwood Manufacturers' Association was very free in permitting outsiders to attend meetings, and hardly a meeting passed that was not attended, either by customers, representatives of the press, or other outsiders.<sup>56</sup> It is evident that few members of open price associations have yet reached the point where they are willing to confide their business affairs to the public. This is not to be wondered at. The idea that business should be conducted in secret has so long had possession of the business man that it will take years of education to persuade him to adopt the policy of full publicity. In the retail trade, "it has taken a century to grow into the one-price-plainly-marked policy."<sup>57</sup>

The object which calls for the correction of all "unintelligences" is in line with the idea that ignorance of competitive conditions is a millstone to industrial prosperity. In this connection, the purpose as expressed by the American Hardwood Manufacturers' Association is "to disseminate among members accurate knowledge of production and marketing, so that each member may gauge the market intelligently instead of guessing at it."<sup>58</sup>

Coöperation in devising cost accounting systems and coöpera-

<sup>52</sup>Eddy, A. J., *New Competition*, 1912, p. 108.

<sup>53</sup>*Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1101.

<sup>54</sup>For instance, Society of Manufacturing Confectioners, American Hardwood Manufacturers' Assn.

<sup>55</sup>Steel Barrel Manufacturers' Assn. for instance.

<sup>56</sup>*Minutes of Meeting*, *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 165.

<sup>57</sup>Eddy, A. J., *New Competition*, 1912, p. 115.

<sup>58</sup>Gadd Exhibit "B," *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1226.

tion in the standardization of sizes and dimensions are not functions that are peculiar in any sense to open price associations. These are very common activities of the ordinary trade association. Knowledge of costs makes an intelligent competitor out of an ignorant one. Open price associations can therefore not afford to ignore this function. Altho only a few associations give the special mention of cost accounting that its importance warrants, yet it will be found that practically all open price associations are engaged in cost educational work. It is noteworthy that one association states that its purpose in devising a uniform system of cost accounting "is not to impose upon any member any cost items or to use in any manner the cost system as a means for controlling prices."<sup>59</sup> Coöperation in standardization of sizes, dimensions, and processes, et cetera, is an integral part of the work of all open price associations, because prices cannot be intelligently compared unless the products subject to price quotation are comparable in size, shape, and quality.

Other objects of open price associations, such as the exchange of information relating to contracts, returned goods, cancellations, advertising, and credits are not usually given specific mention in constitutions but are provided for by some such clause as "the collection and dissemination of statistics of importance to the industry."<sup>60</sup>

#### HISTORIC ORIGIN

The earliest open price associations of which record can be found had their birth in 1911 in the iron and steel industry and in 1912 in the lumber industry.

In the iron and steel industry, the earliest association on record is that of the Bridge Builders' Society, now known as the Bridge Builders' and Structural Society, with headquarters in New York City. This society was organized by Mr. Eddy in 1911. Twenty-five companies doing structural and bridge work went into it. Only one important independent concern did not join; this was

<sup>59</sup>*Constitution, Knit Goods Manufacturers of America, Textile World, May 19, 1917.*

<sup>60</sup>The following exception is noted: "To diffuse accurate and reliable information among its members as to the standing of merchants and others engaged in making or selling of knit goods or the furnishing of materials therefor." Quoted from *Constitution, Knit Goods Manufacturers of America, Textile World, May 19, 1917.*

a subsidiary corporation of the United States Steel Corporation, namely, the American Bridge Co. Mr. Eddy organized this association strictly along the lines advocated in his book which made its appearance a year later.<sup>61</sup> Meetings were to be held once a month. They were to be public. All orders, prices, and tonnage were to be reported to a secretary. Those who filed copies of bids pertaining to any given piece of work would immediately receive a statement from the secretary showing the prices indicated on all the other bids that had been filed. Orders would be handled in the same way. Once a month the secretary would report to the whole society the tonnage taken by each member during the past month, together with the total tonnage. A constitution and by-laws were adopted similar in form to those which have been described as being typical of the Eddy associations. The following quotation taken from the fifth object of the constitution illustrates the care taken to make clear that there was no intent to restrict competition: "To this end each member of the society agrees to file with the secretary copies of all bids, terms, and prices within such period after same are made as may reasonably be required by resolution or by-law, it being definitely understood that each member is at all times free to make such bids and quote such terms and prices as he pleases, and to change the same at will, either before or after filing with the secretary, either before or after receiving information regarding bids, terms, and prices made by others, the only obligation being to file promptly all bids, terms, and prices as the same may be from time to time made."<sup>62</sup>

The second open price association to be founded in the iron and steel industry was the Manganese Track Society, in 1912, and the third, the Manganese Steel Founders' Society, in 1913. They were patterned after the Bridge Builders' Society.<sup>63</sup> Following these the movement took on greater rapidity, with the

<sup>61</sup>Eddy, A. J., *New Competition*, New York, 1912.

<sup>62</sup>*Testimony of J. S. Dean, Record, U. S. vs. United States Steel Corporation, Vol. II, pp. 797-811.*

<sup>63</sup>*Testimony of J. S. Dean, Record, U. S. vs. United States Steel Corporation, Vol. XX, pp. 7970, 7971.*

result that there now exists a score or more open price associations in the iron and steel industry.

The lumber manufacturers started to work out their own system of exchanging information relative to stocks, production, shipments, and sales as early as 1912. Even before this time<sup>64</sup> the then largest association among lumber manufacturers, the Yellow Pine Association, later reorganized under the name of the Southern Pine Association, was collecting statistics of stocks, production, and shipments, and occasionally the secretary would call for a report of sales.<sup>65</sup> He used these reports of sales as a basis for making up a price list and also as a means of learning how closely members were conforming to the price list previously issued. In making up the new price list the secretary would include in it only the highest prices shown by any of the sales reports. The list would then be issued to members with the understanding that it was to be used as a guide in quoting future prices. The result was, in the words of the judge of the Supreme Court of Missouri, who condemned this practise, that "prices charged revolved about prices fixed like planets in their orbits revolve about the sun."<sup>66</sup> The plan was a price boosting scheme pure and simple. It was altogether incompatible with the open price plan, which requires that members are to be free to quote such prices as they please, and that all prices filed with the secretary shall be reported by him to the members, be they high or low. Following this condemnation by the court, the yellow pine manufacturers involved reorganized on legitimate open price lines. It was at this reorganization meeting that some of the men present called Mr. Eddy's attention to the fact that the plan he was explaining to them was already being tried out in a small way by a group of lumber manufacturers in Mississippi.<sup>67</sup>

Inquiry made by the writer of one of the men present at this meeting elicits the following: "The account that you found in the *American Lumberman*, December 20, 1913, is correct. The open price idea was started in Laurel, Mississippi, by a group

<sup>64</sup>As early as 1906. Cf. *State vs. Arkansas Lumber Co. et al*, 169 S. W., p. 156.

<sup>65</sup>*Ibid.*, p. 156.

<sup>66</sup>*Ibid.*, p. 177.

<sup>67</sup>*American Lumberman*, Dec. 20, 1913.



of three or four mills in this city in an informal way. At that time each mill made four or five copies of orders received each day and sent one of these copies to each of the other mills in town. After a time, other neighboring mills asked to be put on the exchange list and some four or five mills in nearby towns were added. No central secretary was used in compiling or sending out the information. This system ran along for several months and was very successful and beneficial.

"In December, 1913, Mr. Eddy, an attorney living in Chicago, requested the yellow pine representatives to meet him in St. Louis to hear a talk on the open price competition idea, which he had developed in several other industries. The writer attended this meeting, and much to his surprise found out that Mr. Eddy's plan was merely an elaboration of the system which we already had in effect.

"Whether or not Mr. Eddy was the originator of the idea, I am unable to state. It may be that in 1913 we read of his plan and tried it on our own initiative. I cannot state positively whether this is the case, or whether the same idea occurred to us without knowledge of Mr. Eddy's plan."<sup>68</sup>

It would appear from this that altho Mr. Eddy's influence in the lumber industry was early felt, there is some room for belief that the open price movement in an elementary form, at least, had originated in certain localities independently of Mr. Eddy's intervention, if not of his influence. This point of view is further substantiated by information received from the secretary of a lumber manufacturers' association having headquarters in Oregon.<sup>69</sup> He writes as follows: "You are right in supposing that this association has operated an open price plan, or as we have called it, an information bureau, since 1912. Our idea originated in a way within the association, but it first became effective locally in certain regions on the West Coast, where the manufacturers of fir created small exchanges independently for the exchange of sales data." He adds, however, "but it is my recollection that a book was written on the subject and that the writer of the book or pamphlet made numerous addresses on the

<sup>68</sup>Gardiner, P. S., *Letter* dated Nov. 26, 1920.

<sup>69</sup>Western Pine Manufacturers' Assn.

subject in various parts of the country. I am inclined to think that this was the origin of the idea."<sup>70</sup> He is undoubtedly referring here to Mr. Eddy. So-called "Information Bureaus" also were developed in the year 1912 by the West Coast Lumbermen's Association, the North Carolina Pine Association, and the Northern Hemlock and Hardwood Manufacturers' Association.

Evidence seems to warrant the conclusion that the origin of open price associations in the lumber industry is attributable to the publicity that Mr. Eddy gave to his plan in the years of 1911 and 1912.

The lumber and iron and steel industries offer the earliest examples of open price associations on record. The other industries seem to have followed in their wake.

The Babson Statistical Organization helped to popularize the open price movement by devoting a session to it at each of its annual conferences for manufacturers in 1914 and 1915.<sup>71</sup> Furthermore this organization began publishing, as a part of its service to manufacturers, a set of bulletins that are intended to serve as a guide to those who are contemplating inaugurating the open price plan.<sup>72</sup>

Enterprising men who have picked up the rudiments of the plan either from Mr. Eddy himself, or from his writings, have organized secretarial service bureaus. These are so organized that they can take over the operation of several open price associations and run them simultaneously. Secretaries of these bureaus are constantly on the watch for opportunities to organize manufacturers into open price associations and are proving a strong factor in their development. Some of them operate as many as a dozen associations.<sup>73</sup> The result of the publicity given to the movement through the instrumentality of these various factors, is becoming increasingly apparent. There is hardly a trade secretary that does not know something of the workings of the plan and a surprising number of business men are acquainted with it.

<sup>70</sup>Cooper, A. W., Secretary, Western Pine Manufacturers' Assn., *Letter*, Dec. 17, 1920.

<sup>71</sup>Gaunt, E. H., "Open Price Plan for Woolens and Worsteds," *Textile World Journal*, April 8, 1916, p. 1709.

<sup>72</sup>*Babson's Reports on Coöperation*, Wellesley Hills, 1915.

<sup>73</sup>For instance, Organization Service Corporation, New York City; A. A. Ainsworth, New York City.

## CHAPTER II

### DESCRIPTION OF THE COMBINATION AND ASSOCIATION DEVELOPMENT IN THE IRON AND STEEL INDUSTRY AND COMPARISON WITH THE OPEN PRICE ASSOCIATION

Beginning with the combinations, in existence some twenty years ago, and closing with the open price association, there is manifest a more or less orderly development from one stage of activity to another. These stages may be named as, first, the Combinations, second, the Statistical Associations, third, the Gary Dinners, fourth, the Open Price Associations. Each of these types will be discussed and compared with the open price type.

The price fluctuating evil so characteristic of the iron and steel industry has led iron and steel producers to seek remedies in these various forms of associated activity. The combinations exemplified by such organizations as the Structural Steel Association, the Steel Shafting Association and the Steel Plate Association, had little in common with the open price association.<sup>1</sup> These combinations resorted to price fixation, regulation of output, and division of business on a percentage basis.<sup>2</sup> The open price association seeks to put each competitor in possession of all the salient facts of the industry, trusting that the desired objectives will be attained by individual independent action, without collusion of any kind, through the exercise of intelligent management and control over each business unit.

In addition to price fixation, regulation of output and allotment of business were outstanding features of the combination.<sup>3</sup> Obviously records had to be kept to show in what degree members were carrying out their agreement. These usually took the form of sworn monthly statements of output, orders taken, and tonnage

<sup>1</sup>These operated from about 1900 to 1904. Cf. *Record*, U. S. vs. U. S. Steel Corporation, Vol. IV, p. 1413; Vol. II, p. 821.

<sup>2</sup>*Record*, U. S. vs. U. S. Steel Corporation, Vol. IV, p. 1413; Vol. XV, p. 6046.

<sup>3</sup>*Ibid.*

shipped. In the majority of cases, the price being fixed, no purpose was served in requiring a report of prices. Penalties were provided for those who exceeded their percentage of allotted business. Those who exceeded the output agreed upon, were taxed a certain amount, based on a charge per ton or per hundred tons on the amount of the excess. Those who fell short of shipping their allotted percentage, were credited with a corresponding amount based on the amount that had been shipped less than the allotted percentage. The commissioner after making these calculations would send the compiled reports to each member.<sup>4</sup>

It may be noted that the exaction of penalties, tho necessary in those days when so little confidence prevailed among competitors, is entirely out of harmony with the philosophy of the open price plan which has for its aim the upbuilding of a spirit of confidence and trust among competitors.

The reporting system in use among combinations may have given Mr. Eddy the clue which led him to develop the reporting system that he did in the open price association. The combination reporting scheme, altho narrow in scope, resembled somewhat that in vogue in the open price association. The combination system called for reports of production, orders, and shipments; so does the open price system. The commissioner compiled and disseminated these statistics; so does the secretary of an open price association.<sup>5</sup> The form in which the statistics were compiled was of course not identical with forms in use by open price associations because the objects have not been similar. The object of the members of the combination was to regulate business by means of collusion in controlling output and dividing business. Such statements as were prepared and disseminated were, therefore, intended to show the members how closely they were conforming to the provisions of their agreement. The object of the open price association being to educate members in all conditions pertaining to their business so that they may compete intelligently, such compiled reports as are disseminated are intended to enlighten each member with reference to his relative position as

<sup>4</sup>*Testimony*, W. C. Temple, *Record*, Vol. XV, p. 6032.

<sup>5</sup>*Reporting Plan*, American Hardwood Manufacturers' Assn., *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 86.

regards volume of production, orders and shipments, et cetera. The foregoing makes it clear that the combination and the open price association have no essential features in common except a certain resemblance in the manner of reporting statistics of production, orders and shipments.

It has been noted that the ultimate object of combination and open price association activity has been to stabilize conditions. It is perhaps worth while to note in passing that their immediate objects also seem to have points of identity. A prominent object of both types of association apparently has been to combat the efforts put forth by buyers to "beat down" prices by misrepresenting prices actually current among competitors. This practise seems to have prompted plate and structural steel producers to organize the structural and plate pools in 1900. Note the testimony of the commissioner:

"Prior to 1897 there were disastrous times in the steel industry. Manufacturers of structural and its sister product, plate, which enters largely into structural, had been fooled so often and so completely by some of the biggest buyers of structural material in the market that apparently there was always somebody who was ready to quote twenty or twenty-five per cent below the cost to produce the manufactured stuff, judging from the quotations that buyers would bring to the manufacturers. Finally two or three manufacturers got together and swapped notes and found to their surprise that each of them had been quoting prices, five, six, and seven dollars a ton less than they had ever quoted to anybody, and they awoke to the fact that they had probably been lied to."<sup>6</sup>

When, however, it came to the point of determining upon a remedy the methods chosen proved to be at opposite poles from each other. The open price plan aims to meet a situation of this kind by providing for the exchange of information between competitors. Knowing all the facts, the contention is that they will then not be deceived into meeting a price that is purely fictitious.<sup>7</sup> Each competitor is left free to name his own price, but he is now in a position to do so intelligently. The organizers of these pools

<sup>6</sup>Temple, *Record*, Vol. XV, p. 6046.

<sup>7</sup>Cf. Jay, *Record*, Vol. XX, p. 7971.

attempted to meet the situation by fixing a minimum price to which all agreed to adhere. Speaking of the action taken by the organizers of these pools, the commissioner went on to say:

"They called for a meeting among a large number of them and they found that the only way to block that thing was for them to get together and agree on a price and tell each other the honest truth as to what prices they were quoting."<sup>8</sup>

With the decade beginning 1900, the Government began vigorously to enforce the Sherman Act. In view of this state of affairs Mr. Gary decided to withdraw all subsidiaries of the United States Steel Corporation from participation in pools. This step was taken in 1904 and led to the immediate disruption of the principal combinations in the iron and steel industry.<sup>9</sup>

They were replaced by the so-called Statistical Associations. The members formerly associated in the combinations simply changed the nature of their activities so that they might appear less offensive. With this stage of association activity, it becomes easier to discern resemblances to the open price form of activity.

Members have now made considerable headway toward becoming more free as agents. Business is no longer apportioned nor production regulated by means of agreement. Penalties are no longer exacted. There are no agreements in writing. Members are no longer required to submit affidavits with their reports. Voting at meetings to determine how members shall conduct their business operations is abandoned.<sup>10</sup> Members continue to make reports every month of their production, orders, and shipments,<sup>11</sup> but the purpose in doing so is no longer that of determining what penalties or credits may be due members for exceeding or falling short of allotted quotas, but of keeping members informed as to whether they have been maintaining the same relative position in the industry that they had previously occupied.<sup>12</sup> It is probably fair to assume that moral obligation to abide by the percentages approximating those which were en-

<sup>8</sup>*Ibid.*, Vol. XV, p. 6046.

<sup>9</sup>*Ibid.*, pp. 6034-5.

<sup>10</sup>Langan, *Record*, Vol. II, p. 839-842; King, *Record*, Vol. VI, p. 2088.

<sup>11</sup>*Ibid.*, p. 839.

<sup>12</sup>Temple, *Record*, Vol. XV, p. 6037.

forced by the combination had now supplanted hard and fast agreements backed up by a money penalty.

Whether at meetings members made declaration of purposes respecting their production policy is not made clear, but it is clear that each member made an announcement of prices which he expected to charge and that as a result of their deliberations each member would announce a price identical with that of every other member. Furthermore, it was generally understood that the price announced was to hold until the next meeting.<sup>13</sup> Evidently strong forces were in operation, even under the statistical form of association, to prevent freedom of action.

Members of open price associations are free agents. It is quite clear that members of these statistical associations were not free agents. However we have seen that considerable progress toward freedom from restraints was made under the statistical form of association.

Owing to the strong condition of the market for iron and steel in the summer of 1907, interest in the statistical associations practically ceased and this form of association passed out of existence.<sup>14</sup> The financial crisis very soon followed. Fearing that the demoralization spread by the panic of 1907 would also envelop the iron and steel industry unless steps were immediately taken to head it off, Mr. Gary invited the leading iron and steel producers to a dinner, the purpose being to talk over the situation with a view of determining what might be done to avert disaster.<sup>15</sup> This was the emergency that brought the Gary dinner system into being. The system proved somewhat successful in stabilizing conditions. Therefore it was retained after the period of the emergency had passed. For a short period (1909-1910) the system temporarily broke down, only to be resumed again at the expiration of that period under the auspices of the American Iron and Steel Institute. The system remained in operation until in 1911, when the Government brought suit against the United States Steel Corporation; whereupon it was abandoned.<sup>16</sup>

<sup>13</sup>King, *Record*, Vol. VI, p. 2083.

<sup>14</sup>Robinson, M. H., Unpublished Manuscript, *Informal Combinations*, p. 37.

<sup>15</sup>*Ibid.*, Gary Dinner System, p. 2.

<sup>16</sup>*Ibid.*, pp. 26, 28, 41.

The advent of the Gary dinners marks the beginning of another stage of association development. In connection with the Gary dinners Mr. Gary introduced two new concepts which Mr. Eddy was to seize upon and make the very foundation stones for his system of coöperative competition. He conceived the idea, first, that systematic attempts should be made to build up a spirit of coöperation between competitors. Coöperation in business would follow if a friendly feeling could be developed between competitors. A feeling of friendship could best be developed by arranging for frequent gatherings. The second thought was that competitors should be induced to exchange information between each other, freely, and frankly. In the words of Mr. Gary, the purposes served by the Gary dinners were "thoroly establishing, if possible, a friendly feeling amongst the steel makers, and of inducing, if possible, the manufacturers to state frankly and freely what they were doing, how much business they were doing, what prices they were charging, how much wages they were paying their men, and oftentimes what their methods were, and in fact furnishing frankly to the others all information concerning their business, to maintain as far as practicable the stability of business and to prevent by exhortation the wide and sudden fluctuation of prices which would be injurious to everyone interested in the business of the iron and steel manufacturers."<sup>17</sup>

Mr. Gary well recognized that in order to make effective his ideas of building up, first, the coöperative spirit; second, the sentiment of mutual helpfulness to be manifested in a free and frank exchange of information, it would be necessary to do more than provide for an occasional dinner. The size of the industry would not permit of more than the leaders of each line of trade being present at these dinners. It was imperative that each line of product be organized in such fashion as to provide for the frequent exchange of information and the growth of friendly feeling among competitors.<sup>18</sup> The method devised was to appoint a general committee of five who were clothed with authority to select a number of sub-committees to represent the

<sup>17</sup>Gary, *Record*, Vol. XII, p. 4889.

<sup>18</sup>See Robinson, M. H., Unpublished Manuscript, *Gary Dinners*, p. 5.



important branches of the iron and steel industry. This action was voted at the first Gary dinner. The sub-committees selected represented the following lines of products: ore and pig iron, rails and billets, structural materials, plates, steel bars, pipes and tubular goods, sheets and plates, wire products.<sup>19</sup>

The general committee was of value in coördinating the work of and stimulating to action the members of the several sub-committees. The latter may be regarded as the successors of the so-called Statistical Associations.<sup>20</sup> Their program, however, was a larger one. They were committed to the additional task, first, of building up an esprit de corps among competitors making for coöperation; second, of broadening the sphere of coöperative activity in the direction of a more frank, free and comprehensive exchange of business information. The way was rapidly being prepared for the advent of the open price stage of development.

Mr. Gary not only pointed the way by preaching coöperation and by creating the organization by which it might be translated into action, but as the president of the United States Steel Corporation, he tremendously abetted the movement by practising what he preached, as the following will indicate:

Q. "Mr. Smith, has the existence of the United States Steel Corporation had any effect, good or bad, upon your business?"

A. "Before the formation of the Steel Corporation business ethics, I might say, were in very bad shape, competitors had no confidence in each other; they resorted to subterfuges, misrepresentations, and false statements. The same lack of confidence existed between sellers and many purchasing agents. It was a very undesirable condition in which to do business. For the past seven or ten years—in later times, at any rate—all of that misunderstanding or misgiving has been replaced by manly, straightforward dealings."

Q. "To what extent do you think the Steel Corporation has brought about that change?" A. "I do not think it could have been brought about without their influence and example."

Q. "Now what is the difference, if any, in the attitude of competitors in your line toward one another from the condition that

<sup>19</sup>*Ibid.*, pp. 6, 7.

<sup>20</sup>*Ibid.*, p. 7.

prevailed say fifteen years ago?" A. "We are honestly friends now. Then we pretended to be friends, but were the bitterest enemies."<sup>21</sup>

Just what the Steel Corporation did to build up this friendly spirit is revealed in Mr. Gary's testimony:

"We have kept competitors, employes, and customers well informed in regard to our general business affairs. Of course I do not mean to say that we always allowed everyone to know of our negotiations concerning contracts and things of that kind that might interfere with the regularity or success of our business in detail, but so far as our policies and principles and general conduct and results and methods are concerned, we have endeavored to keep the public informed."<sup>22</sup>

Altho Mr. Gary's teachings and example had their ultimate influence, the immediate results were not gratifying. Very soon after the initiation of the Gary system it became plain that competitors were not willing to show the same degree of frankness and faithfulness to Mr. Gary in reporting changes in their business methods, as he was doing to them. Testifying on this matter, Mr. Gary said:

"We decided not to meet and give others information as to exactly what we were doing,<sup>23</sup> what our orders were, and where they were, or any information about our business. Conditions had changed. This step was forced upon the corporation. Others did the same. \* \* \* \* \* We had prevented demoralization; we had, by our business friendship and our coming close together and keeping one another posted, prevented the wide and sudden fluctuation which I particularly was attempting to prevent. But there had been changes from time to time and sales made below the advertised prices—what are considered the trade paper prices—but nevertheless I believed it was good business and good morals to continue to furnish the information which we had been furnishing from time to time until we reached the period when it was perfectly evident that there was a disposition on the part of everyone outside of ourselves to do just exactly

<sup>21</sup>Smith, C. C., *Record*, Vol. XX, pp. 8067-8068.

<sup>22</sup>Gary, *Record*, Vol. XII, p. 4917.

<sup>23</sup>This happened early in 1909.

as he pleased; that is, to publish one price and sell at another, to sell far below the prices that were supposed to exist without notifying us. When competitors were making radical changes in prices below their published prices they ought in fairness to notify the rest and especially to notify us, because we were notifying them always. They were not obligated to do it except as two men who profess to be friends, or professing to give information to one another as to what they were doing, naturally ought to tell the truth about it."<sup>24</sup>

Mr. Gary's announcement to his competitors that he would no longer cooperate with them caused the temporary abandonment in 1909 of all association activity. No further meetings were held and the committees were disbanded.<sup>25</sup>

It is well to point out in this connection that the breakdown of Gary's cooperative plan cannot be regarded as an augury of the probable ultimate failure of the open price plan. Under the open price plan there is no discussion of future prices, nor is any attempt made on the part of members to come to an understanding, express or tacit, respecting the course of future prices. Testimony taken in the steel case makes it clear that iron and steel producers conceived cooperation to be synonymous with a united effort to maintain prices. In 1908, Mr. Bope wrote to the directors of the Carnegie Company as follows:

"One concern that has been reported as 'cooperating' with us in the price policy has been persistently and consistently doing the other thing, taking business at any kind of prices they could get; \* \* \* \* \* that in the bar end of our business we are meeting competition today that is just knocking everything in the head. The bar situation is the weakest feature of the whole price policy."<sup>26</sup> Testifying as to what transpired at the group meetings held under the auspices of the various sub-committees, Mr. Crawford said:

"There would be a general understanding that we would do what we would say we would do—quote a certain figure until we found reason to change it; and if we found reason to change

<sup>24</sup>Gary, *Record*, Vol. XII, p. 4902.

<sup>25</sup>Robinson, M. H., Unpublished Manuscript, *Gary Dinner System*, p. 26.

<sup>26</sup>Mr. Bope to the directors, *Record*, Govt. Exh., Vol. 2, p. 520.

it we would notify our competitors, or talk with them about it, when another meeting would be held and conditions discussed.

"A price would always be suggested. The statement was unanimous in every case on the part of all that they would quote a certain price. The matter of price cutting would be brought up and discussed and that discussion would end it; because there was nothing to do in case there was.

"We would say, 'We will quote a certain price until we find reason to change it.' Then would leave with the same understanding that each was going to sell at that price. The effect was to keep a steady price. There were some fluctuations. The understanding after these prices were announced was that there was a moral obligation to sell at that price until competitors were notified."<sup>27</sup>

The Gary system failed at this juncture because market conditions led to more and more price cutting on the part of those who felt obliged to disregard their "moral obligations". It ceased to operate when it no longer was able to control the price situation, constituting proof sufficient that members understood it to be a plan for maintaining prices by joint effort. In contrast to this, prospective members of open price associations are made to understand that the open price plan has no place for agreements or understandings of any kind. They join knowing that they are expected to quote any prices that they may see fit to quote. The open price association is therefore not liable to be disrupted because of broken price understandings, for such agreements not only do not exist but are positively discounted.<sup>28</sup>

Beginning in the latter part of 1909, Mr. Gary thought the time ripe to attempt a resumption of his coöperative activities. The newly organized Iron and Steel Institute, modelled on the lines of the British Iron and Steel Institute, became the new center of operations. Plans were going forward looking toward the effective organization of the industry on "coöperative lines" when in 1911 the Government launched its attack upon the United

<sup>27</sup>Crawford, *Record*, Vol. XV, p. 1777.

<sup>28</sup>*Constitution*, Society of Manufacturing Confectioners and other constitutions of open price associations; also Eddy, *New Competition*, pp. 122, 124.

States Steel Corporation. In view of this circumstance it was deemed best to discontinue the coöperative movement.<sup>29</sup>

This stage of association activity, however, was promptly succeeded by the open price system. Mr. Eddy, having made a specialty of the study of law as it pertained to the various forms of combination, became a close student of the methods pursued by Mr. Gary in the iron and steel industry.<sup>30</sup> He was quick to see the merits of coöperation as preached by Mr. Gary provided it could be directed in such a way as to result in no violation of the law. In studying this aspect of the situation he conceived the idea that there could be nothing illegal in permitting competitors to exchange information dealing with past transactions. His observation of the workings of the Gary system convinced him that understandings in violation of law inevitably followed upon the heels of discussions devoted to a consideration of future prices, but discussions of prices that were already being charged or quoted could never be construed in the nature of understandings in contravention of the law, he thought.<sup>31</sup> Around this idea as a pivotal point he built up the system known as the open price plan. The principal elements of the plan, a reporting system, an open, free, and frank exchange of information between competitors and an appreciation of the worth of friendliness between competitors already lay at his hand, contributed, as they had been, by systems of associated activity that had gone before. It remained for Mr. Eddy to knit them together, weaving into the fabric this new strand of thought of his, namely, that the exchange of information must be limited to transactions that are of the past.<sup>32</sup>

An examination of the list of associations reputed to be doing open price work found in the appendix leads one to feel justified in making the assumption that an open price association is now in existence in almost every line of product formerly controlled

<sup>29</sup>Robinson, M. H., Unpublished Manuscript, *Gary Dinner System*, p. 41.

<sup>30</sup>See Eddy, A. J., *The Law of Combinations*, Chicago, 1901.

<sup>31</sup>Eddy, *New Competition*, p. 119. Mr. Eddy quotes from bill filed in case of U. S. vs. U. S. Steel Corporation as follows: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade." See also p. 121.

<sup>32</sup>See ch. 8 for legal discussion.

by the sub-committees in operation under the Gary system. If this be true, it is a development of some significance. Of course the fact that the subsidiary companies of the United States Steel Corporation are not members of any of the open price associations detracts from the importance of the movement. However, the methods and operations of the Steel Corporation have always been more or less open, so that the independents, all of whom are members of open price associations, can probably reduce the operations of the Steel Corporation to a calculable basis, thereby offsetting, somewhat, the handicap of having a corporation as large as this outside the ranks of membership.

The American Iron and Steel Institute has continued to be the central organ of the industry. Under its auspices two general meetings are held each year, at which technical papers are read and discussed. The institute also collects the statistics of tonnage production of pig iron, steel ingots, finished rolled iron and steel products, et cetera. No statistics of prices are gathered. From time to time the Institute publishes a book known as the *Directory of Iron and Steel Works of the United States and Canada*, describing the various iron and steel companies and their plants.<sup>33</sup>

Those who have studied the association movement among iron and steel producers naturally wonder how successfully they are adhering to those principles of the open price system which dictate that competitive methods are to be free and open, untrammelled by associated action. Having learned that the price fixing virus has been inoculated in years gone by, it is manifestly of interest to know how the open price plan is managing to combat the effects of this virus. The movement is too much in its infancy to permit of any expression in elucidation of this point. Naturally, too, this is a matter on which it is very difficult to obtain data.

<sup>33</sup>Letter from H. H. Cook, American Iron and Steel Institute, Jan. 17, 1921.

## CHAPTER III

### THE EDDY THEORY AND PLAN OF NEW COMPETITION

Very little theory has been developed in support of the open price plan. Three of the most fundamental concepts associated with the plan, namely, first, publicity in the transaction of business; second, interchange of business information among competitors, and third, the development of a spirit of confidence and trust between sellers themselves and between sellers and buyers, were being put into practise by Mr. Gary in the iron and steel industry several years before Mr. Eddy published anything on the subject. However, Mr. Gary, as far as is known, has contributed no theories pertaining to the plan.

Only Mr. Eddy appears to have contributed anything in the way of theory. Such addresses or articles as others have published are practically without exception a rehash of the ideas presented by Mr. Eddy. But even the work of Mr. Eddy scarcely deserves to be designated as a theoretical contribution.<sup>1</sup> The purpose of his book, apparently, has been to win converts to his plan, by presenting the plan in a popular way, calculated to catch the eye of the ordinary business man.

Naturally, before plunging into an exposition of his theory, he undertakes to denounce the kind of competition now extant.<sup>2</sup> This competition, the "old competition", as he calls it, is fierce, brutal, ruthless, destructive, and wasteful. It is the law of the survival of the strongest applied to the commercial and industrial relationships of man, a law by which the stronger, by fair means or foul, overcome the weaker in commercial combat. He decries the existence of a competition which seems only to foster the feeling among business men that in order to be successful

<sup>1</sup>Eddy, A. J., *New Competition*, N. Y., 1912. Mr. Eddy was a practising attorney.

<sup>2</sup>*Ibid.*, pp. 1-37.

they must ruin their competitors. Fitness does not seem to insure survival. To take just one example, many a contractor who is rendering satisfactory service finds himself bidding against others of his class for the custom of a single person or group of persons acting as a unit. Ignorant of the terms being made by competitors, it becomes easy for the individual or group whose custom is being bid for to play one off against the other by misrepresenting to each in turn the terms which have been made by others. The result is that bids are often made which do not cover costs. Inevitably men are forced out of business whose services society needs. They are often the very ones who are the most valuable to society because of their honesty in business practises. The more unscrupulous competitors succeed in surviving by resorting to poor workmanship, adulteration, and skimping on specifications.

One of the worst by-products of the old competition, according to Eddy, is the secrecy existing between each competitor. Ignorant of what his competitors are doing, he bids against his "own fears and necessities."<sup>3</sup> The result of this state of secrecy together with the state of industrial warfare that is associated with it is to fill the world with suspicion. Labor distrusts capital; the distributor distrusts the producer, the producers distrust each other, and the consumer distrusts them all.

It is not necessary to do more than call attention to the line of thought that Mr. Eddy has here pursued. For a long time economists have been cognizant of the fact that the competition that they have regarded as ideal, characterized by an open market, with numerous buyers and numerous sellers, each conscious of the bids and offers of the others, is not the kind of competition that is actually faced by the business man.<sup>4</sup>

When the business man has attempted to avoid the disastrous consequences of actual competitive conditions by means of combinations, consolidations, and association activities, the jurists and legislators have felt it incumbent upon them to force them back into the old conditions. This is a case of outright dis-

<sup>3</sup>Eddy, *New Competition*, p. 92.

<sup>4</sup>Johnson, A. S., "Review of *New Competition*", *Pol. Sc. Quar.*, Mar. 1913, p. 142.



crimination against the business man, contends Mr. Eddy. He points out that farmers' organizations to control the production and marketing of their products are countenanced by the courts, as are labor unions, which exist chiefly to control wages.<sup>5</sup>

"The country has reached the parting of the ways," he goes on to say. "It must make its choice, and make it intelligently—either the competitive or coöperative basis. If the competitive, then no class should be permitted to organize a coöperative movement to get more for what it has to sell; if the coöperative basis, then no class should be prevented from organizing—either one policy or the other; the two cannot exist together. The man who argues for competition must be consistent; he must argue against farmers' coöperative societies and labor unions just as vehemently as he argues against combinations of dealers and manufacturers."<sup>6</sup>

After thus pointing out that "the old order must give place to the new" and that judicial opinion and public sentiment is beginning to show signs of a more tolerant spirit toward coöperative efforts among business men, Mr. Eddy is ready to launch into an exposition of what he terms the "true competition", or the "new competition", which he predicts will very soon supplant the old competition. "True competition," expressed in his words, "exists only where there are two or more competitors competing under conditions that enable each to know and fairly judge what the others are doing. The essence of competition lies in the element of knowledge; it is real, true, and beneficial in proportion to its openness and frankness, its freedom from secrecy and underhand methods."<sup>7</sup>

This constitutes a statement of his theory. In substance the only amplification that he makes of this statement is to point out what he thinks will be the important effects of competition carried on under open conditions, all competitors being possessed of full knowledge. In the first place, prices will be stabilized, he thinks, and his main reason for thinking so, apparently, is that every competitor will "refrain instinctively from cutting

<sup>5</sup>Eddy, *New Competition*, see ch. 19.

<sup>6</sup>*Ibid.*, p. 35.

<sup>7</sup>Eddy, *New Competition*, p. 82.

because he knows if one cuts all will", in as much as "the industry has probably been through more than one disastrous trade war and is ever on the verge of another."<sup>8</sup> In the second place, the absence of secrecy will eliminate the evils attending the old competitive regime. Distrust that pervades every class from producers to consumers will give way to friendliness and trust. Since dealings are no longer in secret, they will not be attended by fraud and misrepresentation.<sup>9</sup>

Mr. Eddy thus states what he deems will be the main effects of his theory, but he does not explain why "true competition exists only where there are two or more competitors competing under conditions that enable each to know and fairly judge what the others are doing." Knowledge is the essence of competition, he declares, but he gives no reasons for so thinking. After making the statement of his theory he immediately proceeds, as has been noted, to consider the probable effects resulting from the acceptance and application of the theory. This being accomplished, he is ready to suggest plans for putting this theory into practise.

Before turning to a consideration of these plans, it may be in order to assert that in the opinion of the writer the statement of theory as made by Mr. Eddy contains in itself nothing essentially new to the science of economics. Economists have long recognized that innumerable elements of friction are ever present under actual competitive conditions to prevent the law of supply and demand from functioning as it would if they were not present. Ignorance has been recognized as one of the deterrents to an approach to a condition of free competition.<sup>10</sup> In fact, economists, in formulating the law of supply and demand which lies at the basis of commercial competition, have made the explicit reservation that the law only holds if it is assumed that all parties are intelligent enough to know their own interest, and are able and willing to act thereon.<sup>11</sup> Obviously they will not know

<sup>8</sup>*Ibid.*, p. 101. For a discussion of the effect of open price activity on prices see ch. 9.

<sup>9</sup>For a discussion of the advantages of the open price plan see ch. 6.

<sup>10</sup>In every case where the term "competition" is used, the meaning is "commercial competition." See Taussig, F. W., *Principles of Economics*, Vol. I, p. 149.

<sup>11</sup>See Palgrave, *Dictionary of Political Economy on "Competition,"* Vol. I, pp. 376-380.

their own interest if they are not acquainted with all the conditions affecting the supply of and the demand for the particular product in which interest is centered. Ignorance of business conditions is admittedly so prevalent among business men of the ordinary type as to render them incapable of acting intelligently in their own interest.

Perhaps the reason why knowledge is the essence of competition may be made clear by the following: A knowledge on the part of sellers and buyers of their own interest, implying, as it does, a knowledge of all conditions that might have a bearing on the supply of, and the demand for, a given commodity, together with the ability and willingness to intelligently act thereon, would result, according to the law of supply and demand, in similar exchanges taking place on similar terms, or to state it in terms of price, it would result in the naming of an equilibrium price "for the same unit of the same quality of the same article in the same market."<sup>12</sup> This stability of market conditions, which finds expression in a single price, will ensue only under the conditions named. It is attainable only in theory. But such stability can be approximated by means of systematic efforts put forth to eradicate sources of friction. Undoubtedly one of the most serious sources of friction is due to sellers and buyers lacking adequate knowledge.

The nearest approximation in real life to a stability of conditions such as is attainable theoretically seems to have been achieved in the case of those commodities which have their market made on the exchanges. The reason undoubtedly is that the machinery of these exchanges, be they stock, bond, wheat, coffee, cotton, or any other kind of exchanges, puts at the disposal of buyers and sellers an unusual amount of information bearing on competitive conditions. The higgling between buyers and sellers, based as it is, on a general knowledge of substantially all facts that have a bearing on competitive conditions, results in prices being named which vary very little from each other for given units of a given commodity of a given quality on a given exchange at a given moment of time. One only has to note the general

<sup>12</sup>Palgrave, *Dictionary of Political Economy on "Competition,"* Vol. I, pp. 376-380.

confusion among buyers and sellers, manifesting itself in wide "spreads" of prices, that occurs in consequence of a temporary cessation of this exchange machinery to know the importance of putting buyers and sellers in a position where they can know all the facts of competition as well as act thereon.<sup>13</sup>

It is a matter of common observation that there is considerable variation in the prices named for identical commodities in those cases where they do not have their market made on an exchange. This is particularly true of the great class of manufactured goods. It is a fair assumption that the "spread" in prices apparent in many, if not most, lines of manufactured commodities is to a considerable degree the result of buyers and sellers possessing an inadequate knowledge of market conditions. Of course conditions may arise which would result in similar commodities selling at different prices even tho sellers and buyers are thoroly acquainted with all essential facts pertaining to market conditions. This cannot be denied; but the contention is that, other things being equal, there will be less of a "spread" in prices—meaning, of course, that ideal conditions of competition are more nearly approximated—when buyers and sellers are well informed than when they are not.

If this country is to continue to shape its destiny in a business way in accordance with the theory that the ideal philosophy of trade is competition in trade, it becomes important that means be sought looking toward a more free play of competitive forces. Perhaps the time will come when the theory of competition as laid down by the economist, now so maligned in many quarters, will find itself vindicated, provided means can be found for eliminating the more serious causes of friction that now prevent actual competitive conditions from approaching ideal competitive conditions. Undoubtedly a very serious amount of friction is occasioned by the lack of machinery for putting business men in possession of the salient facts relating to their particular lines of industry.

<sup>13</sup>At the outset of the war, when the New York Stock Exchange was temporarily closed, the very best of securities fluctuated violently in price. As soon as the Stock Exchange opened these violent fluctuations disappeared, and "spreads" in prices became less pronounced.

Mr. Eddy, in the opinion of the writer, should be credited with an achievement of signal worth in calling the attention of business men to the fact that there are ways of providing machinery that will enable them systematically to get at the information of inestimable value to them in diagnosing market conditions. However, he should not also be credited with developing a new theory of competition. The discovery that knowledge is the essence of competition is, as previously stated, not a new one. Mr. Eddy, however, apparently thinks that he has found a new theory of competition, when, as a matter of fact, economists have always assumed the existence of the very thing that Mr. Eddy would raise to the dignity of a new theory, namely, that sellers and buyers possess enough knowledge of the facts influencing competitive conditions to make them alive to their own interest in their capacity of bargainers.

We turn now to consider briefly the general nature of the plans that Mr. Eddy would set up as models for those who would learn how to achieve true competition. From the standpoint of theory, at least, irrespective of the practical difficulties that might arise, it would seem essential that any system devised for the purpose of securing more intelligence in competition should be sufficiently comprehensive to take in buyers as well as sellers. It is assumed that in the ideal kind of competition, *all* parties are sufficiently intelligent to know their own interests. However, if one class is in possession of all the salient facts of competition and the other is not, it is safe to assume that the one will have an undue advantage over the other in bargaining. In other words, true competition will not prevail.

In the statement of his theory Mr. Eddy seems to have the seller primarily in mind. He says that "true competition exists only where there are two or more competitors<sup>14</sup> competing under conditions that enable each to know and fairly judge what the others are doing.<sup>15</sup> To have true competition, it is necessary that not only sellers be informed, but that also buyers be informed.

<sup>14</sup>This term may be applied to purchasers who are competing against each other in making purchases of goods, but Mr. Eddy undoubtedly uses the term in its more commonly accepted meaning of denoting sellers in competition with each other for the custom of the buyer.

<sup>15</sup>Eddy, *New Competition*, p. 82.

To be sure, Mr. Eddy does make reference to one plan in which connection the "goal to be kept in mind is a Central Exchange, so open, so public, that labor, employers, customers will resort to it for information regarding work, wages, prices, and all conditions affecting every trade and industry represented." Under this plan, apparently, every town is to have its Industrial Exchange, a place of meeting for all trades, and every contractor in all lines of work is to be a member. The exchange that Mr. Eddy here has in mind is apparently to be mainly for the use of those who are engaged in the various building and allied trades. Nothing is said as to the place that buyers and sellers of manufactured goods are to occupy in these exchanges. Apparently Mr. Eddy has little faith in the practicability of this plan for it is given only a passing reference in a passage leading up to the real plan that he has in mind.<sup>16</sup>

This plan which has come to be known as the open price plan<sup>17</sup> is devised almost entirely from the point of view of the seller. In fact one of the principal inducements for trying out the plan, as Mr. Eddy states, is to prevent buyers from misrepresenting prices that are being currently quoted.<sup>18</sup> He also suggests that the plan will put purchaser and seller more nearly "on a footing of equality."<sup>19</sup> An outline of the steps that should be taken by the manufacturer in organizing an open price association is given.<sup>20</sup> The purchaser has no part to play in the organization. Purchasers are to be permitted to attend meetings, but nothing is said about permitting them to have a part in the reporting system. The suggestion is made that purchasers organize their own open price associations, but obviously the trade statistics that they could obtain for themselves would be very limited in scope. They could compare prices paid for purchases, but they could not obtain statistics pertaining to such vital matters as amount and character of production, size, character, and location of stocks of commodities, et cetera. These statistics could

<sup>16</sup>Eddy, *New Competition*, pp. 101-104.

<sup>17</sup>For a description of the typical Eddy plan, see ch. 5, pp. 71-72.

<sup>18</sup>Eddy, *New Competition*, p. 145.

<sup>19</sup>*Ibid.*, p. 145.

<sup>20</sup>*Ibid.*, pp. 124-136.

be obtained only from the producers themselves. It is plain that the machinery of the open price plan does not put all the facts of competition before both the buyer and the seller in the impartial way in which it is done, for example, on the various commodity exchanges. As long as all parties concerned are not in possession of all the facts relating to the competitive market, exchanges cannot be made on the terms contemplated by the law of free competition.

Mr. Eddy's plan, then, failing as it does, to provide a system whereby both buyers and sellers may be put in possession of all necessary information to make them intelligent bargainers, cannot be regarded as a complete solution to the problem of securing full and free competition in the transaction of business. The plan is meritorious, however, in so far as it points to the direction, perhaps, in which may be found a solution. Mr. Eddy was above all things a practical minded man, intent on proposing a practical plan which might give redress to the manufacturer who, he undoubtedly felt, was not on an equal footing with the purchaser in bargaining power. However, he leaves the impression with the reader that his plan will achieve a larger result than merely to give redress to one industrial class. It is heralded as a plan which will lead to true competition.

## CHAPTER IV

### STRUCTURAL FEATURES OF THE OPEN PRICE ASSOCIATION

#### ORGANIC ORIGIN

With very few exceptions the prevalent type of open price association is the voluntary association type. The incorporated type has been observed to exist among a few of the lumber manufacturers' associations.<sup>1</sup> Only one of these, namely, the Southern Pine Association, was organized to do open price work; the others have made it an adjunct of their other activities.

The Southern Pine Association, in adopting the form of association that it did, was actuated chiefly by legal motives. Even tho it has ceased to function as an open price association, it is interesting to recount the circumstances attending the organization of this association,<sup>2</sup> because here is recorded one of the first attempts made to avoid the alleged weaknesses of the voluntary form of association. It was in 1914 that this association came into existence as a result of the reorganization of the old Yellow Pine Association, the latter having been dissolved and many members heavily fined by decree of the Supreme Court of Missouri in consequence of a conspiracy to boost prices.<sup>3</sup> The old association had been a voluntary one. Its disastrous experience with the courts made it clear that under this form of association any member might be held bound by the acts or comments, public or private, of every other member. Under such circumstances as these there would not be much inducement for yellow pine manufacturers to again join hands as members of a voluntary association. Neither was it likely that state authorities,

<sup>1</sup>Southern Pine Assn.; West Coast Lumbermen's Assn.; California White & Sugar Pine Manufacturers' Assn.

<sup>2</sup>Price reporting was abandoned when suit was brought against the American Hardwood Manufacturers' Assn.

<sup>3</sup>*American Lumberman*, Dec. 20, 1913.



particularly those of Missouri, would view with any degree of equanimity any efforts that might be made to resuscitate the old form of organization. Faced as they were by this two-horned dilemma, the leaders among the yellow pine manufacturers hit upon the corporate form of organization as a welcome solution to their problem. Under the corporate form there would be no members from the legal point of view. A corporation would be organized to sell information to subscribers in a manner similar to that done by Bradstreet's or Dun's. Instead of having members, it would have subscribers who would enter into a contract with the corporation for such service as the corporation might be authorized under its charter and by-laws to furnish. Meetings of subscribers would be held at various times and places to make recommendations to the directors, who would act upon them only if the action recommended came within the law. The subscribers' meetings would be in effect voluntary organizations, whose will and wishes the corporate directors would follow so far as the law permitted.<sup>4</sup>

It was contended by counsel,<sup>5</sup> as previously intimated, that the act of one subscriber would not bind any other subscriber. Neither would any act of the corporation—the association itself—bind the subscriber. Furthermore the legality of the plan, it was contended, would be tested in advance. After filing the articles of incorporation with the Secretary of State, they would be brought to the notice of the Attorney General in order that he might advise against their certification if he found them in conflict with the law. One other leading argument in favor of the corporate form had to do with the placing of responsibility with those who subscribed. Under the voluntary form there were, it was contended, no adequate means of getting members to live up to their obligations. Under the corporate form, however, subscribers would sign contracts which would be legal, binding, and enforceable. There could be no voluntary withdrawal, the contract running its full term to the date of expiration, during which time the subscriber would be bound, legally as well as

<sup>4</sup>Cf., *American Lumberman*, Dec. 12, 1914.

<sup>5</sup>Argument of Judge Lucas before meeting of Yellow Pine manufacturers. See *American Lumberman*, Dec. 12, 1914.

morally, to all obligations assumed by him therein. Among other things, promptness in reporting necessary business information would be insured, as would the necessary financial support needed to carry out the purposes of the corporation.

These arguments are passed on to the reader for what they are worth. They involve primarily questions of law which in time will be passed upon by the courts. Undoubtedly one of the serious weaknesses of the voluntary type is the lax manner in which members carry their responsibilities. The infliction of penalties for infractions of rules, such as is provided for by the corporate form of association, is a business like way of coping with this difficulty, say the advocates of this plan.<sup>6</sup> Advocates of the voluntary type, however, maintain that the infliction of penalties is out of harmony with the very purpose of the open price association, in that it tends to tear down the very thing that the open price plan aims to build up, namely, a mutual spirit of friendliness, confidence, and trust between members.

The infliction of penalties is at best a crude means of securing a minimum degree of coöperation from those who in the absence of this provision would perhaps disregard their obligations entirely. Possibly a stage of ethical development among business men has not yet been reached which will permit of their relations with one another being left entirely to the field of honor. Practically all of the voluntary type of open price associations have found it necessary to compromise with their principles to the extent of inflicting a penalty of a kind, at least, upon members who fail to furnish the information called for by the secretary. The simple rule adopted is that those who do not contribute information shall not be entitled to receive any.<sup>7</sup>

The writer is inclined to the point of view that the "loose" form of association characteristic of the Eddy type is the preferable kind. It is characteristic of human nature to rebel against

<sup>6</sup>The Armstrong Bureau of Related Industries, Chicago, Illinois, is organized as a corporation to do open price work for manufacturers who become subscribers. In this case a bond deposit is required as a guarantee of faithful performance of all terms. For an explanation of this system see Montague Ferry, *Intelligent Selfishness*, Chicago, 1919, ch. 6.

<sup>7</sup>For a further discussion of the weaknesses of open price associations see ch. 6.

restriction or restraint. The imposition of prohibitions usually generates a desire to circumvent them.

With respect to the relative immunity of the two types from visitations of the law, perhaps the only safe statement that a layman can make is that the courts will seek to punish those who are guilty of violations of the law regardless of the form of association that may have been adopted.

Irrespective of whether they belong to the corporate or the voluntary type of association, all open price associations may be grouped according to the following classification: they have either been organized as open price associations, or they have come into existence as an outgrowth of a trade association, or they have had their functions assumed by trade associations as a departmental activity.<sup>8</sup> Most of the associations that were organized by Mr. Eddy would belong to the first group. Prominent examples of the second group are furnished by the Southern Pine Association and the American Hardwood Manufacturers' Association. Most of the other lumber manufacturers' associations belong to the third group.<sup>9</sup>

In general it may be said that the associations which belong to the third group show all manner of differences in the character and scope of their open price activities. This is naturally explained by reason of the fact that having retained their identity as trade associations, they have adopted only such phases of open price activity as have seemed to offer a solution for problems which the old type of organization has been unable to handle. The one element of open price work that all the associations of this group have adopted in common is price reporting. With some this is as far as the semblance to the Eddy type of association goes. Others arrange for the sporadic exchange of information among members, and still others may have a regular and definite system of exchanging information of a limited character. Seldom, if ever, will it be found that an association be-

<sup>8</sup>A similar classification is made by H. R. Tosdal in his article on "Open Price Associations" which appeared in the *American Economic Review* for June, 1917. See p. 336.

<sup>9</sup>Examples of the third group are: National Box Manufacturers' Assn.; National Cannery Assn.; National Association of Brass Manufacturers; National Machine Tool Builders' Assn.; the various associations of millers, etc.

reports with every one of the other bureaus.<sup>11</sup> The Associated Metal Lath Manufacturers also have a similar method of relaying information from local bureaus to a central office.<sup>12</sup>

Where membership is spread over a wide area it is usually found necessary to provide for group meetings. For this purpose the Leather Belting Exchange divides its membership into two groups—one comprising the manufacturers of the West and the other those of the East. The western group meets in Chicago each month and the eastern group in New York one week after the Chicago meeting, thus enabling the secretary to be present at both meetings and coördinate the work done. Further coördination of the work of the two groups is obtained by holding a joint meeting every three months. These are held alternately at New York and Chicago.<sup>13</sup> The American Hardwood Manufacturers' Association has conducted four monthly group meetings, these being held at Cincinnati, Ohio; Memphis, Tennessee; New Orleans, Louisiana; and Jackson, Mississippi. Once a year all the groups have come together in a convention.<sup>14</sup>

Because it is to the advantage of an open price association to have as many members as possible and because restrictions would be out of harmony with the open price plan, it is found that restrictions upon membership are practically non-existent. Membership is ordinarily open to any firm, corporation, or individual in good standing engaged in the particular line of business involved, provided agreement is made, first, to comply with the provisions of the constitution and by-laws; second, to pay the required fees and dues. However, it is usually specified that only those who are engaged in the manufacture of the product in which the association is interested are eligible. In this connection at least two associations would permit others than manufacturers to become members under certain restrictions not enforced upon

<sup>11</sup>*The Black Diamond*, "How the National Association Reports Sales," Oct. 11, 1919, pp. 322-324.

<sup>12</sup>*Annual Official Program*, New England Builders' Supply Association, Boston, 1917, p. 43.

<sup>13</sup>Spaulding, W. V., *Experiences in Coöperative Competition*, p. 5. An address delivered before the Babson Conference, Sept. 15, 1915.

<sup>14</sup>*Sales Report of A. R. Gadd*, *Record*, American Column and Lumber Co. vs. U. S., Vol. II, p. 1067.

longing to this group has anything like the complete system for exchanging information among members that is characteristic of the Eddy type. It goes without saying that the associations belonging to the first two groups, having been specifically organized to do open price work, are usually patterned after the Eddy type of association.

#### MEMBERSHIP

In order to get the best results out of their coöperative activities, open price associations endeavor to gather within their fold all competitors who are engaged in the various lines which these associations would aspire to control. It will therefore be found, that in so far as the industry is localized, the membership of these associations will be localized. In so far as the territorial distribution of the industry is a national one, membership will be spread over a wide area. No members of the National Association of the Finishers of Cotton Fabrics, for example, will be found anywhere but in the East, for the industry is localized there. On the other hand membership in the Leather Belting Exchange, for example, is distributed over a wide area, as is that of the American Hardwood Manufacturers' Association or the National Coal Association.

The territory should undoubtedly be limited sufficiently to permit of a ready exchange of information and meetings of members at frequent intervals. Where the industry is such that membership must necessarily cover a wide area local exchanges may be provided for, as in the case of the National Coal Association. Before price reporting was discontinued by this association,<sup>10</sup> four exchanges were maintained in all — one in Washington, D. C., one in Chicago, one in Cincinnati, and one in Pittsburgh. The work of these exchanges, or "bureaus", as they are called in the coal industry, was directed from the national headquarters at Washington. Instead of making their reports to one central agency for the industry, operators would send them through their local associations to the nearest local bureau. Each local bureau in turn would exchange its compiled

<sup>10</sup>July, 1920.

the others. The Ohio Millers' State Association permits any manufacturer of flour or meal to become a "regular" member of the association and other persons, firms, and corporations may be admitted and become "associate" members, and may have all the privileges of regular members, except voting.<sup>15</sup> The Knit Goods Manufacturers of America also provides for regular and associate members. The regular members are to be those who participate in the reporting plan.<sup>16</sup> The associate members are divisible into two classes. One class consists of manufacturers who do not participate in open price work; the other class consists of sales agents or commission houses which sell knit goods, and this class is to have no vote in the management of the association.<sup>17</sup> It is evident that manufacturers, even in the few cases where they permit others than members of their own class to come into the association, are careful to see that no control of management shall fall into any other hands than their own.

The rules determining the manner in which members shall be voted into the association vary considerably. The most common practise seems to be to require the affirmative vote of the majority of members present at regular meeting.<sup>18</sup> The Tap and Dye Institute requires the affirmative vote of three-fourths of the members present.<sup>19</sup> The Society of Manufacturing Confectioners requires the approval of the executive committee followed by the majority vote of members present in regular meeting.<sup>20</sup> The American Hardwood Manufacturers' Association merely requires a majority vote of the Board of Directors;<sup>21</sup> the Salt Producers' Association a majority vote of the executive committee.<sup>22</sup> The American Tack Manufacturers' Association requires unanimous election.<sup>23</sup>

<sup>15</sup>*Constitution*, Art. 3, Sec. 1, 2.

<sup>16</sup>*Constitution*, Art. 4.

<sup>17</sup>*Ibid.*, Art. 5, Sec. 1.

<sup>18</sup>For instance, the Ohio Millers' State Assn.; National Coal Assn.; Leather Belting Exchange; Steel Barrel Manufacturers' Assn.

<sup>19</sup>*Constitution*, Art. 3, Sec. 2.

<sup>20</sup>*Constitution*, Art. 4, Sec. 2.

<sup>21</sup>*Constitution*, Art. 3, Sec. 2.

<sup>22</sup>*Constitution*, Art. 3.

<sup>23</sup>Tosdal, H. R., "Open Price Associations", *American Economic Review*, Vol. VII, No. 2, p. 339.

Provisions are usually inserted in the constitution indicating under what circumstances members may be expelled. The usual provision is that they may be expelled "for good and sufficient reasons" by a vote of the members, a majority or three-fourths vote usually being required. The more common reasons for expulsion are the non-payment of dues, and breach of the constitution and by-laws. Some associations make members liable to expulsion for filing misleading information.<sup>24</sup>

Expenses incurred in the operation of open price associations are usually defrayed by membership dues and the levy of special assessments. In addition some associations require the payment of an initiation fee. The Salt Producers' Association has an initiation fee of \$200.00, the Pressed Metal Association \$50.00, the Tap and Dye Institute \$100.00, and the Hardwood Manufacturers' Association \$25.00.<sup>25</sup> In exacting payments for dues, most associations apparently go on the theory that members derive benefits from the work of the association in proportion to the volume of their business. Practically all of them base their dues and special assessments on a capacity, production, shipments, or sales basis. Regular members of the Ohio State Millers' Association pay dues annually in advance based upon the daily capacity of each mill owned or operated by each member.<sup>26</sup> The common practise in the lumber industry is to base dues on the number of feet of logs cut annually. Manufacturers belonging to the Hardwood Manufacturers' Association, for example, pay dues in twelve monthly installments, based on an assessment "at the rate of not to exceed five cents per thousand feet log scale, with a maximum of \$2000.00 per annum, based on the number of feet of hardwood logs cut for the preceding calendar year."<sup>27</sup> All assessments levied by the Salt Producers' Association are on the basis of output.<sup>28</sup> The same is true of the National Coal Associa-

<sup>24</sup>Society of Manufacturing Confectioners, *Constitution*, Art. 7. Sec. 8; Tap & Dye Institute, *By-Laws*, Sec. 5.

<sup>25</sup>Tosdal, H. R., "Open Price Associations" *Economic Review*, Vol. VII, No. 2, p. 339.

<sup>26</sup>*Constitution*, Art. 6, Sec. 1.

<sup>27</sup>*Constitution*, Art. 5, Sec. 1. See *Record*, American Column & Lumber Co. vs. U. S., Vol. 1, p. 73.

<sup>28</sup>*Constitution*, Art. 5.

tion.<sup>29</sup> The National Chair Manufacturers' Association bases its dues on the volume of shipments. The Tap and Die Institute and the Steel Barrel Manufacturers' Association and the Society of Manufacturing Confectioners base their dues on the amount of sales.<sup>30</sup>

Obviously there is a disadvantage which militates against the proper financing of the work of an association in having dues based upon the amount of business done. Those in control cannot be sure of obtaining stated amounts of money from year to year. It is therefore rendered difficult to plan a program of financial expenditure that will not overreach or underreach the size of the fund that is available at any given time. When business is poor, the income from dues is small, and the consequence often is that operations must be curtailed. Of course this objection loses force when those in control are sagacious enough to reserve for the lean years surplus funds that have been collected during the fat years.

Members as a class have as their chief duties, aside from the payment of dues, first, to furnish information to the central office, second, to attend meetings. Their chief privileges are to vote at meetings and to receive such information as the secretary may circulate among them. Usually the rule is that unless members are willing to furnish information, they receive none.

#### OFFICERS

The list of officers of an open price association differs in no essential particulars from that which is found in any formal type of association. These officers are a president, vice-president, secretary, treasurer, and an executive committee or a board of directors. The Ohio Millers' State Association has both a board of directors and an executive committee.<sup>31</sup> Such an arrangement is not often found. In the lumber industry provision is also made for several vice-presidents.<sup>32</sup> The typical Eddy association, however, seldom has more than one vice-president.

<sup>29</sup>*Constitution*, Art. 5.

<sup>30</sup>*Constitutions*, Art. 6; Art. 5; Art. 7; Sec. 9.

<sup>31</sup>*Constitution*, Art. 4.

<sup>32</sup>American Hardwood Manufacturers' Assn., *Constitution*, Art. 8, *Record*, Vol. I, p. 75.



The president is usually elected annually by a majority vote of the membership. He is practically always a man active in the line of business that the association represents. In fact, the constitution of the Leather Belting Exchange specifically states that the "President shall be a member of the Exchange, and engaged in the manufacture of leather belting."<sup>33</sup> He performs the usual duties of the chief executive officer. In most constitutions they are not minutely specified. They may be summed up as follows: to preside at all meetings, including those of the executive committee; to appoint all committees not provided for in some other way; call meetings of the executive committee, and special meetings of the association upon written request of a certain number of members, as well as call meetings of all permanent and special committees. He is generally an *ex-officio* member of all committees. It is usually customary for him to review the work of the year at the annual meeting.

The vice-president assumes the duties of the president during his absence.

Most constitutions provide that the treasurer and the secretary may be one and the same person. In cases where the treasurer is not also the secretary the common practise is to elect him at the annual meeting. Only in a few cases is it customary to elect a treasurer when he is also the secretary.<sup>34</sup> More often the procedure followed is that the executive committee makes an appointment subject to the approval of the membership. The constitution of the Leather Belting Exchange, in contrast to the general practise, specifies that the treasurer shall be a trust company or other banking corporation of recognized standing, and shall be appointed by the exchange.<sup>35</sup> In general it is the duty of the treasurer to collect and receive all moneys of the association, pay all orders for money when countersigned by the secretary, and keep a correct record of all receipts and disbursements. If the treasurer and the secretary are united in one person, his signature upon checks is usually considered sufficient.<sup>36</sup>

<sup>33</sup>*By-Laws*, Sec. 2.

<sup>34</sup>Tap & Dye Institute, *Constitution*, Art. 1.

<sup>35</sup>*By-Laws*, Sec. 4.

<sup>36</sup>Society of Manufacturing Confectioners, *By-Laws*, Sec. 3; Hardwood Manufacturers' Assn., *Constitution*, Art. 9, Sec. 3.

The executive committee usually consists of one or more of the elective officers in addition to several elected members ranging anywhere from three to seven in number. The executive committee of the Tap and Die Institute is composed of the president, vice-president, and three other members elected at the annual meeting.<sup>37</sup> That of the Salt Producers' Association is composed of the president and seven elected members. Only three members comprise the executive committee of the Leather Belting Exchange.<sup>38</sup> The executive committee of the Ohio Millers' State Association is made up of the president, vice-president, treasurer, secretary, and a board of directors comprised of five elected members.<sup>39</sup> The common type of executive committee has the general power of management of the affairs of the association. Its function is to see that all of the objects and purposes of the association are carried out. Typical of the powers given to executive committees are the following: 1. call special meetings; 2. fill vacant offices until the next annual meeting; 3. retain counsel; 4. employ a secretary; 5. authorize necessary expenditures.<sup>40</sup> Practically always there is a provision that all acts of the executive committee must be submitted to the next regular or special meeting of the association for approval.

The office of the secretary is by far the most important cog in the machinery of the open price organization. The secretary of one open price association writes as follows: "The success of any individual organization depends entirely on the secretary and unquestionably most of the failures of the association work have been due to his ignorance of what constitutes proper coöperation and how to attain it."<sup>41</sup> A representative of Babson's Statistical Organization who has been active in acquainting the business world with the open price form of coöperation states that a secretary should be, first, an executive officer, not merely a clerk; second, he should have business experience, education, tact, and ability to speak in public; third, he should command respect for

<sup>37</sup>*Constitution*, Art. 4, Sec. 3.

<sup>38</sup>*By-Laws*, Sec. 2.

<sup>39</sup>*By-Laws*, Art. 1, Sec. 5.

<sup>40</sup>Society of Manufacturing Confectioners, *Constitution*, Art. 3, Sec. 4.

<sup>41</sup>Letter from D. S. Hunter, Secretary of the Steel Barrel Manufacturers' Assn., Dec. 20, 1920.

his merits as a man; fourth, that it is not necessary that he be familiar with the line of business that the association is at work on.<sup>42</sup> In addition it should be remarked that it is absolutely necessary that he be a man of integrity and dignity, for he occupies a position of confidence and trust. Because of his position of confidence and trust a provision is found in most constitutions specifying that he must have no connection or affiliation with the line of business with which the association is identified. The secretary is usually the only salaried officer of the association.

Most associations outline the duties of the secretary very minutely. Undoubtedly this is done because of the feeling of distrust that prevails among competitors who at the outset of their experiment in coöperation are in a state of mind which prompts them to throw all the safeguards that they can about themselves. Some associations require that the secretary retain in absolute secrecy all information furnished him by members, and it is often specified that when he has made proper record thereof the statements conveying the information shall be returned to their owners or be destroyed.<sup>43</sup> In one case the secretary is required to keep this information secret even from the executive committee.<sup>44</sup>

The secretary may be either elected or appointed. Where election is the rule the electing is usually done by the association as a whole; where appointment is the rule the appointing is usually done by the executive committee subject to the approval of the association. There are exceptions to both statements, however. In the case of the Ohio Millers' State Association the secretary is elected by the executive committee.<sup>45</sup> In the Leather Belting Exchange the office is filled by an election conducted by the exchange.<sup>46</sup> The same is true of the Tap and Die Institute.<sup>47</sup>

<sup>42</sup>Address of G. E. MacIlwaine before American Specialty Manufacturers' Assn., New York *Journal of Commerce*, Dec. 11, 1916.

<sup>43</sup>Leather Belting Exchange, *By-Laws*, Sec. 2.

<sup>44</sup>The North Carolina Pine Box and Shook Manufacturers' Assn. requires that reports received from members be destroyed. See *Weekly Sales and Lumber Price Report*. The Leather Belting Exchange requires that all papers be returned to their owners. See *By-Laws*, Sec. 2.

<sup>45</sup>*Constitution*, Art. 4, Sec. 4.

<sup>46</sup>*By-Laws*, Sec. 4.

<sup>47</sup>*Constitution*, Art. 4, Sec. 2.

Appointment is made by the membership in the case of the National Coal Association.<sup>48</sup>

The duties of the secretary, as outlined by one association, are, first, to provide and operate a regular central office for the proper care of business; second, to take care of finances and funds; third, to keep in close personal touch with all members at meetings and by personal visits; fourth, to conduct necessary correspondence; fifth, to maintain and increase membership; sixth, to serve as a clearing house between the members for the exchange of credit information; seventh, to develop and distribute information and statistics of educational value relating to costs of production, selling markets, trade and labor conditions; eighth, to attend all meetings and keep accurate stenographic records thereof.<sup>49</sup> Other duties sometimes enumerated are, to send copies of minutes of meetings of the association and the executive committee to members;<sup>50</sup> to keep a list of members and the date of their election;<sup>51</sup> to notify all members of assessments due; to notify all members of the times and places of meetings;<sup>52</sup> to examine all bills and countersign all orders on the treasurer;<sup>53</sup> to prepare an annual and semi-annual report of all transactions and all conditions;<sup>54</sup> to preside at all meetings.<sup>55</sup>

#### THE CENTRAL OFFICE

An essential part of the structure of an open price association is an office where the secretary may carry on the work of gathering and disseminating information. Some associations have their own central office in charge of a salaried secretary.<sup>56</sup> However, a very common practise is for several open price associations to have an office and secretary in common.<sup>57</sup> There is a tendency

<sup>48</sup>*Constitution*, Art. 2.

<sup>49</sup>Tap & Dye Institute, *By-Laws*, Sec. 2.

<sup>50</sup>Leather Belting Exchange, *By-Laws*, Sec. 3.

<sup>51</sup>Steel Barrel Manufacturers' Assn., *Constitution*, Art. 4, Sec. 4.

<sup>52</sup>Society of Manufacturing Confectioners, *By-Laws*, Sec. 3.

<sup>53</sup>Society of Manufacturing Confectioners, *By-Laws*, Sec. 3.

<sup>54</sup>American Hardwood Manufacturers' Assn., *Constitution*, Art. 9, Sec. 4.

<sup>55</sup>Leather Belting Exchange, *By-Laws*, Sec. 3.

<sup>56</sup>For instance, Bridge Builders' Society; National Association of Finishers of Cotton Fabrics; Leather Belting Exchange.

<sup>57</sup>A. A. Ainsworth and A. A. Blake each serve about a dozen associations in New York City.

in the direction of centralization of this kind. Not only does it reduce expense, but it makes possible the employment of a secretary, highly trained in coöperative work, whose salary in the aggregate would be too large, perhaps, for any one association to undertake to pay. Secretaries find, that by a proper organization of their office force, they can readily handle several associations. In fact, the experience which a secretary derives from coming in contact with the problems of several different lines of business can be used to good account in coping with the problems that are encountered by any one of the associations. Where open price work is done as an adjunct to other trade association activities it is customary for the trade association secretary also to assume the duties connected therewith. A few instances may be found where an association does not run an office of its own nor employ a secretary, but simply arranges for an outside agency to manage the details of operation. The Pressed Metal Association, for example, has its open price work done by a Boston firm of certified public accountants.<sup>58</sup> The Associated Metal Lath Manufacturers and the Linseed Crushers' Council operate through the Armstrong Bureau of Related Industries, located in Chicago.<sup>59</sup>

### MEETINGS

Great stress is placed on the importance of bringing members frequently together in meetings. Most of the associations that are planned along the lines advocated by Mr. Eddy have monthly meetings.<sup>60</sup> A few have them two months apart.<sup>61</sup> Those associations that are really trade associations engaged in open price work as a branch of their activity usually have meetings only once or twice a year.<sup>62</sup> Besides the monthly meetings there are the annual and special meetings. The constitution nearly always provides a set date for regular and annual meetings. Special

<sup>58</sup>Scovell-Wellington & Co.

<sup>59</sup>For a description of the Armstrong Plan, see Montague Ferry's book, *Intelligent Selfishness*, Chicago, 1919.

<sup>60</sup>For instance, Leather Belting Exchange; Cotton Finishers; Bridge Builders' Society, American Hardwood Manufacturers' Association.

<sup>61</sup>For instance, Steel Barrel Manufacturers' Assn.

<sup>62</sup>Examples are Knit Goods Manufacturers of America; Ohio State Millers' Assn.

meetings may usually be called by the president, or on the written request of a certain number of members. The constitution of the Leather Belting Exchange, however, provides that special meetings may be called at any time or place by the executive committee, or upon the demand of six members. That of the Knit Goods Manufacturers of America provides that they may be called upon the request of the secretary, or by five members, or a majority of the executive committee, or "upon the sole authority of the President."<sup>63</sup> Sometimes the date for the monthly meeting of the executive committee is specified.<sup>64</sup> It is nearly always provided that members must be notified of meetings a certain number of days in advance. The usual quorum for the transaction of business is a majority of the membership. The Ohio Millers' State Association provides that fifteen members present at meetings shall constitute a quorum.<sup>65</sup>

A few associations, judging from the clauses incorporated in their constitutions, encourage the attendance of buyers at meetings;<sup>66</sup> others prohibit it;<sup>67</sup> the majority, however, make no declaration on the matter.

Those who are uninitiated in the work of open price associations would naturally suppose that the chief topic of discussion in meetings is prices. The truth seems to be that prices, themselves, are not so much discussed as are, first, the circumstances attending the quotation of certain prices, second, the conditions of the market that make for lower or higher prices. The reason for the apparent anomaly, that prices themselves are not discussed to any extent in an open price meeting, is that this information is imparted to the membership through the reporting system. Members, therefore, already know what prices have been charged, and they come to the meetings to find out why prices are as they are, and to learn what the business outlook is in order that they may put themselves in a position to quote future prices intelli-

<sup>63</sup>*Constitution*, Art. 8, Sec. 2.

<sup>64</sup>See *Constitution*, Franklin County Coal Operators' Assn., Art. 1.

<sup>65</sup>*Constitution*, Art. 7, Sec. 3.

<sup>66</sup>Knit Goods Manufacturers of America, *Constitution*, Art. 8; American Hardwood Manufacturers' Assn., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1104; Society of Manufacturing Confectioners, *Constitution*, Art. 5.

<sup>67</sup>Steel Barrel Manufacturers' Assn., *Letter*, Jan. 20, 1921.

gently. An examination of the minutes of all the group meetings of the American Hardwood Manufacturers' Association for the year 1919 discloses only three references to the prices of specific items of lumber, and two of these, by the way, were made by non-members of the plan.<sup>68</sup> Undoubtedly there is a temptation to discuss future prices; it is therefore generally provided that counsel be present at meetings to see that discussions are confined to strictly lawful subject matter.

The Eddy associations appear to be very scrupulous in avoiding discussion that might be construed to be in violation of the law. Among organizations that have not come under the influence of Mr. Eddy or his lieutenants less vigilance in this respect is not infrequently displayed. The following quotation illustrates the kind of discussion which is permitted by many so-called open price associations but which would not be tolerated by an Eddy association:

"As showing the utility of the Price Exchange Plan, a price was taken from the first report presented and was stated to the members present for their opinion. The merchandise concerned was a 176-needle half hose, 16 ounce, with looped toe, sold at \$1.15. It was the opinion of all, including several New York selling agents who were present as guests that the price was too low, and one selling agent stated that the price should be \$1.25."<sup>69</sup>

Reference to the minutes of a typical Eddy Association shows that members are not even permitted to act as a body in standardizing terms of payment.<sup>70</sup> In as much as terms of payment are an integral part of price, a united effort to fix terms would be just as illegal as a united effort to fix the prices themselves. Apparently this fact is not recognized among many associations because the practise of standardizing terms is exceedingly prevalent.<sup>71</sup>

In general the chief features of an open price meeting program as conducted by the typical Eddy associations may be summa-

<sup>68</sup>See *Record*, American Column & Lumber Co. vs. U. S., Vol. I, p. 100.

<sup>69</sup>Account of a meeting of the Pennsylvania Division of the National Association of Hosiery & Underwear Manufacturers, *Textile World Journal*, Oct. 20, 1917, p. 73.

<sup>70</sup>The Drill and Reamer Society, *Minutes of Meeting*, June 11, 1920.

<sup>71</sup>Particularly so in the lumber industry. See *American Lumberman*, Dec. 22, 1917; Nov. 3, 1917; Oct. 20, 1917.

rized as follows: first, a meeting of the executive committee, followed by a meeting of the association; second, the transaction of all routine business; third, discussion of questions touching on the details of past transactions such as reasons for quoting certain prices, methods of figuring costs, and the like;<sup>72</sup> fourth, the hearing of reports from each member regarding general conditions in the industry.<sup>73</sup>

The device adopted by the American Hardwood Manufacturers' Association for making the round robin discussion of market conditions most effective is worthy of special comment. Prior to the holding of the monthly meetings a questionnaire was sent to each member. The following questions were contained in the questionnaire:

1. "From what class of customers are your inquiries coming and what per cent of your total inquiries come from each class?"
2. "From what class of customers are your orders coming and what per cent of your total orders come from this class?"
3. "Check off from the following list how long it would take you to ship out the total orders on hand working under normal conditions, and assuming that all orders you have on your books are ready for shipment."
4. "What is your total production of hardwoods during the month of . . . . ? What do you estimate your production will probably be for . . . . months?"
5. "What is your total present stock of hardwoods, sold and unsold? What part of your present stock of hardwood is unsold?"
6. "Are your labor conditions any different from 30 days ago? Are they better or worse? What caused the change, if any?"
7. "How is the car supply at the present time; better or worse, as compared with 30 days ago? What per cent of your requirements are you getting?"
8. "How are your collections? Are they better or worse as compared with 30 days ago?"

<sup>72</sup>See *Textile World Journal*, Jan. 13, 1917, p. 109.

<sup>73</sup>*Transcript of Minutes of Meeting of the American Hardwood Manufacturers' Assn.* may be found in the appendix. See Exh. No. 2.



9. "What per cent of normal for this time of the year is your present supply of logs banked ahead of the mill?"

10. "Do you expect to be shut down within the next few months on account of the shortage of logs, or for any other reason? If so, please state how long mill will be idle."

11. "What is your view of market conditions for the next few months? What is the general outlook for business? State all reasons for your conclusions."<sup>74</sup>

A summary of the replies received under each head was prepared by the manager of statistics and the results were made the basis of discussion at the next group meetings, each member present being called upon in turn to express his point of view with reference to each question as it came up for discussion. Gathered, as they were, from a substantial part of the whole industry, these data when properly summarized gave a bird's-eye view of the industry, which, when reënforced by an open and free discussion in meetings, proved a great aid to members in finding remedies for conditions that were unsatisfactory.

It is peculiarly characteristic of the open price meeting that discussions, instead of being of a rambling, disconnected nature and leading to no definite end, are calculated to give each member a perspective of the industry as a whole to the effect that he may direct his individual business efforts in consonance with those of all the others in such a way as to inure to the greatest profit of all.<sup>75</sup>

<sup>74</sup>Affidavit of F. R. Gadd, *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1101.

<sup>75</sup>For a copy of a typical open price constitution, see appendix, Exh. 3.

## CHAPTER V

### THE REPORTING PLAN

Barring the work done at meetings, the reporting system covers most of the activities ordinarily engaged in by open price associations. Since no two industries use the same method in marketing their output there will be found points of difference in every reporting plan; however, these plans readily group themselves into two broad classes: one pertains to manufacturers who produce goods sold to jobbers and retailers primarily; the other to manufacturers who make goods only to specification, each contract differing more or less from all others and calling for special bids and prices.<sup>1</sup>

#### REPORTING AMONG MANUFACTURERS WHO MAKE GOODS TO SPECIFICATION

Variations in plans among this group of manufacturers are less pronounced than they are among the other group. Mr. Eddy evidently had chiefly the class of contracting manufacturers in mind when he wrote his book, for only passing notice is given to the class of manufacturers that sells to jobbers and retailers.<sup>2</sup> Briefly outlined, Mr. Eddy's plan, as presented in his book, calls for the filing by members of all inquiries received, all bids made, and all contracts awarded. Under this plan the secretary does not permit the information contained in the reports of inquiries to be interchanged among members for the reason that there would be a strong temptation for members to resort to collusive bidding.<sup>3</sup> The reports of inquiries are used to make up a weekly bulletin containing statistical information throwing light on the volume of work in prospect, as well as the general character of the work. The secretary interchanges all

<sup>1</sup>Eddy, A. J., *New Competition*, p. 123.

<sup>2</sup>*Ibid.*, p. 123.

<sup>3</sup>*Ibid.*, p. 128.

bids as received among those who have bid on a given piece of work, provided that all have filed copies of their bids and have not marked them "sealed". Those who have not filed copies of their bids get no information concerning the bids of the others. If a member sends in a bid marked "sealed" the secretary will retain it, and no information regarding that bid will be sent to other members until after the contract is awarded, whereupon all bids are opened for discussion. The member who marks his bid "sealed" gets no information regarding other bids. Apparently the reason for a provision calling for "sealed bids" is to induce the skeptical to try out the open price plan by giving them the right to file bids sealed if they so desire; in time they drop the practise because it offers no advantages.<sup>4</sup> No bidder is bound to adhere to the bid that he has filed. After ascertaining the bids of others he is free to lower his own bid to obtain the work, but he must immediately file all changes so as to give other bidders opportunity to revise their bids if they care to do so. The final report sent out to the bidders by the secretary is a copy of the contract as finally awarded. This, in brief, constitutes the reporting system as laid down by Mr. Eddy for this class of manufacturers.<sup>5</sup>

How closely have open price associations followed the plan laid down by Mr. Eddy? At any rate, among those associations for which Mr. Eddy's successor is counsel, there appears to be one pronounced deviation.<sup>6</sup> This pertains to the matter of inquiries. In his testimony before the New York Joint Legislative Committee on Housing, Mr. Eddy's successor stated that none of the associations with which he was connected made reports of inquiries. He could not explain why this feature had not

<sup>4</sup>The Bridge Builders' Society started this plan, but soon dropped it. See testimony of J. S. Dean, *Record*, U. S. vs. United States Steel Corporation, Vol. 2, p. 797.

<sup>5</sup>Eddy, A. J., *New Competition*, ch. VI.

<sup>6</sup>Mr. Wm. J. Mathews, Mr. Eddy's successor, is counsel for the following associations organized by Mr. Eddy: Bridge Builders and Structural Society; Ring Travellers' Society; Hoop Band Strip Steel Institute; Institute of Makers of Explosives, Dynamite and Gun Powder; Bolt, Nut and Rivet Society; Cold Roll Strip Steel Institute; Wire Fence Manufacturers; National Association of Finishers of Cotton Fabrics. See *Hearings before Joint Legislative Committee on Housing*, New York City, N. Y., Dec. 29, 1920, *Record*, p. 4602.

been adopted by Mr. Eddy when he organized these associations.<sup>7</sup> Perhaps he feared that outsiders might come to the conclusion that inquiries were being reported in order to accomplish collusive bidding. Undoubtedly members could improve their position with this information at hand without resorting to collusive bidding. Such reports would throw a light on the volume of work in prospect. If they showed, for example, that a large volume of work was pending, members would be careful not to contract to capacity for low priced work and a stiffening of prices would undoubtedly come about in shorter time than might otherwise have been the case.

The other features of the Eddy plan for this class of manufacturers have been adopted in their general outlines. Variations in the detailed workings of the plan are of course to be found. The procedure in vogue among the Pressed Metal Manufacturers may be regarded as typical. Copies of bids are mailed to the office of the commissioner where all bids are arranged in a file according to the names of the prospective customers. If within a period of two months no other bids are received on the same contract it is assumed that no competitive bids were made. As soon as the records show that two members have quoted on the same contract, a report is made out on a form provided for the purpose, showing the names of members quoting, the part number quoted on, rate per thousand for parts, and the charge for tools. A copy of this report is mailed to both members quoting, but not to the other members. If one of the members obtains the order he makes a report of it to the commissioner, who in turn relays the information to the unsuccessful bidders. At the regular monthly meeting a statistical report is read showing the number of bids which have been reported, the number which are competitive, and the number which are closed.<sup>8</sup>

In the case of the National Association of Finishers of Cotton Fabrics the members quote daily as soon as made every quotation, written or verbal, giving name of customer, description

<sup>7</sup>Testimony of Wm. J. Mathews before the New York Joint Legislative Committee on Housing, New York City, N. Y., Dec. 29, 1920, *Record*, p. 4633.

<sup>8</sup>Tosdal, H. R., "Open Price Associations," *American Economic Review*, Vol. VII, No. 2, June 17, 1917, p. 343.

of work, quantity, terms, discounts, "and all inducements, direct or indirect." Each week each member files with the secretary on a blank prepared for the purpose statistical information as to "quantity of orders in pounds or yards and the number of days' work ahead." The secretary classifies the information received and makes daily and weekly reports to members, sending the summarized reports to those, only, who have contributed information.<sup>9</sup>

The Eddy associations make an exception to the general procedure of reporting as illustrated by the cotton finishers and pressed metal manufacturers where bidding is done on contracts for governmental or other public bodies. Where work of this kind is involved, bids are not exchanged because these bodies will accept only one bid from each bidder and that bid must be delivered sealed and is to be opened only on a specified date and hour.<sup>10</sup>

An interesting deviation from the plans characteristic of the Eddy associations is in use by the National Bottle Manufacturers' Association. In this case an exchange of information is made only upon the request of some member. The member desiring the exchange of information fills out a specially prepared form. He wants to know two things: first, what prices and terms have been quoted on the contract in which he is interested; second, who the successful bidder is and what prices and terms he has made to obtain the contract. The customer's name and address are shown; a description of the contract is given; and the bid made by the inquiring member is fully described. Upon receipt of this inquiry, the secretary sends out on a prepared form a request to every member for information bearing on this contract. Members are asked to state, first, whether or not they have quoted on this contract, and if so, what terms were made; second, whether or not the order was received, and if so, on what terms. Members reply directly on the forms. The secretary

<sup>9</sup>*Ibid.*, p. 342. For an account of the reporting system of the Bridge Builders and Structural Society, see *Record*, U. S. vs. U. S. Steel Corporation, Vol. II, pp. 797-803. For a general description of the Eddy reporting system, see testimony of Wm. J. Mathews before the N. Y. Joint Legislative Committee on Housing, Dec. 29, 1920, pp. 4630-4636.

<sup>10</sup>*Ibid.*, p. 4634.

compiles on another prepared form the information received, and mails it to the members who have made reports in response to the inquiry. The result is that these members obtain the following information about the contract in question: first, a full description of the terms made by each bidder reporting; second, the name of the successful bidder and the terms that he made, including price, date of shipments, freight allowance, and any other inducements, direct or indirect. The only name disclosed by the secretary is that of the successful bidder. The names of the other bidders are designated by letter. Only the secretary has the key to the lettering system. This offers one illustration among many that might be given of the secretiveness that persists among members even after they have joined hands in an open price association. They are not willing to disclose their names for fear that a competitor might work them an injury.

#### REPORTING AMONG MANUFACTURERS WHO SELL TO JOBBERS AND RETAILERS

The business facts most commonly exchanged among this class of manufacturers are those relating to prices and terms of payment, production, orders, shipments, stocks, purchases, manufacturing and selling costs, returned goods, cancellations, advertising, and credits. Some of this information, particularly that relating to manufacturing costs, orders, purchases and credits, is also exchanged among manufacturers of the class just described but the practise is less common than it is among the class that sells to jobbers and retailers.

In order to make prices and trade and cost statistics comparable it is imperative that the goods be closely graded or standardized. It will accordingly be found that an amazing degree of standardization has taken place among manufacturers who are members of open price associations. Of course standardization in many instances was begun long before open price work was contemplated because of other numerous advantages of having standardized commodities, but certainly the open price movement has greatly accelerated progress in the direction of standardization.<sup>11</sup>

<sup>11</sup>For a good example of standardization see form for reporting prices in use by

A few cases are found where open price work is being done in a limited way even tho little standardization has been accomplished. Some industries do not lend themselves to standardization because individuality of style is sought after and is a strong factor in competition. One of these industries is the textile industry. Open price associations in this field, notably the Woolen Goods Exchange and the Knit Goods Manufacturers of America, have endeavored to overcome in some degree the difficulty involved in obtaining comparable information, by having members file with the secretary samples of the goods which each manufacturer is marketing, with a price tag attached to each sample. Members are then privileged to come to the office of the secretary to view these samples.<sup>12</sup>

A unique method that aims to accomplish the same purpose is in use among chair manufacturers. Each manufacturer mails the secretary a photographic reproduction of each style of chair that he has on the market and indicates on the face of the photograph the price that is being quoted. The secretary provides each reporting member with a copy of all photographs. Members thereafter inform him of all changes in quotations and he, in turn, instructs the membership to change the price indicated on the photographic plates accordingly. Of course this plan is not entirely satisfactory because the photographic plates give little inkling of what the quality and workmanship may be.

Many open price associations confine their reporting to a selected list of products. Newly organized associations find it most expedient to limit their price reporting to one or two products because of the difficulties that are always to be encountered in getting the work on a going basis. The products first chosen are those, usually, which are the easiest to standardize and the most competitive in character. After an organization for price reporting has been built up, it becomes relatively easy to add other products to the list. The members of the Woolen Exchange, for example, began reporting (July 1, 1916) only on staple men's wear and broadcloths; these goods were the most competitive and were sufficiently uniform in grade to enable

the Society of Manufacturing Confectioners, appendix, Exh. 4.

<sup>12</sup>*Textile World Journal*, Jan. 13, 1917, p. 60.

price comparisons to be made. Soon uniform cloths were added. These were followed by a considerable line of women's wear fabrics and toward the end of that year several lines of fancy goods were added.<sup>13</sup> Members of the American Hardwood Manufacturers' Association began reporting one species of wood only, namely oak, which was most widely produced. This was in 1917. By 1919 practically all the southern hardwoods of any importance were being reported.<sup>14</sup> Some industries probably never can be standardized sufficiently to permit all of their products to be reported. It would seem almost impossible, for example, to introduce price reporting in any comprehensive way in the dry goods trade, where styles are almost innumerable.

Among the class of manufacturers who cater to jobbers and retailers the greatest differences prevail as to the amount of information that is exchanged. A few are so open in their exchange that each member knows practically all about the business of every other member. (This, of course, could only be true of some of the smaller associations.) Others do little more than exchange price lists. The reporting system may be the simplest imaginable or it may be extremely elaborate. The Ohio State Millers' Association, for example, only requires its membership to fill out a card once a week, indicating the sales, output, and purchases for the week, and stock on hand at the time of reporting. All that a small group of lumbermen in Mississippi do is to mail to their statistical bureau in Hattiesburg a typewritten carbon copy of the orders received for the day. The secretary sends out at irregular intervals a mimeograph statement of the sales reported. No other information is exchanged. In contrast to this, the plan of the American Hardwood Manufacturers' Association called for, first, the filing of a price list at the beginning of each month; second, a daily report of sales, to be an exact copy of orders taken; third, a daily report of shipments, to be an exact copy of the invoice; fourth, a monthly report of stocks, classified by grade, kind, and thickness; fifth, a monthly production report classified by grades and thicknesses; and sixth,

<sup>13</sup>*Textile World Journal*, Apr. 8, 1916; Jan. 13, 1917.

<sup>14</sup>*Reporting Plan*, American Column & Lumber Co. vs. U. S., *Record*, Vol. I. p. 81.



inspection reports. The secretary, of course, compiled this information and mailed it to members either in the form of reports or incorporated as a part of a weekly bulletin.<sup>15</sup> Enough has been said at this point by way of illustration to indicate the wide range of difference existing between associations as to the amount of detail that members report. Further illustrations will arise in connection with the succeeding discussion of reports in use among the various associations. First will be considered reports in use in the exchange of price information; second, those used in recording cost, trade and other statistics.

Open price associations do not all follow the same method of reporting prices. Each of them has sought to work out a method which would yield the maximum results with the least expenditure of energy. Most associations, however, can be placed in one of two great groups. In one the practise is to exchange price lists either between the members themselves,<sup>16</sup> or through the medium of the secretary. This procedure is supplemented by the reporting of such transactions as involve prices made at variance with these price lists. In the other group the practise is to exchange price information based only upon actual transactions.

The associations which have chosen the method of filing a price list and reporting only variations therefrom have usually been those whose products command a price which is stable for a comparatively long period of time, as is the case, for example, in the woolen and knit goods lines, or the furniture line, where certain prices are announced at the beginning of the season and remain approximately at those figures during the remainder of the season. Obviously time and energy are saved in avoiding the reporting of numerous transactions where prices charged are identical with those shown on the price list. On the other hand, not being accustomed to report all sales, members are likely to neglect to report such prices as are made at variance with those

<sup>15</sup>*Reporting Plan, American Column & Lumber Co. vs. U. S., Record, Vol. I, pp. 82-86.*

<sup>16</sup>Little information is available as to the prevalence of this practise. Members of the National Photo-Engravers exchange price lists among themselves in small groups in certain localities.

on their list. In order to avoid this contingency to some extent, as well as to prevent misunderstandings as to what may be the active prices, some associations provide that each member must file a new price list at regularly recurring intervals;<sup>17</sup> others provide that a new price list must be filed every time a member issues one to the trade.<sup>18</sup>

Associations that are interested in products for which the market is a fluctuating one are likely to line up with the group that requires its members to report actual transactions. The other scheme would not work well where the market is a fluctuating one because a price list issued one day might be obsolete the next. But also in this group there are associations that attempt to obtain maximum results for effort expended by eliminating certain transactions from their reporting system. The Linseed Crushers' Council, an open price association operating under the direction of the Armstrong Bureau of Related Industries, requires that members report only carload sales. It is not felt that sales of less amount have any material effect on the market.<sup>19</sup> The Leather Belting Exchange requires its members to mail to the secretary copies of all invoices, but only those above \$60.00 are listed in the secretary's report to members.<sup>20</sup>

There seems to be very little variation in the plans of such associations as provide for the filing of price lists. As previously intimated they are filed either at regular or irregular intervals. The Knit Goods Manufacturers of America require that price lists be filed at least once every three months, and if price changes become very active members are urged to file price lists more frequently.<sup>21</sup> Usually price lists are reported on specially prepared forms. Price variations are to be reported as soon as made. Prepared forms are not so frequently provided for this purpose; quite commonly this information is simply conveyed

<sup>17</sup>*Reporting Plan*, Knit Goods Manufacturers of America, *Textile World Journal*, May 19, 1917.

<sup>18</sup>*Reporting Plan, Constitution*, Society of Manufacturing Confectioners.

<sup>19</sup>*Bill of Complaint*, U. S. vs. American Linseed Oil Co., et al.

<sup>20</sup>Spaulding, W. V., *Experiences in Coöperative Competition*, p. 6; also Tosdal, H. R., "Open Price Associations" *American Economic Review*, Vol. VII, No. 2, June 17, 1917.

<sup>21</sup>*Constitution*, Art. 10, Sec. 7.

by letter. The secretary immediately relays the information to the other members.

Variation in practise is greater among the associations which require reports covering nothing but actual transactions. Practically all of the lumber manufacturers' associations require a daily report of sales. In the case of the American Hardwood Manufacturers' Association the members' daily report showed all sales and cancellations made that day, and these reports were to be exact copies of orders taken, and to include all sales, large or small, as well as all special agreements of every kind in reference to price, grade, or terms.<sup>22</sup> The West Coast Lumbermen's Association requires that all sales be reported daily and they must be consecutively numbered and be submitted in affidavit form. Members of the Northern Hemlock and Hardwood Manufacturers' Association sign a weekly statement to the effect that they are reporting all sales that have been made during the week. Members of the North Carolina Pine Association are not required to sign an affidavit in connection with their submittal of daily sales reports; they do not even sign their names, but fill in the number by which they are identified in the secretary's office. In contrast to this, members of the Steel Barrel Manufacturers' Association sign a statement printed on the daily sales report that reads as follows: "The report above is a true and complete report of all sales made this day, \* \* \* which we pledged to report and develops every feature of such sale without any omissions as to concessions, rebates, or allowances that have been made either directly or indirectly." The Armstrong Bureau has developed an unusual arrangement for quickly communicating market information to the linseed oil manufacturers. The latter are instructed to send telegraphic reports of price changes to the bureau. They are sent in code in order to save expense and are immediately relayed to all members in coded form. The price of linseed oil moves in harmony with the price of linseed. The price of linseed fluctuates almost daily. In order to keep properly informed of the trend of the market it is found necessary to report by telegram. In contrast to this, members of

<sup>22</sup>*Reporting Plan, Record, American Column & Lumber Co. vs. U. S., Vol. I p. 82.*

some associations aim to keep only roughly informed of the trend of the market. Members of the United States Potash Producers' Association, for example, turn in a combined production and sales report only once a month. Other associations are either content to learn only the approximate trend of the market or sales are so few and fluctuations so insignificant that it is not deemed necessary to require members to report sales oftener than once a week. Members of the News Print Service Bureau report weekly sales on a card about the size of a blotter. Export and domestic sales are shown separately, as are carload and less than carload sales.

Respecting the exchange of price information, there remains to be discussed what kinds of reports are submitted by secretaries to the membership. Here, too, variations are very pronounced. They may be made by telegraph,<sup>23</sup> as previously stated, or they may be mailed daily,<sup>24</sup> weekly,<sup>25</sup> or monthly,<sup>26</sup> in typewritten,<sup>27</sup> mimeographed,<sup>28</sup> or printed form.<sup>29</sup> Not a single case has been found where the secretary is permitted to report the names of customers. The American Hardwood Manufacturers' Association planned to have this feature, but it was not adopted because members objected to divulging the names of their customers.<sup>30</sup> Some reports show the approximate destination of shipments. The daily sales report issued by the secretary of the Steel Barrel Manufacturers' Association shows the State wherein the sales are made. The weekly report of the Ohio Millers' Association shows the town or city. The American Hardwood Manufacturers' Association reports designate the territory in which sales are made

<sup>23</sup>The Linseed Crushers' Council.

<sup>24</sup>For instance, Steel Barrel Manufacturers' Assn.; North Carolina Pine Assn.; West Coast Lumbermen's Assn.

<sup>25</sup>For instance, Ohio State Millers' Assn.; National Box and Shook Manufacturers' Assn.; Newsprint Service Bureau; American Hardwood Manufacturers' Assn.

<sup>26</sup>For instance, Tool Steel Society.

<sup>27</sup>For instance, Lumbermen's Statistical Bureau.

<sup>28</sup>For instance, West Coast Lumbermen's Assn.; Ohio State Millers' Assn.

<sup>29</sup>For instance, American Hardwood Manufacturers' Assn.; North Carolina Pine Assn.

<sup>30</sup>*Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1107.

by the nearest city.<sup>31</sup> The West Coast Lumbermen's Association and the National Box and Shook Manufacturers' Association reports give no clue whatever regarding the destination of shipments. Some reports do divulge the names of sellers,<sup>32</sup> others indicate the identity of the seller by code number or letter only,<sup>33</sup> and still others give no clue whatever to the identity of the seller.<sup>34</sup> The secretary alone knows the identity of each seller represented by a code number. The use of the code number does serve a purpose to the other members, however. In case conditions surrounding some particular sale seem to any member to be unreasonable, he is given the privilege, in some associations at least, of taking the matter up with the secretary. The member communicates the code number to the secretary, who in turn will communicate with the manufacturer bearing this code number, and without divulging the identity of either the seller or the inquirer, report to the inquirer any special circumstances which may have surrounded the sale tending to explain any unusual conditions.<sup>35</sup>

Secretaries do not always report each individual sale even tho members may have done so. The secretary of the West Coast Lumbermen's Association is furnished with a daily report of sales, but the report that he issues shows the total volume of sales, the low, high, and the "prevailing" price, covering a period of three or four days at a time.<sup>36</sup> One secretary reports, monthly, a list of "ruling prices that have been quoted in the market." The secretary of a society handling steel products reports only the total number of pounds of each kind of steel sold at each price. A similar scheme is in use in an association of dyers. Finally certain associations provide for the contingency where manufacturers sell both to jobbers and retailers by getting

<sup>31</sup>See copy of sales report, appendix, Exh. 6.

<sup>32</sup>For instance, American Hardwood Manufacturers' Assn.; National Chair Manufacturers' Assn.

<sup>33</sup>Steel Barrel Manufacturers' Assn.; North Carolina Pine Assn.

<sup>34</sup>For instance, West Coast Lumbermen's Assn. The National Box and Shook Manufacturers' Assn. report shows no names of sellers, but indicates the number of sellers who have reported.

<sup>35</sup>Spaulding, W. V., *Experiences in Coöperative Competition*, p. 6.

<sup>36</sup>See copy of report in appendix, Exh. 7.

out sales reports with two sections to them, one devoted to retail prices, the other to wholesale prices.<sup>37</sup>

From the foregoing it will be seen that the exchange of price information is a most important function of open price associations. However, there are those who contend that if cost systems could be standardized so that each member might know his costs accurately, there would be no need of exchanging price information. Those who make this assertion apparently are actuated by the theory that the proper price is that based on cost plus a reasonable profit. Many manufacturers feel, however, that because of the recurring waves of prosperity and depression to which the industrial world is subject, they must in times of prosperity create a cushion of profits with which to absorb the losses that come in times of depression. In other words they must at all times seek to get the price that market conditions will permit them to obtain. Open price associations are therefore not content to limit their activities to the exchange of cost information.

It is conceivable that members might be able to obtain the maximum price consistent with market conditions without exchanging information about prices, if statistics of production, orders, shipments and stocks could be assembled, compiled, and disseminated in such a way as to be representative of the whole industry, and at the same time be intelligently acted upon by each manufacturer in the industry. But because of the many difficulties that stand in the way of achieving such a goal, associations have been content to arrive at an approximate estimate of the trend of the market by taking the easier course of simply exchanging information about prices. Many associations have as yet attempted nothing more. Associations that represent industries in which the number of competitors is comparatively small succeed best in gathering trade statistics, because there are a smaller number to be educated to an understanding of the value of taking the time and trouble to furnish these statistics for compilation and dissemination. The plan of the American Hardwood Manufacturers' Association called for a monthly production report, but this feature of the plan had to be abandoned

<sup>37</sup>This is done by the Knit Goods Manufacturers of America, for instance.

because members either did not have their bookkeeping so ordered that they could furnish this information, or they were unwilling to take the time and trouble to do so.<sup>38</sup>

In discussing reports of trade statistics, costs, et cetera, consideration will be given, first, to those which, when considered in relation to each other, throw a light on present and future market conditions, these being reports of orders, production, shipments, and stocks; second, to reports of costs, and to reports of items which are elements of costs, namely reports of credit information, purchases, advertising, and wages. This will complete our review of the main features of the reporting plan.

As often as not, associations require members to submit their reports of orders, shipments, production, and stocks in combined form, and these are then summarized by the secretary and issued to the membership in combined form. By bringing figures of orders, production, shipments, and stocks into juxtaposition on one form, a bird's-eye view of the general trend of the market is obtained. Of necessity a report of this kind is very general in its purview. If a product is divisible into many species or grades some or all of which have a competitive market all their own, it is probable that a combined report would not be satisfactory unless it could be issued for each species or grade, for a combined report could of necessity not show, for example, the orders received for each grade, or the production, shipments and stocks of each grade. In as much as the competitive situation for one grade might be entirely different from that of another, it follows that a combined report in which grades or species have no place might not be the most acceptable. On the other hand, the work entailed in getting out separate reports, one of which, for example, might show the volume of orders for each grade or species, another the production of each grade or species, another the stocks of each grade or species, et cetera, might be so great as to make it impracticable to adopt the system of individual reports in its entirety.

The North Carolina Pine Association has found the use of a combined form to be fairly satisfactory because its members are interested principally in one kind of lumber, namely the pine

<sup>38</sup>Gadd, F. R., *Record*, American Column & Lumber Co. et al., Vol. II, p. 1107.

grown in the Carolinas. But even in this case the report is deficient because it does not concern itself with the various grades of pine, nor with the various thicknesses in each grade. In an association such as the Hardwood Manufacturers' Association, representing a membership that produces and markets more than a dozen different species of hardwood lumber, each one of which has several grades, all of which have several different thicknesses, it is manifest that a combined report could not be used with success. Members of the North Carolina Pine Association report each Monday on a specially prepared form the total volume of orders for pine that have been accepted, the total shipped and the total produced during the preceding week, all measured in feet of lumber. Space is also provided for recording the normal output per day. It is specifically stated that the figures submitted will be held strictly confidential. No signature is required, each reporting member merely inserting the number by which he is identified in the secretary's office. On the following Thursday each member reporting is mailed a printed summary of the figures that have been reported. This shows the number of mills reporting, the totals and averages per mill of orders, shipments, production and normal production, the percentage relationship between, first, orders and shipments; second, orders and actual production; third, shipments and actual production; fourth, orders and normal production; fifth, shipments and normal production; sixth, actual production and normal production. Furthermore the percentage to normal of orders, production, and shipments is shown graphically by the use of a form of barometer originally used by the Brookmire Economic Service to picture fundamental business and financial conditions.<sup>39</sup> Finally the orders, shipments, production and normal production as given by previous reports running back over a period of three months is shown in columnar form, thus enabling a comparison to be made from month to month. Statistics of stocks have no place in this report. They are collected and disseminated only about once a year.

Some associations apparently prefer to substitute in their combined reports statistics of stocks for statistics of orders. One association issues a monthly statement of production, shipments,

<sup>39</sup>See copy of report, appendix, Exh. 8.



and stock, in which the statistics for each are shown for every month covering a period of four years. In addition, each member receiving this report is given his percentage of production, shipments, and stock to the totals for the association. Since figures are lumped, those of any single concern are not known to any other single concern, but, as just indicated, each member is given his proportion to the whole. By comparing this proportion month by month and year by year, every member can determine whether he is getting the share of work that he is accustomed to get, or more or less, and he can determine whether he is carrying too heavy or too light a stock.<sup>40</sup>

A certain association of chair manufacturers does not find it feasible to gather and disseminate statistics of production and stocks. Members are asked to submit a monthly report on a specially prepared form showing in dollars the total shipments, total orders received, total cancellations, and total unfilled orders for each of five different chair groups composed of dining room, bedroom, and office chairs, rockers, and "miscellaneous." With the report members are requested to transmit a check to cover monthly dues, based on a percentage of the total shipments reported. With these data as a basis, the secretary issues each month a graphic chart called a "Monthly Experience Chart." By means of graphs the trend of orders received is indicated not only for the whole of the present year, month by month, but for the corresponding months of the year preceding; in the same manner graphs are drawn to show shipments made this year, shipments made last year, unfilled orders this year and unfilled orders last year, all by months, and in terms of dollars.

In an association of sales book manufacturers the secretary issues a monthly report showing, not only production and order statistics, but the number of quotations that have been filed at variance with price lists and the number who have sold below their price lists. Aside from the notation of the special quotations filed, and the sales below list, the following information is given in columnar form: first, percent actual quantity production to normal; second, percent actual value production to normal; third, percent actual quantity sales to normal; fourth, percent actual

<sup>40</sup>Babson, R. W., *Reports on Coöperation*, No. C. C-7.

quantity books sold new users to total sold; fifth, time required to complete unfilled orders and contracts. The arrangement is such that these data appear for each member, but members are designated by number only. Below these data is a comparative table showing this information by averages for the past year according to months.<sup>41</sup>

Production and shipment statistics are frequently combined in one report. In the lumber industry it is customary to issue a monthly report of cut and shipments.<sup>42</sup> One association makes a graphic record of orders received, production and shipments, showing by means of lines the comparative trend in percentages by months.<sup>43</sup>

A sufficient number of illustrations have been given to show that there is little uniformity in the arrangement of the contents of these combined reports. Each industry has apparently sought to develop a form that would best meet its peculiar requirements.

Individual reports of orders, production, shipments and stocks appear to be less frequently used than the combined form of report. Undoubtedly the combined form of report makes the strongest appeal to the average business man because it gives him at a glance a perspective of the whole industry that he cannot obtain from a perusal of individual reports except by correlating them in his own mind, a task that is often regarded as being too irksome to undertake.

A common form of individual report submitted by secretaries to show the periodic relationship between volume of sales is described in one of the bulletins on coöperation published by Babson's Statistical organization.<sup>44</sup> Two columns of percentages are given. One column shows the percentage of sales made by all members for the month reported, of sales made by all members for the same month of the preceding year; the other column shows the percentage of sales made by all members from the beginning of the year to and including the month of the report, and of sales

<sup>41</sup>See copy of report, appendix, Exh. 9.

<sup>42</sup>See an illustration, *American Lumberman*, Feb. 10, 1912.

<sup>43</sup>For copy of report see Naylor, E. H., *Trade Associations*, New York, 1921, p. 260.

<sup>44</sup>Babson, R. W., *Bulletins on Coöperation*, C.-C. 11.

made by all members for the same period of the preceding year. The Optical Manufacturers' Association compiles a weekly report of orders.<sup>45</sup> Once every three months a tool steel society issues a blueprint which shows diagrammatically for each kind of steel the total volume of orders received in pounds for each month of the preceding three months. The diagrams show at a glance whether orders have been increasing or diminishing.

Statistics of production are usually assembled with other statistics in a combined form. However, a society handling drill and reamer products does issue a form based on the percentages of operation as reported by the membership, showing the average percentage of operation for the month as compared to normal as well as that for the month preceding, together with the increase or decrease in percentage.

Stock reports may be very simple, as in the case of the Salt Producers' Association, which divides salt into but four grades, or they may be very complex, as in the case of the American Hardwood Manufacturers' Association, whose membership produces from fifteen to twenty different species of lumber each one of which is divided into several grades, and each of the grades being divisible into several thicknesses. Members of the American Hardwood Manufacturers' Association were required to submit a monthly report showing the totals of all grades, thicknesses and kinds, and this information was redistributed monthly by the secretary. The secretary's report showed only totals, the quantities in the hands of individual manufacturers not being indicated.<sup>46</sup> Several of the other lumber manufacturers' associations distribute monthly stock reports.<sup>47</sup> As early as 1913 the North Carolina Pine Association inaugurated a scheme calculated to prevent the market from being unduly depressed by the presence of surplus stocks. Members report their list of surplus stocks to the secretary, who in turn circulates the list among the membership for the purpose of enabling members to buy up surpluses

<sup>45</sup>Gaunt, E. H., *Coöperative Competition*, p. 20.

<sup>46</sup>See copy of stock report, appendix, Exh. 10.

<sup>47</sup>The Northern Hemlock and Hardwood Manufacturers' Assn. began reporting stocks in 1914, and the Yellow Pine Assn. (now Southern Pine Assn.) in 1913.

before having them thrown on the market to depress it.<sup>48</sup>

If the limited information available may be taken as an index, exchange of data dealing with purchases is not very prevalent. Probably it is as much to the advantage of members to have reports of purchases as it is to have reports of sales. They can lose as much money through ignorance of conditions surrounding the purchase of raw materials as they can through ignorance of the market conditions surrounding the sale of their finished goods. The Salt Producers' Association exchanges information every month as to the number of tons of salt purchased by members. Members of the National Association of Box Manufacturers exchange information monthly relative to purchases of box lumber. The quantity, description, price, f. o. b. point, and the concerns from whom purchased are given.<sup>49</sup> Usually the compiled reports of purchases submitted by the secretary to the members do not give the member's or seller's names, or any details of the purchase, but merely state what the articles are, the quantities purchased, and the prices paid.<sup>50</sup>

There appears to be little interchange of information bearing on the cost of labor. The workers themselves have, in many quarters, through their labor organizations obtained more exact information as to wages and working conditions than have their employers.<sup>51</sup> The National Association of Box Manufacturers exchanges information once a month as to the hourly rate of wages paid for the various classes of labor in use. The rate paid for overtime and the number of hours per day that factories are running are also given.<sup>52</sup>

The work done, not only by open price associations, but by the ordinary trade associations, in coöperative advertising is so well known that it scarcely needs to be mentioned here. Suffice it to say that associations are doing a great deal, not only in the way of popularizing the products which they sponsor, but also by de-

<sup>48</sup>*The American Lumberman*, Oct. 24, 1913, p. 46.

<sup>49</sup>See copy of report, appendix, Exh. 11.

<sup>50</sup>Naylor, E. H., *Trade Associations*, p. 266.

<sup>51</sup>Garside, A. H., *The Value of Statistical Reports in Business*. Address before the annual convention of the Knit Goods Manufacturers of America, May 20, 1920, p. 4.

<sup>52</sup>See copy of wage report submitted by members, appendix, Exh. 12.

termining the relative merits of the various advertising media and effectively removing such abuses, for example, as "padded" subscription lists.<sup>63</sup>

The interchange of cost information is a very vital part of open price work. It is done on the theory that ignorance of costs is greatly responsible for the ruinous cutting of prices; that when members know their costs they will quote prices intelligently.<sup>64</sup> Mr. Belt, at one time Chief Accountant for the Federal Trade Commission, in an address before a group of hardwood lumber manufacturers, stated, "It is generally admitted that ruinous prices are due more to the fact that manufacturers do not know what their actual costs are than to their desire to sell at prices which do not yield fair returns on the money invested." He further stated that the Federal Trade Commission in its work had found that a majority of the business failures were attributable to poor accounting and inadequate business information.<sup>65</sup>

In order to compare costs, it is necessary that all members have a uniform method of figuring costs. This does not mean that certain cost figures are to be imposed upon members; it means that they are to use their own figures, but in arriving at those figures the same method is to be used. In order to get uniformity of method, it is, of course, necessary that the association take the initiative in working out a system of uniform accounts suitable for the industry. Usually a committee taken from the membership is put in charge of developing a system. The committee generally hires a cost accountant to study the industry and to do all the detailed work. He sometimes visits the plant of every member of the association in order to learn wherein methods of operation vary and wherein they are alike, so that a system may be installed which will be sufficiently flexible to be adaptable to all plants. It is generally found advisable to make the system as simple as possible, for members will not be prevailed upon to install one that is so intricate in its operation that they cannot understand it. Once having established costs

<sup>63</sup>Babson, R. W., *Reports on Coöperation*, C. C-11.

<sup>64</sup>Gaunt, E. H., *Coöperative Competition*, p. 28.

<sup>65</sup>Address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.

on a comparable basis, members are in a position to discuss them intelligently in meetings and through the medium of the secretary. For several years the exchange of costings has been going on among lumber manufacturers' associations.<sup>56</sup> A common method of exchanging costings has been for members to submit cost sheets showing costs for the leading items of production whereupon the secretary has averaged these costs, mailing to each member reporting a statement of average costs.<sup>57</sup>

A form of activity in which all of the associations organized by Mr. Eddy are engaged is the interchange of credit information. Other associations have made little progress along this line. No doubt so little headway has been made, first, because of the existence of credit men's associations, to which most members probably belong; second, because of the fear of the average business man that competitors will discover the identity of his customers through the instrumentality of such an exchange. Credit men's associations are made up of non-competitors. Of necessity such an association can not furnish each member with as intimate a knowledge of a customer's credit standing as can an organization made up of members in the same line of trade. Such a vital matter as learning how much credit has already been granted to a customer can not very easily be ascertained by a credit association made up of non-competitors; but the secretary of an open price association can give this information because he has probably requested each member to advise him how much credit he has already extended to each of his customers and what the credit limit is of each customer.

One open price association asks its members to check such of the following as are applicable to each of their customers and mail the form to the secretary, whereupon he bulletins it to the other members or refrains from doing so if the reporting members so request:

1. Accounts overdue.
2. Refused statement.

<sup>56</sup>For copies of cost reports submitted by members of the North Carolina Pine Association and cost statements submitted by the secretary to the membership, see appendix, Exhs. 13 and 14.

<sup>57</sup>*American Lumberman*, May 1, 1915.

3. Refused to accept delivery.
4. Took excessive discount.
5. Slow pay.
6. Draft not honored.
7. Note or check protested.
8. Transferred real estate.
9. Closed by sheriff.
10. Has sold out.
11. Has requested extension.
12. Judgment entered against.
13. Has had fire.
14. Has made assignment.
15. Is in bankruptcy.
16. Condition improved.
17. Account satisfactory.
18. Cancelled order without authority.
19. Returned merchandise without permission.
20. Made unjust claim of shortage, of condition, of quality, etc.
21. Deducted discount to which not entitled.
22. Account collected by attorney or agency.
23. Account paid by installments.
24. Has given chattel or real estate mortgage.
25. Has given bill of sale or trust deed.

In addition members are requested to give the name, address, and business of the customer, the period of time that the customer's account has been on the books, the maximum credit extended, and the present condition of the account.

## CHAPTER VI

### THE ADVANTAGES AND DISADVANTAGES CONNECTED WITH OPEN PRICE WORK

The plan of this chapter will be to consider in the first part the advantages attending the operation of the open price system, and in the second part, the disadvantages involved, first, in the attempt to install an open price system; second, in the operation of such a system. In both parts, the aim will be not only to discuss the general advantages and disadvantages that inure from the operation of the open price association as a whole, but to pay some attention to the particular difficulties or benefits flowing from each phase of its work. Because of the newness of the open price movement very little data have as yet been accumulated which might throw any light on the attitude of buyers, whether they be engaged in buying for resale or in buying for purposes of consumption.<sup>1</sup> Probably insufficient time has passed for sentiment to be crystallized, one way or the other. The writer is therefore constrained to write this chapter principally from the point of view of the member of the open price association, altho not entirely so. Some discussion will be devoted to an elucidation of the point of view of purchasers.

#### ADVANTAGES

From the point of view of the member, all benefits of open price work may be said to be derived from the operation of two factors, namely, first, the building up of the spirit of coöperation; second, the interchange of information. Some secretaries have expressed to the writer their opinion that the development of the former element is the more important. Probably neither one is more important than the other. About all that can be truthfully

<sup>1</sup>The benefit to the consumer from the conservation of timber due to the operation of the open price system is discussed in ch. 7, pp. 148-156.



said is that there must be a certain degree of the coöperative spirit developed before members are willing to interchange information fully and freely. A concrete illustration of the attitude that is developed between competitors by the preaching of coöperation, by frequent contact in meetings and the like is afforded by the testimony of Mr. Smith, President of the Union Steel Casting Company, in the Steel Case:<sup>2</sup>

Q. "Now what is the difference, if any, in the attitude of competitors in your line toward one another from the condition that prevailed fifteen years ago?" A. "We are honestly friends now. Then we pretended to be friends, but were the bitterest enemies."

Q. "Can you give any illustration of that?" A. "Yes, sir. Perhaps a year and a half ago or two years ago we were in difficulty in making driving wheel centers for the American Locomotive Company people. They complained about it, and I personally went there. I knew what caused them. We had to use anchors to carry the core. I found out what their complaint was; asked them if anybody was furnishing driving wheel centers without that difficulty. They said the Pratt & Letchworth Company of Buffalo furnished them without the hard spots. I went to Buffalo and told Pratt & Letchworth Company of our difficulty and asked them how they avoided it. They showed me a new kind of anchor they had, which did not make hard spots, gave me samples of them, and I got the same kind and had no further trouble. While I was there they told me that they had some difficulty with the sand, that their castings did not clean as well as ours, and wanted to know the trouble. I, of course, gave them all the help I could and told them that they were not grinding it enough, and stayed with them for about half a day, and they got better results from their sand, and we had no more hard spots in our wheel centers. We visited each others' plants for the purpose of improving our condition, and have no hesitancy in helping each other when we can."

Obviously where coöperative efforts are directed toward mutual helpfulness in improving industrial processes the benefit re-

<sup>2</sup>Record, U. S. vs. United States Steel Corporation, Vol. XX, pp.8c68-8c69.

dounds not only to the competitors involved but to the consumer.<sup>3</sup>

A good illustration of the coöperative spirit developed in meetings is afforded by the following extract taken from the affidavit of a hardwood Manufacturer belonging to the American Hardwood Manufacturers' Association:

"The fall and winter of 1918 found us with a large accumulation of stocks on hand in thoroly dry condition, and we found that it was difficult to move them at the prices we were asking. This condition continued through the earlier part of 1919, and in spite of our repeated sales effort, we did not secure any business for Red Gum as well as some other items. Therefore at a group meeting at Memphis, when market conditions were being discussed, I found that my competitors had been selling their Red Gum freely. I advised the group that I had been unable to move our Red Gum and that we had an accumulation of the stock above normal. It developed that my competitors had been able to move their stocks because their prices were considerably lower than ours. Shortly following this meeting, owing to our insistent efforts to place before the consuming trade of the country our Red Gum stock, we commenced to receive a good many inquiries and this, in part, as a result of the fact that our competitors who were at the group meeting where I stated we had this stock, informed their customers that we could supply their needs. \* \* \* \* \* The fact that these group meetings develop a spirit of good fellowship, whereby my competitors are willing to advise a buyer that a common competitor can furnish stock that they do not happen to have, is of great value to me."<sup>4</sup>

Members interchange information in order to learn as closely as possible all the factors that have a bearing on the market for their product. If they lack knowledge of the market they are prevented, first, from properly regulating their business in conformity with business conditions; second, from securing the highest price for their product that market conditions warrant.

<sup>3</sup>For an account of the growth of the cooperative spirit in the New Bedford Open Price Association, see *New York Journal of Commerce*, May 1, 1916.

<sup>4</sup>Weiss, H. B., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1667-8.

In one sense the small producer may be said to receive the greater benefit from the interchange of information, because of the fact that the large producer with his large organization is in a better position to gather information for himself through his salesmen and by other means than is the smaller producer, who in many instances does not even have a traveling salesman in his employ. This is strikingly brought out in the case of the small mill owners who belonged to the American Hardwood Manufacturers' Association. Mr. Boyle, attorney for the association, in his argument before the Supreme Court stated that of the forty-eight letters which the Manager of Statistics of the association received, commending open price work that was being done, all of those that indicated that a better price had been received in one instance or another as a result of the operation of the open price system, were from small mills without a sales organization.<sup>5</sup> Numerous affidavits from small mill owners, taken in the case, point to the same conclusion. The following is typical:

"As an operator of a comparatively small mill which maintains no sales force, he found these reports and letters of great value to him. Previous to belonging to the association he was largely at the mercy of the wholesaler, to whom he has always sold the bulk of his production. Before joining this association and receiving these reports, in June 1919, he sold first and second quartered white oak to wholesalers for \$88.00 per thousand at the mill, or \$105.00 per thousand in Boston, for which these wholesalers obtained from the consumers the prevailing price of \$250.00 per thousand. This condition of ignorance of conditions worked a hardship on him and was of no benefit whatever to the consuming public, the wholesaler reaping all the profit on the transaction.

"That a small producing mill without a sales organization cannot, under present conditions, intelligently do business unless through some association or other means that keeps him in touch with market conditions. In his opinion, the Open Competition Plan has been of great benefit to the small producing

<sup>5</sup>Argument of L. C. Boyle in the Supreme Court of the United States, *American Column & Lumber Company vs. U. S.*, Oct. 21, 1920, p. 68.

mills and has worked no hardship whatever on the consuming public."<sup>6</sup>

Mr. F. B. Dabolt, a small mill owner, gave the following sworn statement:

"He received the sales report of the Open Competition Plan and found these reports of great use in keeping him informed as to the trend of the market. This information was of value to him in enabling him to gauge the worth of his lumber, \* \* \* \* \*. The information contained in these sales reports was of special value, for the reason that his firm travels no men and has no sales organization, and unless he had access to these sales reports he would have been obliged to have obtained this information at considerable trouble and expense, or else have depended entirely on the statements of buyers as to the market value of his product. In that way these sales reports were of practical and financial value to him."<sup>7</sup>

In another sense the large producer profits perhaps just as much as the small producer through the operation of a system that makes his small rival a more intelligent competitor, for the latter is then not so likely to "spoil" the market—at least so runs the argument—and in so far as price cutting is due to ignorance of the market and not to financial instability or other causes, it is probably valid. A small producer can do more damage to the market than the volume of his production would seem to give him the power to do because he can make quotations equivalent to many times the value of his production. Furthermore large producers are learning that little consolation is to be sought in the fact that competitors who quote inordinately low prices simply because they are not posted on market conditions, usually go bankrupt, for in nearly every case they are replaced by another crop of small, weak competitors, who will also "muddy the water."

The large producer feels, then, that the only remedy for a situation of this kind, short of combination or consolidation, is to educate the small competitor.<sup>8</sup>

<sup>6</sup>*Brief for the Appellants*, American Column & Lumber Company vs. U. S., Part 2, p. 68.

<sup>7</sup>*Ibid.*, Part 2, p. 93.

<sup>8</sup>*New York Journal of Commerce*, Jan. 3, 1916. Mr. Belt, at one time Chief

It might be inferred from the foregoing that because of his facilities for gathering information the large producer derives little direct benefit from the operation of the open price association. It is true that he may feel no need for price information because of reports received from salesmen,<sup>9</sup> but he can learn little about the status of production, stocks, costs, et cetera, in the industry unless he exchanges information with his competitors. One consequence will be the lack of vital business statistics on which to base his production policy. But even sales reports might be of value, if for nothing else, as least as a check on the statements of salesmen. Salesmen, who in their eagerness to make a sale have quoted a particularly low price, contrary to the instructions that may have been given them, are wont to excuse their action on the ground that they were forced to make this price in order to meet that made by another competitor. Reference to sales reports will often show whether or not the excuse has any foundation in fact. If it has not, as is often the case, a repetition of needless price cutting on the part of salesmen seeking to make easy sales can be prevented, with a consequent saving of money.<sup>10</sup> Furthermore, in cases where salesmen have been spending considerable time in ascertaining market conditions, the use of sales reports would make this activity less necessary, thus permitting salesmen to devote more attention to selling.<sup>11</sup>

There is scarcely anything written or said about the open price plan that does not stress the value of open price work in preventing purchasers from perpetrating frauds upon the producer or otherwise overreaching him. This may be considered one of the leading arguments for the plan and is, perhaps, the strongest

Accountant for the Federal Trade Commission, once said: "The best price tonic I know of is an educated competitor." Address before the American Hardwood Manufacturers' Association of the United States. Jan. 30, 1917. *American Lumberman*, Feb. 3, 1917.

<sup>9</sup>Many manufacturers of hardwood lumber stated that they felt no need for sales reports because they employed salesmen who kept them in touch with the market. See *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1508.

<sup>10</sup>For illustration of the use of sales reports as a check on information received from the sales force see *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1921.

<sup>11</sup>*Textile World Journal*, April 8, 1916.

one offered in justification of its existence. The practise among buyers of misrepresenting the prices quoted to them, playing one competitor off against the other, in order to "beat down prices" or obtain secret rebates or discounts or other favors has become so common that it is scarcely looked upon as an illegitimate trade practise any longer.<sup>12</sup>

In the contracting world owners misrepresent the nature of the bids received, leaving the impression among those who have submitted bids that theirs is not the lowest, the intent being to induce them to submit lower bids, which they usually do, unless they are informed by means of the exchange of bids as to the true circumstances. That this malpractise has been given a death blow in industries controlled by open price associations is averred by all proponents of the open price plan.<sup>13</sup>

By the interchange of information the cement manufacturers have tried to prevent speculation in cement coupled with cancellation of contracts. Purchasers, thinking that from fundamental conditions the price of cement would go higher in the future than at the time of the purchase, frequently have attempted to cover a contract for a certain building or other piece of construction work by placing duplicate orders with different mills and then requiring the entire amount ordered from all mills to be furnished if it should turn out that the price has gone up and on the contrary cancelling out on some pretense or other if it should turn out that the price has gone down.<sup>14</sup>

Evidence in the Hardwood Case shows beyond doubt that wholesalers, prior to the initiation of the open price plan, were successfully overreaching producers who were in ignorance of market conditions, but that the operation of the plan prevented them from continuing the practise among members.

One member wrote to the Manager of Statistics as follows:

<sup>12</sup>Johnson, A. S., "Review of New Competition," by A. J. Eddy, *Pol. Sc. Quar.*, Vol. XXVIII, March 3, 1913, p. 143.

<sup>13</sup>Mathews, J. W., Testimony before the New York Joint Legislative Committee on Housing, *Record*, p. 4635.

<sup>14</sup>Harrison, L. C., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, p. 1716. For further illustrations of malpractises connected with bidding, see account of action taken by the Bridge Builders & Structural Society, *Iron Age*, Vol. XCVI, July 1, 1915, p. 57.

"From my experience as a small manufacturer, this (sales report) is one of the most important services the association has given me. Before becoming a member of the Open Competition Plan, I know I have sold a good many cars of lumber three or four dollars under the market to wholesalers, upon which they reaped the benefit of my ignorance."<sup>15</sup>

In an affidavit another small producer made the following statement: "Affiant maintains no sales organization and markets his products largely to wholesalers, possibly 85 per cent of his product being so sold. For this reason, the sales reports of the Open Competition Plan were of especial value to affiant for the reason that the wholesalers from the nature of their business are continually in touch with the market, and when purchasing naturally desire to buy at as low a figure as possible. These sales reports were a check against their statements. By virtue of these reports, affiant states that he was enabled to get nearer the market price from the wholesalers."<sup>16</sup>

Lumber manufacturers have undoubtedly been dependent upon the statements of buyers to an extraordinary degree. Unlike grain, cattle, cotton, and many other basic commodities, lumber has no common market. There are no current price quotations, no statistics as to receipts at consuming points, as to production, as to supplies offered, nor of prices asked or bid. The smaller producers, in particular, sell nearly all of their lumber to the wholesaler. By reason of his intimate and daily contact with the consuming trade, the wholesaler has been in a far better position than the manufacturer to know the needs of the market, the market prices, and all the facts which influence prices. It is made peculiarly difficult for the great number of smaller manufacturers to get market information because of their locations. The larger and stronger concerns have, as previously stated, kept in touch with the needs of consumption by means of well organized sales departments.<sup>17</sup>

Undoubtedly similar conditions exist in many other industries.

<sup>15</sup>Bohlssen, H. C., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, Exh. No. 1138.

<sup>16</sup>Nigh, F. H., *Record*, Vol. III, p. 1670.

<sup>17</sup>Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. III, pp. 1247-1248.

Probably every industry is infested with buyers who profit upon the ignorance of producers by circulating false market information. At least false price reports are current everywhere, however they may have originated, and in the absence of authentic information such as open price associations aim to give members, considerable credence is given to them. Mr. Belt, at one time Chief Accountant for the Federal Trade Commission, once said, "It is unfortunate that false reports as to prices quoted by competing houses are so widely current. Often false price reports are given credence and prices are met which never existed. This practise in the aggregate has a disastrous effect on our commercial health." The remedy, according to Mr. Belt, lies in producers exchanging information, comparing experiences, and discussing trade problems.<sup>18</sup>

The Government during the Great War found the trade statistics that had been accumulated by open price associations of immense benefit in determining the manner in which orders for supplies should be allocated among the various manufacturers. Knowing their productive capacity, it was comparatively easy to determine the size of the order that should be given to each of them.<sup>19</sup>

Mr. Belt, formerly of the Federal Trade Commission, has pointed out that open price associations have just the kind of information that is needed by the various governmental bodies interested in the affairs of business, including such matters as supply, demand, prices, costs, productive capacity, et cetera. Probably the manufacturers who can show clearly the needs of their industry by means of statistics will receive the most consideration at the hands of bodies dealing with such matters as the tariff, freight rates, and the like.<sup>20</sup>

We have seen what an important place reports of bids and sales have played in preventing purchasers from overreaching particularly the small producer. Testimony taken in the Hard-

<sup>18</sup>Belt, R. E., Address before the American Hardwood Manufacturers' Association of the United States, *American Lumberman*, Feb. 3, 1917.

<sup>19</sup>New York *Journal of Commerce*, May 11, 1917, May 16, 1918, Mar. 19, 1920.

<sup>20</sup>Belt, R. E., Address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.



wood Case has brought out the nature of the use made of trade statistics by members of the American Hardwood Manufacturers' Association. With regard to reports of sales the substance of the great bulk of this testimony was to the effect, first, that by informing members of the relative demand for the different kinds, grades, and thicknesses of hardwood lumber, these reports enabled them to adjust their production to suit the demand, thereby avoiding underproduction of some items and overproduction of others; second, that the reports enabled them, in fixing their prices, to follow more closely and quickly the general trend of prices, whether up or down, on the one hand avoiding sales at lower prices than the condition of supply and demand seemed to warrant, on the other hand avoiding prices that seemed higher than the average run of prices, thereby preventing stocks from moving too slowly.<sup>21</sup>

For instance, Mr. F. M. Platter stated, "As to the sales report affiant says that he regarded it as valuable in his business operations. That the data thus furnished tended to keep him informed as to the character of the stocks that were most in demand, and thereby he could more effectively serve consumption demands."<sup>22</sup>

Mr. F. H. Stanford found the sales reports of value as indicating the general trend of the market.<sup>23</sup>

Mr. E. A. Lang found the sales reports particularly valuable in determining the market value of woods which were infrequently sold: "That such sales reports are of some value to affiant in judging the market price of small items of lumber which constitute only a small percentage of our production, due to the fact that they are generally manufactured from a scattering growth of timber, and having only a few cars of these items to dispose of from time to time, we are naturally not fully informed as to either the volume or market conditions of these items. Such information could doubtless be secured from other

<sup>21</sup>Oral argument of G. Carroll Todd before the Supreme Court of the United States, *American Column & Lumber Co. vs. U. S.*

<sup>22</sup>Platter, F. M., *Record, American Column & Lumber Co. vs. U. S.*, Vol. III, p. 1675.

<sup>23</sup>Stanford, F. H., *Record*, Vol. III, p. 1654.

sources, but it would take more time and effort to do so than to get it from the sales reports mentioned."<sup>24</sup>

In one of the meetings a member explained the value of sales reports to manufacturers who only make a little of any particular wood. He stated that they would not be compelled to sacrifice stocks which they did not handle regularly because by glancing at the sales reports they could ascertain the prices made on this class of stocks by those who were handling it in large quantities.<sup>25</sup>

Reference to sales reports did not always result in members raising prices. Sometimes they were lowered. Several manufacturers, after consulting sales and stock reports, found it advisable to lower prices in certain instances in order to move their stocks because of the discovery that their prices were out of line with those being asked by competitors.<sup>26</sup>

Many members found sales reports of greatest benefit when used in connection with the stock reports. Mr. B. F. Dulwever stated "that one of the principal benefits of the sales report and the stock report used jointly was to ascertain the items that were in greatest demand, and the items which were short in supply, and he found these reports of great value to his firm in deciding what thicknesses to manufacture."<sup>27</sup>

Another member found that these reports furnished him with an incentive to improve the manufacture of his lumber: "He found these reports (sales reports) of use in connection with the stock reports in guiding him along the manufacturing end. For instance, if he found that certain firms were getting prices for certain grades of lumber higher than he could obtain for the same grades, he found almost invariably that it was because their lumber was better manufactured and more strictly graded and better care taken of it in curing and in general. He found these reports of value to him therefore in improving the manu-

<sup>24</sup>I.ang, E. A., *Record*, Vol. III, p. 1647.

<sup>25</sup>Minutes of Meetings, *Record*, American Column & Lumber Co. vs. U. S., Vol. I. Several members testified to the value of sales reports in determining the market price of small items of lumber; see *Record*, Vol. III, pp. 1647, 1656.

<sup>26</sup>Dickinson, C. C., *Record*, Vol. III, p. 1710; Stark, W. M., *Record*, Vol. II, p. 1260.

<sup>27</sup>Dulweber, B. F., *Record*, Vol. III, p. 1565.

facture and care of his lumber. He found the sales reports also of value in showing what territories were demanding certain species and thicknesses of lumber."<sup>28</sup>

The stock report of the American Hardwood Manufacturers' Association has been described as "one of the most detailed and complete statistical reports published by any association in the world."<sup>29</sup>

During 1919, at least, members of this association placed more emphasis on the value of the stock reports than they did on sales reports. The reason for this was that in 1919 prices rose so fast that sales reports were not received in time to be of much value as a guide to the trend of the market.<sup>30</sup> The chief benefit of stock reports lay in the assistance they gave in determining what kinds of lumber to manufacture and the grades and thicknesses.

Mr. H. B. Weiss testified as follows: "I have found this report of invaluable assistance to me in determining into what particular thicknesses and grades to manufacture our logs. This is a problem that is continually confronting us because our product is not, as a rule, sold until it has been manufactured and conditioned, which is possibly an average of six months after the material is sawed. I have found in the past that in the absence of knowledge of stocks in the hands of my competitors I would instruct our mill to saw a certain thickness, only to find later that the market carried a burden of these particular thicknesses, and it was with great difficulty that they could be marketed, whereas consumers were in great need of some other thicknesses that we could have manufactured."<sup>31</sup>

Mr. M. B. Cooper testified, "that when the monthly report of stocks reached his desk, he invariably checked it over with a view of ascertaining as to what grades and thicknesses were piling up and what grades and thicknesses were becoming scarce, and oftentimes he has changed his sawing instructions to the mill due to the information obtained through these stock reports."<sup>32</sup>

<sup>28</sup>Glenn, E. C., *Record*, Vol. III, p. 1652.

<sup>29</sup>*Record*, Vol. II, p. 1064.

<sup>30</sup>*Record*, Vol. III, p. 1633.

<sup>31</sup>Weiss, H. B., *Record*, Vol. III, p. 1665.

<sup>32</sup>Cooper, M. B., *Record*, Vol. III, p. 1645.

It may be remarked in this connection that this regulation of output to conform with the consumption demands as revealed by the stock report not only results in a benefit to the manufacturer himself but also to the consumer of lumber, for it leads to the concentration of production on those grades and thicknesses for which there is a heavy demand, instead of the production of grades and thicknesses for which the demand is light, thus preventing an undue increase of prices for such grades and thicknesses as are in demand and at the same time avoiding an undue depression of price of those grades which are not in demand.

Other manufacturers have stressed the value of stock reports in determining whether to hold or sell stocks on hand. In writing of his opinion of the Open Competition Plan, Mr. H. B. Sale said, "We had, previous to the United States entering the war, a customer who had taken our production in Quartered White Oak Strips but since the war his business has so materially decreased that the amount of stock required to meet his production has been very small. We are therefore hunting for a market for such strips. Of course we could dispose of these to almost any manufacturer at the ordinary going price, but have held them for approximately ten months. We would have had to dispose of them at a loss or sold them at the going market price. We examined the stock list carefully and found Quartered White Oak Strips in the hands of manufacturers to be less than normal and therefore continued quoting on inquiries the prices which we had set on them as the price at which we could make a profit on these strips. This price was in excess of the reported going price in the Open Competition Plan, but we were quite satisfied that before sufficient additional production could be put upon the market that the price would come to approximately our price on the stock. This arrived today as evidenced by the duplicate of our shipping order mailed you."<sup>33</sup>

Since the American Hardwood Manufacturers' Association did not issue regular production reports, there are no data available which would show how members might have used information pertaining to production. However, there are data to show in

<sup>33</sup>Sale, H. B., *Record*, Vol. II, Exh. No. 1132.

the case of other lumber associations what has been done with these and other reports at meetings, with a view of pointing out to members the trend of market conditions. It has been customary with most associations of manufacturers to have a Market Conditions Committee or the secretary make a report based on a comparison between statistics of stocks, production, orders, shipments, et cetera, which members might use as a guide to their production policy. The following extract taken from the Secretary's report at the midsummer session of the Northern Hemlock and Hardwood Manufacturers' Association held in July, 1912, gives a clear idea of the various advantages flowing from a consideration of the different kinds of trade statistics in relation to one another; at the same time it is typical:

"Last January there was 12 per cent more unsold hemlock lumber on hand than on January 1, 1911—due to the very heavy hemlock production late last fall, while there was a slight decrease in hardwood stocks. Taken altogether, the January 1st (1912) reports showed an increase in hemlock and hardwood stocks on hand of 10 per cent over January 1st, 1911. The extraordinary movement of lumber in the last six months, of this year, together with only a normal production, have reversed these figures, so that on July 1st there was four per cent less unsold hemlock on hand than on July 1st, last year, and 28 per cent less unsold hardwood on hand than a year ago. Taking hardwood and hemlock stocks together, sold and unsold, the totals reported by 45 concerns was practically the same this year as last.

"Turning to our cut and shipments reports, from an average of more than 70 firms during the last twelve months, however, we find that during this period hemlock shipments have exceeded the cut by 12 per cent and that hardwood shipments have gone beyond production by 7 per cent, making a total excess of shipments over cut since July 1, 1911, of 10 per cent. It is especially interesting to note that stock reports show 45 per cent less No. 3 unsold hemlock on hand July 1st this year than on July 1st, 1911. Moreover, there has been much more effort on the part of buyers to contract stocks ahead. While large blocks of hemlock are seldom contracted, nearly three times as much

hemlock was sold ahead as on the first of July, 1911. Moreover, at this time, 60 per cent of the total hardwood stock on hand is sold, while a year ago only 50 per cent was sold ahead. More lumber was shipped by the Association members in May than in any other month covered by our records, while the June reports show but a slight decrease from the high mark set by the May shipments. A summing up of the reports by the same firms in the corresponding first six months of this year and last, indicates an increase in hemlock cut of 11 per cent, and increase in hardwood shipments of 41 per cent, a decrease in hardwood cut of 13 per cent, an increase in hardwood shipments of 30 per cent, making up to date this year a decrease in total cut of 2 per cent, and an increase in total shipments of 37 per cent over the corresponding period of 1911. There is no doubt that the total hardwood production in 1912 will be less than in 1911, and so far as can be determined the same will be true of the hemlock cut."<sup>34</sup>

#### DISADVANTAGES

The disadvantages connected with open price work may be conveniently grouped under the following heads: first, handicaps to the installation of an open price system; second, negligence of members in the performance of obligations; third, deficiencies in the reporting system.

The two chief handicaps to the installation of open price associations may be attributed to a disinclination of business men to affiliate themselves with such an association and to the obstacles offered by the nature of the industry to be organized. Manufacturers may be deterred from joining an open price association for a number of reasons. A deep seated distrust and suspicion of their competitors may suffice to keep them away, or a misconception of the character of the association, or the expense connected therewith, or a fear of arousing the hostility of customers, or of coming in contact with the long arm of the law. Speaking of the difficulty of installing an open price association, a pioneer in the open price movement says, "It has always proved exceedingly difficult to establish, because suspicion, jealousy, and

<sup>34</sup>*American Lumberman*, July 27, 1912. A short account of the uses of reports of costs, purchases, labor, credits, etc., may be found in ch. 5, pp. 92-96.

doubt in the minds of competitors must first be done away with. \* \* \* \* \* In a number of cases the plan has been tried and then dropped because of the narrowminded attitude of rivals.<sup>35</sup> As previously intimated, this tendency toward secretiveness has been particularly noticeable in the textile field. The explanation given has been that this business depends for its success to an unusual degree upon the individuality in the goods produced, competitors being therefore reluctant to show competitors the product of their looms.<sup>36</sup>

Misconception of the character of open price associations is the rule rather than the exception. It is extremely difficult to convince a prospective member that the open price system is not a price fixing scheme. If he is anxious to control prices he may become a member with that end in view. There are nearly always some members of open price associations who are constantly trying to use the association as a means of stifling competition—attempting to bring about agreements that will just avoid the Sherman Law restrictions and still gouge profits unduly.<sup>37</sup> Undoubtedly these abusers of the open price system are its worst enemies. Business men who aim to be strictly law abiding, observing, as they do, the unlawful activity of these lawbreakers, jump to the conclusion that all open price activity is stamped with the same illegal character and they are not easily persuaded to join. This is particularly true if their past experience with price fixing plans has been unfortunate. One member of the American Hardwood Manufacturers' Association expressed the feeling of this class of men when he wrote to the Manager of Statistics as follows:

“Our experience with various price fixing plans in the early days were humiliating and costly, and for that reason we stood off from this Open Competition Plan for some time, but we finally went into it, the exact date we do not remember.<sup>38</sup>

The expense involved in belonging to an open price association

<sup>35</sup>Gaunt, E. H., “An Open Price Plan for Woolens and Worsteds,” *Textile World Journal*, Apr. 8, 1916, p. 1709.

<sup>36</sup>New York *Journal of Commerce*, May 22, 1919.

<sup>37</sup>New York *Journal of Commerce*, Dec. 14, 1916.

<sup>38</sup>Nigh, W. H., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, Exh. No. 1127.

will prevent some business men from affiliating. The cost of running such an association as estimated by Babson's Statistical Organization is modest. They state that the cost of organization began in one case with a fee of \$3000.00 for counsel, that the first expenses were rather large, but that \$700.00 a month should cover all expenses. Of course this was written in 1915 when the price level was considerably lower than it now (1921) is, and the figures were probably given for an association with a membership of not more than twenty-five.<sup>39</sup> Notwithstanding these circumstances, the pro rata expense cannot be considered unduly heavy and probably is not a serious drawback to the spread of the open price movement.

The fear of arousing the opposition of buyers is, in some cases, at least, a powerful deterrent to the spread of the movement. In the textile industry, in particular, this opposition has assumed formidable proportions. In this field the opposition has been inspired either by the knowledge on the part of buyers that open price methods would prevent them from making further profits as a result of the ignorance of sellers, or it has been inspired by the feeling, fostered, first, by the secret methods pursued by some so-called open price associations; second, by the indiscreet talk of certain members of these associations, that they were being made the victims of what amounted to a conspiracy to maintain prices.

The following extract taken from an editorial which appeared in the *New York Journal of Commerce*, December 14, 1916, pictures the situation as viewed from the standpoint of the buyer who feels himself victimized: "What has occurred in certain trades is this: the manufacturers have laid certain cards on the table, but they are hiding every detail of the game from the buyers who are their customers. This is a violation of the open price spirit and gives justification for a suspicion that things are not in accordance with the law. Statements to the effect that no violation of the law is intended will not convince buyers who feel that they are entitled to know most of the influences that affect the value of the merchandise they want to buy.

<sup>39</sup>Babson, R. W., *Reports on Coöperation*, C. C-3.



"Within a short time certain manufacturers who are in trade organizations have done considerable boasting as to what they proposed to do to buyers because of their new allegiance to the principles of the open price movement. A doubt exists as to whether these manufacturers really know what an open price association can do and how easily their membership in such a body, taken in conjunction with statements of the character indicated, can land all hands in jail."<sup>40</sup>

The attitude taken by the National Association of Purchasing Agents toward the open price movement is indicated in the extracts taken from a letter received by the writer which follow:

"The question came up indirectly in our last convention, when a proposal was made that we organize a bureau to report the orders placed and prices paid by our members in various localities for specific commodities. After mature discussion and later consideration by the Executive Committee, it was decided that such a plan offered prospects of violation of the existing laws against unfair competition and the matter was therefore definitely dropped by our association.

"I am reasonably confident that there are no associations of purchasing agents engaged in any way in open price work. On the whole, the viewpoint of purchasing agents is opposed to such association activities. The real function of the open price association, as we see it, is to permit producers to charge for their commodities not on the basis of their production costs or real competition values, but on a basis of all that the market will stand. Naturally purchasing agents cannot be expected to sympathize with this viewpoint."<sup>41</sup>

Fear of Government action is perhaps the most powerful deterrent to the spread of open price work. In this connection, Mr. Belt, formerly Chief Accountant for the Federal Trade Commission, once said, "As a result of the conflict in the past between business men and the Government, many business men have become suspicious of coöperation and are led to think that because some forms of coöperative effort have been condemned

<sup>40</sup>New York *Journal of Commerce*, Dec. 14, 1916.

<sup>41</sup>Boffey, L. F., Secretary, National Association of Purchasing Agents, Letter dated Feb. 11, 1921.

the Government was opposed to all forms of coöperation. Unfortunately, as a result some are reluctant about joining their trade associations for fear that they would be censured by the Government for meeting with their competitors."<sup>42</sup>

A further deterrent is due to the weakness of the voluntary association. The indiscreet remarks of one or two members may involve the whole association in litigation.<sup>43</sup>

The nature of the industry may be such as to make it exceedingly difficult to do open price work with any degree of success. There may be too many different articles or styles or grades; or the competitors may be too numerous and widely separated. Mr. R. H. Bennett, secretary of the California Wholesale Grocers' Association, writes: "With my wholesale distributive constituency openness of price information is impracticable, by reason of the great number and variety of articles handled, the purchase of fluctuating possibilities, and quality differences."<sup>44</sup> Members of the Pennsylvania Division of the National Association of Hosiery and Underwear Manufacturers once discussed the practicability of adopting the open price system but the project was abandoned as sentiment was general that the great variety of styles and grades characteristic of the underwear industry would require too complicated a system to make it of any value to the members.<sup>45</sup> The American Hardwood Manufacturers' Association found the effectiveness of its work exceedingly impaired because of the great number of competitors in the hardwood industry and because of the fact that they were for the most part isolated from one another. The industry, in 1912, comprised between 12,000 and 15,000 independent units. These units were scattered over practically the entire United States east of the Mississippi River and west of the Mississippi in the States of Missouri,

<sup>42</sup>Belt, R. E., Address before the American Hardwood Manufacturers' Association of the United States, *American Lumberman*, Feb. 3, 1917. The attitude of governmental bodies is discussed in ch. 8, pp. 188-193.

<sup>43</sup>This matter is discussed in ch. 4, pp. 50-53.

<sup>44</sup>Letter dated Dec. 20, 1920.

<sup>45</sup>Bi-monthly meeting of the Pennsylvania Underwear Manufacturers' Division of the National Association of Hosiery and Underwear Manufacturers, Jan. 13, 1917, *Textile World Journal*, Jan. 20, 1917, p. 35.

Arkansas, Louisiana, and Texas. Effective coöperation between all of these units was well nigh impossible.<sup>46</sup>

The National Bottle Manufacturers' Association found it impracticable to adopt the open price system in its entirety for the reasons, as expressed by the secretary that, "the open price plan can only be successfully operated under certain conditions. These conditions require a comparatively small membership—a fairly large unit of sale—and a uniformity of product. In our case we have a rather large membership, there being about fifty subscribers to our special fund. There are a great many medium and small sized sales so that the volume of business to be recorded would be very large; and finally we have a wide diversity of interest among the members. Some members are making only one class, others are making three or four, while others make all eleven classes. Because of these conditions we feel it would not be a practical plan to even consider the operation of the open price plan for the main association."<sup>47</sup>

The negligence shown in the performance of obligations is of sufficient gravity to lead some persons to believe that the voluntary form of association is doomed to failure on this score alone.<sup>48</sup> This negligence is chiefly marked, first, by poor attendance at meetings; and second, by extreme laxness in furnishing the required reports to the secretary. Laxness in furnishing reports may be due either to carelessness, indigence, or a deliberate resolve to withhold certain kinds of information.

One cannot read the accounts of open price meetings given in trade journals without noticing that secretaries are constantly bewailing the failure of members to attend meetings. Of the 329 members who belonged to the American Hardwood Manufacturers' Association, 120 never attended a meeting and 50 attended but one meeting.<sup>49</sup> The Armstrong Bureau of Related Industries

<sup>46</sup>Gadd, F. R., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1098.

<sup>47</sup>Stevenson, C. R., *The Elimination of Unfair Competition*; address delivered before the National Bottle Manufacturers' Association, May 1, 1920.

<sup>48</sup>Mr. Armstrong of the Armstrong Bureau of Related Industries voices this opinion.

<sup>49</sup>Argument of L. C. Boyle in the Supreme Court of the United States, *American Column & Lumber Co. vs. U. S.*, p. 34.

has sought to insure better attendance at meetings by imposing fines on those who absent themselves or come tardy.

Secretaries also are constantly admonishing members to be more prompt and regular in submitting reports. In this connection the secretary of the Northern Hemlock and Hardwood Manufacturers' Association writes, "We now have about ninety members, and of these about fifty are reporting their sales and these are the only ones who receive the information in the Sales Bulletin. It is open to any of the others whenever they desire to report their sales. If this requirement were not made, it would be very difficult to get any of the firms to make the reports."<sup>50</sup>

The secretary of the California White & Sugar Pine Manufacturers' Association writes, "We have never yet had fifty per cent of our members submit statistics effective the same date and those received are never complete. With regard to prices, we have requested members to send in to this office copies of their orders to be tabulated and returned to them at weekly intervals. At the present time about five out of forty-eight are doing this."<sup>51</sup>

In one of their meetings, the secretary of the West Coast Lumber Manufacturers' Association said, "It is to be regretted that we cannot get all the mills to report within reasonable time. \* \* \* \* \* Some of the reports for as far back as October, 1912, are not in yet, and we are still working on them. We have sent as high as six requests without receiving any reply."<sup>52</sup>

Mr. Wm. J. Mathews, counsel for several of the Eddy associations, admitted before the Lockwood Committee that members did not always make a report to the secretary of corrected bids.<sup>53</sup> There is hardly an open price constitution, coming within the notice of the writer that does not take cognizance of this negligence in reporting by providing that members who do not furnish information shall receive none. In addition, members of the Knit Goods Manufacturers are required to sign a statement reading as follows: "I hereby agree that I will be responsible either by

<sup>50</sup>Swan, O. T., Letter dated Jan. 4, 1921.

<sup>51</sup>Smith, C. Stowell, Letter dated Dec. 3, 1920.

<sup>52</sup>This report was made in 1913 at the March meeting. See *American Lumberman*, April 5, 1913.

<sup>53</sup>Testimony of Wm. J. Mathews, *Record*, New York Joint Legislative Committee on Housing, Dec. 29, 1920, p. 4635.

personal attention or delegation to some particular person in my employ to see that any and all quotations, prices, rebates, or any other condition covering quotation or sales which differ in any way from prices, conditions, etc., on file at any time with the Association are forwarded to the office of our Association within twenty-four hours from the time such changes are made. I further agree that this agreement is binding as long as my mill is a Regular Member of the Knit Goods Manufacturers of America."<sup>64</sup>

In some quarters, at least, members appear to be intentionally deceiving other members about the nature of their transactions. This is done by omitting from their reports any low sales or exceptional discounts that may have been made. This abuse is of a most serious character because it tends to undermine the spirit of confidence and trust that must be developed to a considerable degree before much progress in open price work can be made. One open price secretary informed the writer that dishonesty in reporting is very prevalent, and is to be ascribed, he thought, to the fact that members are ashamed to turn in reports of low sales. In the textile industry complaints frequently arise that members do not report discounts that have been made. One important textile manufacturer is quoted as saying, "I do not want my fabrics filed with this Association. It might be different if you could get the whole truth from all competitors, but do you think that sellers are going to tell the five per cent 'inside' they are giving John Jones or the ten percent that Tom Smith gets? To be sure they will report the open market price, but it is just these private terms that make competition so hard in the marketing of wool goods, and they will be just as much of a factor whether there is an open price association or not."<sup>65</sup>

In one of the meetings of the Michigan Hardwood Manufacturers' Association the Secretary gave vent to the following vigorous language: "In this connection it is well to state that certain members of the Committee have knowledge of sales made by a

<sup>64</sup>"Amendment to Constitution, Knit Goods Manufacturers of America," *Textile World Journal*, May 17, 1919.

For other instances of negligence in reporting, see *American Lumberman*, Feb. 10, 1917, Mar. 29, 1913, Nov. 2, 1912.

<sup>65</sup>*Textile World Journal*, Aug. 12, 1916, p. 20.

few members at low prices that have not been reported to the secretary. No one is obliged to get the list prices, but everyone has a moral obligation to report all sales. There is absolutely no other accurate way to determine the market conditions, and it is a distressing commentary on the loyalty of some of our members to say that this committee must "gumshoe" around the trade for price-sale information. Any member sacrificing stock does himself and the association less injury by frankly acknowledging the transaction than he does by covering it up. Any member who persistently covers up such transactions may justly be suspected of trying to take advantage of other members who are not only trying to get a fair price for their goods but who also, when necessity constrains them to a sacrifice, make a report of it to the Association, thereby putting all members in a position to know the real conditions. Secrecy will ultimately reflect more real injury upon the culprit than upon his associates whom he has misled by his silence."<sup>56</sup>

At the time when, with the help of Mr. Eddy, the old Yellow Pine Association was being reorganized into what later became the Southern Pine Association, it was brought out in the presence of Mr. Eddy that under the old form of association the practise had been to send to the secretary copies of all orders, but that very soon it developed that only a few of the large operators sent in this information, and that they reported only the cream of their orders.<sup>57</sup>

Cognizance of this abuse is taken in some constitutions. One constitution, for example, provides that members who file misleading information will be dropped from membership.<sup>58</sup> Another means often resorted to in order to encourage honesty in reporting is to show no figures of individuals in the compiled reports issued from the secretary's office.

The reporting system is in many instances deficient because reports are either inaccurate, or obsolete or the information contained therein is not comparable. Some secretaries have frankly admitted to the writer that members are not as careful about

<sup>56</sup>*American Lumberman*, Oct. 23, 1915.

<sup>57</sup>*Ibid.*, Dec. 20, 1913.

<sup>58</sup>*By-Laws*, Society of Manufacturing Confectioners, Sec. 8.

submitting accurate reports as they should be. Oftentimes the fault is due, not to carelessness, but to an inadequate system of account keeping which makes it nearly impossible to submit anything more than mere estimates.

If the industry is such that wide and sudden fluctuations occur in the price of the product, it is found difficult, if not impossible, to put sales reports in the hands of members in time to be of any value in gauging the trend of the market. This is particularly true if the membership is large and widespread, as was the case with the American Hardwood Manufacturers' Association. Because of the vast number of reports of sales to be arranged and compiled, the Manager of Statistics found it impossible to mail reports to members oftener than once a week. The reports came out too infrequently to be of use as a guide in quoting prices. This was particularly true in the latter part of 1919 and the early part of 1920 when prices for lumber rose almost daily. Considerable testimony was given to show the obsolete character of these sales reports. A few of the more representative statements are as follows:

Mr. J. T. Holloway testified, "As to the Sales Report, affiant says that under normal conditions these data would be of value in that they would give a mill operator an understanding of the market tendency. However, under the abnormal conditions that have existed for the last four or five months, the Sales Reports are practically of little value, because when they reach the members they are from ten days to two weeks old and the data are such past history that they are of no practical worth."<sup>59</sup>

Mr. S. A. Williams said, "Affiant states that he has always carefully read the sales reports issued by the Open Competition Plan, but he has found that they report sales as of ten days to two weeks past, and that they do not reflect the present condition of the market at the time of reading, and consequently the benefit derived was exceedingly limited. It is the opinion of affiant that any lumber producer using the prices reported in these sales reports as a guide would in the majority of cases in the past few

<sup>59</sup>*Record, American Column & Lumber Co. vs. U. S.*, Vol. III, p. 1661. This affidavit was filed Mar. 9, 1920.

months at least have sold his lumber for \$5.00 to \$10.00 per thousand under the market.”<sup>60</sup>

G. W. Everts testified: “In reference to the sales reports affiant desires to state that he considers that the sales data exhibited by this sales report are from one to two weeks behind the current market, but affiant states that he does consider the reports of value as indicating the trend of market conditions, but that, in so far as being an accurate guide as to what today’s prices are, they are of very little assistance, and this as stated on account of the rapid changes due to the enormous demand and the lack of hardwood supplies throughout the country.”<sup>61</sup>

In many cases it is found extremely difficult to get products so standardized as to make reports of sales comparable; hence their effectiveness is very materially diminished. Such was the case with reports of sales issued by the American Hardwood Manufacturers’ Association. The whole lumber industry has made tremendous strides in the standardization of grades, yet the specifications laid down are not so exact but that there may be found differences in the quality of lumber within each grade. These differences are enough to detract considerably from the value of sales reports as is indicated by the following testimony:

Mr. H. G. Garrett said that, “the difficulty with reported prices lies in the lack of uniformity of grade in hardwood lumber. As a concrete example affiant states that in the grades of lumber, he has frequently found it cheaper to pay some manufacturers from \$10.00 to \$15.00 a thousand more for the so-called same grade than others whose lumber, tho of the same alleged grade, is really of inferior quality.”<sup>62</sup>

One firm wrote to the Manager of Statistics as follows: “We are young in the hardwood game, but find more or less manipulation of grades, and this reduces the value of the price information, as a mill selling No. 1 Oak at \$25.00 at the mill may actually be receiving more money for his stock than some other mill, that has accepted an order for a National grade at \$28.00.”<sup>63</sup>

<sup>60</sup>*Ibid.*, Vol. III, p. 1639. Affidavit filed Mar. 9, 1920.

<sup>61</sup>*Ibid.*, Vol. III, p. 1633. Affidavit filed Mar. 9, 1920; see also Vol. III, pp. 1530, 1563, 1639.

<sup>62</sup>*Record*, Vol. III, p. 1722.

<sup>63</sup>Williams, S. A., *Record*, Vol. II, Exh. No. 1154.



The list of disadvantages here reviewed is sufficiently formidable to make it appear that the fate of open price associations in some industries, at least, is somewhat uncertain.<sup>64</sup> Probably all of the disadvantages named are not applicable to all open price associations. Undoubtedly the larger associations find themselves more harassed in this respect than do the smaller ones. In the opinion of the writer the most serious weakness of open price work as it is conducted is the exhibition of a lack of good faith among members, displaying itself chiefly in an attempt to deceive each other by filing misleading information. This attitude is undoubtedly a heritage of the old competitive regime. Imbued as they have been with an antagonistic spirit toward one another, venting itself in falseness and trickery, it would be a matter of surprise if this feeling should have died out in the short space of the nine years in which open price work has been in existence.<sup>65</sup> It is thought that as members become truly educated to the advantages accruing from open price work and come to realize that this work cannot thrive in the presence of falseness, deceit, and laxness of performance of duties, they will drop the practises which now seem consequential enough to threaten the very existence of the open price institution. The open price movement is still too much in its infancy to warrant one in basing predictions of its success or failure on any data so far accumulated.

<sup>64</sup>The uncertainties attendant upon the doubtful legality of open price work are reserved for later discussion. See ch. 8, pp. 161-175.

<sup>65</sup>This statement is made in 1921.

## CHAPTER VII

### OPEN PRICE ACTIVITY IN THE LUMBER INDUSTRY

The wealth of data disclosed by recent government investigations in the lumber industry taken together with the vast amount of evidence collected in the case of the United States vs. the American Hardwood Manufacturers' Association renders it possible to get a view of the operation of the open price system in this industry such as no other industry has yet afforded.

In another connection<sup>1</sup> it has been pointed out that open price work in the lumber industry is almost entirely limited to associations of manufacturers. In a survey made by the *American Lumberman* in 1917 it was found that twenty-seven associations of manufacturers were in existence at that time. The highest membership of any one of these organizations reporting was 892; the lowest, ten. There was an average percentage of fifty-eight members to one hundred eligibles. The average age of the associations was 8.86 years. Twenty-two associations were organized previous to 1917. Of the twenty-seven associations two were organized in 1889, one in 1891, one in 1897, but all the others are less than twenty years old and seventeen less than ten.<sup>2</sup>

A few of the more unimportant associations appear not to have operated open price systems, but the leading ones have done so. The recent investigation of the Federal Trade Commission disclosed that all of the principal regional associations belonging to the National Lumber Manufacturers' Association have been doing open price work.

These are (1) the West Coast Lumbermen's Association (manufacturers of Douglas fir lumber); (2) Western Pine Manufacturers' Association (manufacturers of western white and yel-

<sup>1</sup>See ch. 1, *Prevalence of Open Price Associations*, p. 3.

<sup>2</sup>*American Lumberman*, June 9, 1917, p. 40.

low pine); (3) Northern Hemlock and Hardwood Manufacturers' Association (manufacturers of hemlock and hardwoods in Wisconsin and upper Michigan); (4) Michigan Hardwood Manufacturers' Association (manufacturers of hemlock and hard woods in the lower peninsula of Michigan); (5) Northern Pine Manufacturers' Association (manufacturers of Minnesota Northern pine); (6) North Carolina Pine Association (manufacturers of North Carolina pine); (7) Georgia-Florida Saw Mill Association (manufacturers of short leaf yellow pine lumber); (8) Southern Cypress Association (manufacturers of cypress lumber); (9) California Sugar and White Pine Manufacturers' Association (manufacturers of sugar and white pine lumber); (10) Southern Pine Association (manufacturers of yellow pine lumber).<sup>3</sup>

The only important association of manufacturers doing open price work that is not affiliated with the national organization is the American Hardwood Manufacturers' Association.

The sole connection that the national association has had with the open price system has been to receive statistics of various kinds from the regional associations, particularly those of production, these being summarized and the summaries distributed to the lumber manufacturers through the regional associations.<sup>4</sup> The American Hardwood Manufacturers' Association offers the only instance where an association has been organized to do open price work. The other lumber associations have installed the work as a departmental activity.

No doubt the followers of Mr. Eddy would assert, and with much truth, that the lumber associations are not true to the standard type of open price association, because most of them have attempted to do more than merely inform members about past transactions. By issuing price lists and discount sheets they have tried to induce members to adopt a uniform or rising scale of prices. Practically every lumber association has resorted to this illegal practise at one time or another. The recent report of the Federal Trade Commission shows that there has been

<sup>3</sup>*Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations*, Jan. 10, 1921, p. 2.

<sup>4</sup>*Ibid.*, p. 3.

more or less concerted action among members, working through committees, in issuing price lists and discount sheets.<sup>5</sup>

On June 18, 1919, Mr. Howard Jayne, of the Willappi Lumber Company, a member of the Committee on Values, wrote Secretary Babcock of the West Coast Lumbermen's Association, in part: "With reference to the work of the Price Committee of the Association, I am afraid my ideas are not in accord with the Committee, in that I personally feel quite opposed to coming out with so many discount sheets, with such radical advances. It seems to me the market is in a shape where it is profitable to all parties concerned on a basis of discount sheet No. 5, and that from that point on it should be a case of the mills asking a price commensurate with their ability to deliver it. Perhaps it is true that discount sheet No. 6 conforms to the present market conditions, in fact we have sold items on that basis; nevertheless, we believe concerted action on the part of the mills should be dropped from now on."<sup>6</sup>

According to the version of the Federal Trade Commission, sales reports were issued to enable members to compare the actual prices obtained with the prices quoted in the uniform discount sheets.<sup>7</sup> If any manufacturer interfered with the market price of lumber by quoting a lower price, he was immediately notified by some manufacturer of the discount sheet in effect, together with other general information which would encourage him to obtain full list prices.<sup>8</sup>

In 1919 the Michigan Hardwood Manufacturers' Association submitted the plan of issuing price lists and discount sheets to Mr. L. C. Boyle, General Attorney of the National Lumber Manufacturers' Association, for his opinion. Mr. Boyle replied, "As a conservative and precautionary method I am urging your group to abandon your price list plan. . . . I know that it is not the purpose of your plan to fix the price. Your members are free to sell at any price they please, nevertheless, when your

<sup>5</sup>I. e., *Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations.*

<sup>6</sup>*Ibid.*, p. 66.

<sup>7</sup>*Ibid.*, p. 68.

<sup>8</sup>*Ibid.*

committee publishes a higher price than the current market, based upon its conception of market tendencies, it is in fact putting out figures that are at least to be shot at by the trade and to that extent indirectly doing that which tends to control prices to a higher level."<sup>9</sup> It may be remarked that as a result of this opinion, no substantial change was made by the Michigan Manufacturers in the method of supplying information.<sup>10</sup> The Federal Trade Commission gave evidence to show that other leading associations were pursuing similar methods.<sup>11</sup>

Open price associations organized by Mr. Eddy or his disciples do not permit "suggested" price lists to be issued by the central office. Any price information that is disseminated must be based on prices actually quoted by members.

#### THE YELLOW PINE ASSOCIATION

To recount the origin, history, organization, and operation of each of the many important associations of lumber manufacturers would require a volume in itself.<sup>12</sup> However, one must needs devote some attention to the early history of the Southern Pine Association, known before 1914 as the Yellow Pine Association, because, first, an important decision was rendered by the Supreme Court of the State of Missouri with reference to this association, and this decision has a bearing on the legal aspects of open price work; second, the activities in which it has been engaged reflect pretty accurately those engaged in by many of the other lumber associations; third, it is one of the oldest as well as one of the most important of the lumber associations in existence.

The Yellow Pine Association first had its origin among cer-

<sup>9</sup>*Preliminary Report of the Federal Trade Commission on Activities of Lumber Manufacturers' Associations*, pp. 80-81.

<sup>10</sup>*Ibid.*, p. 82.

<sup>11</sup>For an account of the price activities of (1) the West Coast Lumbermen's Association, see *Report*, pp. 57-68; (2) the Western Pine Manufacturers' Association, pp. 69-74; (3) the Northern Hemlock and Hardwood Manufacturers' Association, pp. 74-78; (4) the Michigan Hardwood Manufacturers' Association, pp. 78-86; (5) the Southern Pine Association, pp. 18-54; (6) the Georgia-Florida Saw Mill Association, p. 41.

<sup>12</sup>An account of their earlier history may be found in a *Report on the Lumber Industry by the Bureau of Corporations*, April 21, 1914, Part IV.

tain manufacturers and wholesalers in Southern territory in 1890. In 1906 membership was limited to yellow pine manufacturers and wholesale dealers. About that time the membership was close to three hundred and represented a yellow pine cut of nearly four billion feet out of a possible nine billion feet. It was a voluntary organization, had a written constitution and by-laws, board of directors, president, first vice-president, treasurer, and secretary. Their duties were those which ordinarily go with their respective offices. In addition there were permanent committees on "Grades", "Weights", "Values", "Good of the Association", "Resolutions", "Membership", "Revenue", "Auditing of Accounts", "Terms of Sale", and "Price Lists".<sup>13</sup>

The objects, as shown in the section of the constitution added in 1906, were "to secure a full understanding of the conditions surrounding the lumber market in the territory covered by this association; to adopt uniform grades for the inspection of lumber; to promote uniform customs and usages among manufacturers of lumber; to procure and furnish to these members such information as may tend to protect them against unbusinesslike methods of those with whom they deal, and such other information as may be found for the benefit of members; and to propose and carry out such other measures as may be deemed for the welfare and in the interest of manufacturers of lumber who shall be members of the association."<sup>14</sup>

This association was one of the pioneers in classifying lumber into uniform grades and sizes. By a system of rigid inspection it was able to enforce among manufacturers of yellow pine its rules pertaining to grades, sizes, and weights. What is more important from the point of view of open price work is that these inspectors, employed by the association, kept the central office informed as to the actual amount of yellow pine in stock among members. In addition, each of the members furnished the central office with reports of stock, lumber manufactured, and shipments made. Thus the secretary knew the amount of lumber being manufactured, by whom, the amount being sold,

<sup>13</sup>*Report of the Commissioner of the Court, State vs. Arkansas Lumber Co. et al.*, 169 S. W., p. 154.

<sup>14</sup>*Ibid.*, p. 152.

by whom, and the amount of stock remaining in the hands of each respective manufacturer. This information was disseminated from time to time among the membership by mail or at meetings.<sup>15</sup>

The feature of the association's work which probably is of most interest to the student of open price systems is its price activity. Here is found what is undoubtedly, among lumber associations, the earliest instance of the issuance of price lists. From its organization in 1890 the association issued price lists to members, and to the trade.<sup>16</sup> They were published in booklet form to 1906, and subsequently as a market report. The work of preparing the list was done by a committee until 1906, when it was turned over to the secretary. In order to aid him in getting out the price list, members were requested to submit, occasionally, reports of sales. Another purpose in calling for these reports was to determine if members were observing the association price list. The procedure followed was for the secretary to mail to each member a sheet, which was a copy of the price list in force, with a blank column at the right of the column of prices quoted. The correspondent in answering, if selling or offering at the figures contained in the price list, would make no change upon the sheet. If there were items which he had sold that were lower than the list, he would insert the prices at which he had sold or was offering in the space in the blank column opposite the item; if higher than the price list, the same method was employed.<sup>17</sup> With this information as a basis, the secretary would issue his price list or discount sheet. The new prices named were usually "boosting" prices.<sup>18</sup> Witnesses for the State testified that with the issuance of a market report, the dealers had to pay the prices named therein.<sup>19</sup> However, members of the association did not all abide by the prices listed. Those who were not financially strong felt impelled to move

<sup>15</sup>*Ibid.*, p. 154.

<sup>16</sup>*American Lumberman*, June 22, 1912.

<sup>17</sup>*Report of the Commissioner of the Court*, State vs. Arkansas Lumber Co. et al. 169 S. W. p. 156; also *American Lumberman*, June 20, 1912.

<sup>18</sup>*Report of the Commissioner of the Court*, p. 159.

<sup>19</sup>*Ibid.*

their stocks quickly by cutting below the list in order to get ready cash with which to meet obligations.

The court found members of the Yellow Pine Association guilty not only of fixing prices to be charged for yellow pine lumber, but of curtailing output by agreement and concerted action.<sup>20</sup> The reports of production, shipments, and stocks were a ready instrument with which to consummate this conspiracy to curtail production. Concerted action was secured at meetings. In 1904 a resolution was passed to the effect that each member should curtail his output thirty-three and one-third per cent for a period of ninety days. A large number acted in accordance with the resolution.<sup>21</sup> The monthly reports of cut, shipments, and stocks received by the secretary were used as a check in determining how well members were complying with the resolution. After the first period had elapsed, a second period of curtailment of ninety days was recommended with like results.<sup>22</sup>

As late as 1912, three or four years after suit had been brought against members of the Yellow Pine Association, they continued to exhort each other to cut down production and boost prices. The character of these so-called "experience" meetings is pretty clearly shown by the following extracts from their round table discussion:

"Things are looking fine for a good year's business if we do not get in a hurry for our golden eggs and kill the goose ourselves. I can say as a general thing for my Texas brethren in the lumber business that they are not taking that step. For the last 60 days I have interviewed every traveling man in the machinery and supply lines and every lumberman coming into the office, and up to the present time I have not found a single instance of anybody increasing his production. If that policy is followed I look for a better year than even the famous year 1907."<sup>23</sup>

Mr. F. G. Dickman said, "We closed orders day before yes-

<sup>20</sup>Suit was begun in 1908; final judgment was rendered in 1914.

<sup>21</sup>*Report of the Commissioner of the Court*, p. 160.

<sup>22</sup>*Ibid.*

<sup>23</sup>Speech of Eli Wiener at monthly meeting of Yellow Pine Association, quoted in *American Lumberman*, July 6, 1912, p. 41.



terday for export which will run us to September and we are not going to run nights or overtime to make that up."<sup>24</sup>

Mr. S. H. Fullerton said, "My experience is much the same as others who have spoken. I think the tide has set onward and upward and that prices of lumber will steadily advance. . . . After hearing the talks here I think I will go home and get our sales manager to put up prices about \$1.00 a thousand. I do not see what is the use of realizing that this situation is on us unless we can take some advantage of it. I see my friend Johnson sitting here and I expect he will put his price up about \$1.50 in order to save some of it for a higher price later."<sup>25</sup>

In handing down his decision, the judge drew a line of distinction between proper and improper price activities and incidentally passed judgment in favor of open price activity as conceived by Mr. Eddy and his followers. This is the only ruling that has yet been made by any State court bearing directly on the legality of exchanging information about past transactions.

In giving his opinion he said, in part, "A price current may be issued under the Missouri Anti-trust laws, but the list or compilation ought either to be compiled and promulgated by an indifferent or wholly disinterested person, or if compiled and promulgated by an interested person, it ought to be honestly and fairly compiled; it ought fairly to represent current prices as based upon actual sales, or upon actual offers to sell, and not misrepresent such prices with a view of boosting any prices of any item or items.

"If Smith, the secretary of the association, pursuing the lawful methods originated by him of obtaining reports from correspondents of actual sales, had fairly compiled and averaged such reports into a list of current prices of yellow pine lumber, we would not say that Smith's acts or acts of the association in this behalf were unlawful."<sup>26</sup>

The judge imposed heavy fines on many of the leading manufacturers. The Yellow Pine Association was disbanded, only to be immediately reorganized, with the help of Mr. Eddy, under

<sup>24</sup>*Ibid.*, p. 41.

<sup>25</sup>*Ibid.*, p. 42.

<sup>26</sup>Opinion of the Judge, *State vs. Arkansas Lumber Co. et al.*, 169 S. W., p. 177.

the name of the Southern Pine Association. Of the open price associations that have been mentioned this association is the largest in point of membership with the exception of the American Hardwood Manufacturers' Association. There were approximately two hundred members in 1918. Since the scope of its activities is very similar to that of the American Hardwood Manufacturers' Association, whose activities are to be reviewed later in this chapter, this subject will be omitted.<sup>27</sup>

The history of the Yellow Pine Association illustrates with what readiness the open price system may be made a tool in the hands of those who would pervert its use in order to accomplish results at once unlawful and injurious to the public.

#### THE AMERICAN HARDWOOD MANUFACTURERS' ASSOCIATION

The American Hardwood Manufacturers' Association, before it recently ceased doing open price work,<sup>28</sup> was the largest open price association in existence. Early in 1920 its membership comprised 383 manufacturers, who operated approximately 465 out of an approximate total of 9,524 mills engaged in hardwood manufacture in the United States, and their output was about thirty-three and one-third per cent of the total production in the United States.<sup>29</sup>

This association came into existence January 1, 1919, as a result of the amalgamation of two associations of hardwood manufacturers, the Hardwood Manufacturers' Association of the United States, with headquarters in Cincinnati, organized in 1902, which drew its membership in the main from the eastern part of the United States; and the American Hardwood Manufacturers' Association, with headquarters at Memphis, organized in 1917, as a consolidation of two smaller groups, which drew its membership almost entirely from the southern part of the United States. The two smaller groups were the Gum Lumber Manufacturers' Association, organized in 1914, and the American Oak

<sup>27</sup>A review of its activities may be found in the *American Lumberman*, March 26, 1920, p. 53.

<sup>28</sup>In March, 1920, the Federal Court for the Western District of Tennessee granted an injunction restraining members from engaging in open price activity. See ch. I, pp. 4-5.

<sup>29</sup>*American Lumberman*, March 13, 1920.

Manufacturers' Association, organized in 1916. Each of these small groups did open price work from their inception.<sup>30</sup> The open price plan operated by the American Hardwood Manufacturers' Association since January 1, 1919, was that adopted by the American Hardwood Manufacturers' Association of the United States, March 1, 1917.<sup>31</sup> The reason for the amalgamation was that these two groups, to-wit, the Hardwood Manufacturers' Association of the United States and the American Hardwood Manufacturers' Association, had an intermingled membership, and were doing more or less the same character of work. It was thought that by avoiding duplication of work much expense could be saved the members.<sup>32</sup>

The objects and purposes of the American Hardwood Manufacturers' Association, as expressed in its constitution, are "to secure a full understanding of conditions surrounding the Hardwood Industry; to adopt such measures as will provide for uniform standards and improved methods of manufacturing and marketing Hardwood Forest Products; to acquire, preserve and disseminate information in connection therewith; and to generally promote the interests and welfare of Hardwood manufacturers."<sup>33</sup>

Membership is limited to manufacturers of hardwood forest products. Each member is entitled to one vote, and this vote must be cast in person or by an authorized representative of the firm; proxies are not permitted. A majority vote of the board of directors is sufficient to elect an applicant to membership. The board of directors has the power to expel any member for cause, by a majority vote.

Upon being elected into membership, members must pay an initiation fee of \$25.00. Dues are graduated according to the volume of production. The rate of dues is fixed by the Board of Directors and are assessed annually by a committee on

<sup>30</sup>An account of the open price work done by the Gum Lumber Manufacturers' Association may be found in the *American Lumberman*, May 23, 1914. For accounts of the organization and operation of the American Oak Manufacturers' Association, see *American Lumberman*, Nov. 14, 1916 and Jan. 27, 1917.

<sup>31</sup>Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1249.

<sup>32</sup>Gadd, F. R., *Record*, Vol. II, p. 1100.

<sup>33</sup>*Constitution*, Art. 2, *Record*, Vol. II, p. 1293.

assessments. They are payable in monthly installments, and any member failing to pay any installment within thirty days after it is due, is subject to suspension.<sup>34</sup>

The officers of the association consist of the president, first and second vice-presidents, treasurer, secretary-manager and twenty-one trustees. The president, vice-presidents and treasurer are elected annually by the membership; the trustees, every third year. The secretary-manager is appointed and has his salary fixed by the board of directors. The latter consist of the elective officers and trustees. The executive committee is made up of the president and six of the directors. The latter are appointed by the president at the annual meeting, and serve one year, their appointments being subject to the approval of the board of directors. The duties of officers and directors are those which ordinarily go with their offices.<sup>35</sup>

In addition to these officers and directors there are a number of standing committees appointed annually by the president, subject to ratification by the members. The scope of the activities of the association is pretty well indicated in noting the scope of the activities of these permanent committees.

The committee on membership takes such steps as are necessary to increase the membership of the association, and passes upon the eligibility of those making application for membership. The committee on assessments assesses the annual dues. The committee on advertising passes upon and handles the advertising programs of the Association. The committee on finance audits the books of the association and supervises financial matters in general. The committee on resolutions handles matters which would properly come before such a committee. The committee on reports and statistics works out plans for securing and tabulating such information and statistics as will be of value to the membership. The committee on inspection rules deals with all matters pertaining to inspection and grading. Then there is a committee representing the interests of each wood, which undertakes to promote and take charge of such scientific and commercial investigations as will inure to the benefit of the

<sup>34</sup>*Constitution*, Art. 3, *Record*, Vol. II, p. 1293.

<sup>35</sup>*Constitution*, Art. 8, *Record*, Vol. II, p. 1297.

manufacturers of that wood. These woods are gum, oak, poplar, ash and hackberry, cottonwood, chestnut, elm, maple, cypress, hickory and pecan, walnut, and sycamore. There is another committee which exists to promote the interests of manufacturers of sawn and sliced veneers, and another for manufacturers of commercial rotary veneers.<sup>36</sup>

Annual and monthly meetings are held, and special meetings may be called by the president or by a majority of the board of directors. At the annual meetings officers are elected for the ensuing year.<sup>37</sup> In addition it is customary for the president to review in a general way, and the secretary more in detail, the work accomplished by the association during the year. The monthly meetings have been held by groups in the various regions of production. These group meetings have been held at Cincinnati, Ohio; Memphis, Tennessee; New Orleans, Louisiana; and Little Rock, Arkansas. They have been held at these points as a convenience to the members in attending. In order to have the discussion at these meetings proceed in an orderly and systematic manner, the manager of statistics was in the habit of mailing to each member, a few days in advance of the date of the meeting, a questionnaire containing a request for information bearing on market conditions as related to the hardwood industry.<sup>38</sup> In the light of the replies received to the questions, members present at meetings would discuss the various subjects developed by the answers. The minutes disclose that these discussions were free and open. Outsiders, including competitors and buyers, freely participated in them.<sup>39</sup> At practically every group meeting manufacturers and other people not members of the Open Competition Plan were present.

If one were to make a summary of the chief points that usually came up for discussion in these meetings, perhaps the following would be representative:

1. The class of customers from which most inquiries and orders were coming. Answers to this question showed what

<sup>36</sup>*By-Laws*, Art. 2, *Record*, Vol. II, pp. 1300-1301.

<sup>37</sup>*Constitution*, Art. 6, *Record*, Vol. II, p. 1296.

<sup>38</sup>Gadd, F. R., *Record*, Vol. II, p. 1101.

<sup>39</sup>*Ibid.*, p. 1104.

industries, consuming hardwoods, were most active, and served to guide members in determining on what kinds of lumber to accentuate and diminish production.

2. The length of time that it would take members to ship out total orders on hand, working under normal conditions. The answer to this question obviously disclosed the amount of unfilled orders on hand, indicating whether business was good or not.

3. The total production of hardwoods for the past month. These data when compared to normal production showed whether or not there was a tendency to accelerate or slow down production. When considered in relation to the size of stocks on hand and volume of orders, it was possible to discern roughly whether the tendency was in the direction of overproduction or underproduction.

4. The total present stock of hardwoods, sold and unsold. These data when compared to the normal stocks on hand, and taken in relation to the volume of production and orders, were criteria of the probable future trend of prices, and also served to guide members in formulating their production policy.

5. The condition of labor as compared to thirty days ago and the causes for any changes that might have come about. The efficiency and availability of labor, of course, had a direct bearing on the quantity and quality of production.

6. The character of the car supply as compared to thirty days ago. The answer to this question obviously revealed with what dispatch shipments were going forward to customers.

7. The character of collections as compared to thirty days ago. These data revealed the financial conditions prevailing among customers in the consuming industries, and reflected to some extent the general financial condition of the country.

8. The number of mills, if any, expecting to shut down; the length of time they were to remain shut down and the reasons therefor. The answer to this question revealed to a degree the future trend of production.<sup>40</sup>

The reporting plan, as inaugurated by the Hardwood Manufacturers' Association of the United States in 1917, and taken

<sup>40</sup>*Minutes of Meetings, Record*, Vol. I, pp. 104-223; also Gadd, *F. R. Record*, Vol. II, pp. 1101-1103.

over by the American Hardwood Manufacturers' Association in 1919, provided for, first, production reports; second, sales reports; third, shipping reports; fourth, stock reports; fifth, price lists; sixth, inspection reports.<sup>41</sup>

Reports of production were to have been made to the secretary, monthly, each wood being classified according to grades and thicknesses, and the secretary was to have sent to each member, once a month, a summary of the production for the previous month, but this feature of the plan had to be abandoned because a sufficient number of mills did not turn in reports to make the information complete enough to be representative.<sup>42</sup>

The sales report, as originally planned, was retained, with the exception of a few minor changes. Members were required to make a daily report of all sales and cancellations, and these were to be exact copies of orders taken and were to include all agreements. These reports were compiled and issued to members weekly, in printed form. The plan, as it originally stood, involved publishing the names of customers, but this was discontinued as it was found that some of the members objected to publishing the names of their customers. The sales report mailed to members, as finally evolved, showed for each kind of wood and grade the date of sale, by whom sold, the number of feet sold, the thickness, the destination by city or territory, the delivered price made to the customer, its equivalence at a common gateway, such as Cairo or Cincinnati, and the current average of sales at these gateways. The purpose of the gateway price was to put all prices on a common basis for comparison. Comparison of the actual prices received was not possible because of difference in freight rates to different points. "Projection of prices to their gateway equivalent" put all prices on a common basis, thus making them comparable.<sup>43</sup>

Having members make reports of shipments was a phase of the plan that was never put in operation. It was found impracticable to do so. These reports were to have been made

<sup>41</sup>Gadd, F. R., Exh. 12, *Record*, Vol. I, p. 82.

<sup>42</sup>Gadd, F. R., *Record*, Vol. II, p. 1107.

<sup>43</sup>See copy of sales report, appendix, Exh. 6.

daily by members, and were to have been exact copies of the invoice. They were to have been summarized by the secretary, much in the same way that reports of sales were summarized, and mailed weekly to members.<sup>44</sup>

Reports of stocks were made monthly to the secretary, showing the amount of stock in each grade, kind, and thickness on hand the first of the month. Three columns were provided. The first two columns showed the total stock on hand both sold and unsold divided into green and dry. The third column showed the total stock of each kind, grade, and thickness sold. The secretary compiled all reports into one report, showing for each grade, kind, and thickness, in separate columns, total dry stocks, total green stocks, stocks sold, stocks oversold, stocks unsold, stocks unsold for the month previous, and the increase or decrease in stocks unsold.<sup>45</sup>

Price lists were to have been filed by each member with the secretary at the beginning of each month, and any changes of prices were to have been filed as soon as made. The secretary was to have sent out each month a summary of these price lists showing the prices asked by each member, and any changes reported by members were to have been immediately transmitted by the secretary to all members. However, this phase of the plan was discontinued because many members did not publish price lists regularly, and the information was not sufficiently complete to be representative.<sup>46</sup>

Inspection reports were submitted to the secretary by inspectors who were employed to check up on the grading of members. This report to the secretary showed the grading of the various mills and also the association inspector's grading on the same shipments. It was relayed by the secretary to all members. The purpose, as expressed by the organizers of this plan, was not to change any member's grading, but to furnish each member with a "basis upon which he can compare his prices with

<sup>44</sup>Gadd, F. R., *Record*, Vol. II, p. 1107.

<sup>45</sup>See copy of stock report, appendix, Exh. 10.

<sup>46</sup>Gadd, F. R., *Record*, Vol. II, p. 1107.



those of other members, thereby making the price reports more intelligible and accurate."<sup>47</sup>

The remaining feature of the plan was a market report letter which was to have been issued monthly by the Committee on Reports and Statistics. The intention was to have the committee give its idea of the market and incorporate a general analysis of market conditions.<sup>48</sup> However, the work of getting out this market letter was turned over to the secretary. He did not mail out the letters monthly as was provided for by the original plan, but issued them at irregular intervals. They were written on a great many different subjects bearing on matters of business interest, but in the main they were an expression of the secretary's understanding of industrial conditions as related particularly to the hardwood industry.

These letters seem to have been the chief cause of the action of the Government in filing suit against the members of the Association.<sup>49</sup> The contention of the Government was that they were written with the purpose of inciting members to "boost" prices, and that a conspiracy existed among members to effect this end. The writer, having read them, inclines toward the point of view that these letters did little more than point out the actual conditions of the market. These conditions were such as would inevitably have led to rapidly rising prices, irrespective of any conspiracy that may or may not have existed. The following quotation taken from the report on the lumber industry, made June 1, 1920, by the Forest Service of the United States Department of Agriculture, depicts very succinctly conditions as they prevailed early in 1919, the time that the Government alleges the conspiracy began:

"The termination of the war found the lumber industry with depleted stocks. Production during the war had been much less than normal on account of shortages of labor and equipment and embargoes on transportation. A large part of the lumber produced had been taken by the Government for war purposes. During the same time, the normal construction of

<sup>47</sup>*Report of Open Competition Plan, Record, Vol. I, p. 86.*

<sup>48</sup>*Ibid.*, p. 87.

<sup>49</sup>For an account of the Hardwood case, see chapter 8, pp. 157-160.

dwellings and industrial structures and the use of lumber in many manufacturing industries had been greatly curtailed. Following the war these pent up demands were released. They caught the lumber industry not only with its stocks short and broken from war conditions, but unable on account of labor difficulties, lack of freight cars, and bad weather in important producing regions, to respond rapidly with increased production. Aside from the general causes affecting prices of most commodities, the expansion of credit accompanied by currency inflation and the wave of speculation and extravagance, an 'auction' lumber market would no doubt have resulted from frenzied competition of buyers to obtain the limited stocks available, wholly inadequate to satisfy current demands.

"Under the combined influence of the general conditions making for high prices and this situation in the lumber industry itself, prices rose to unprecedented limits. In March, 1920, average mill prices in the South and West had increased 300 percent and more, over the prices received in 1914, and average retail prices in the Middle West showed increases ranging from 150 to 200 percent. In the case of the high quality hardwoods and other specialized products, the average advance in eastern wholesale markets was from 200 to 250 percent, and the demand at this advance was still unsatisfied."<sup>50</sup>

This extract is written from the point of view of the whole lumber industry, but the conditions named therein were peculiarly applicable to the hardwood industry. Several hundred pages of testimony were taken in the Hardwood case, gathered not only from members, but from disinterested non-members and buyers, substantiating the point of view that conditions of supply and demand were such as to produce a runaway market. Prices rose so high that members became alarmed lest they should react unfavorably on the hardwood industry by causing purchasers to resort to substitutes. Some of the leading producers attempted for a time to stem the tide of rising prices by refusing to raise their own, but the current was too strong for

<sup>50</sup>Report of the Forest Service of the U. S. Department of Agriculture, *Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, June 1, 1920, p. 34.

them, and seeing that their efforts were of no avail, they resumed the policy of taking the price that market conditions made it possible to secure.<sup>51</sup> Instances are given where buyers offered producers premiums in order to get the stocks they so urgently required. They bid against each other for the available stocks.<sup>52</sup> If there was a conspiracy to raise prices, it at least did not result in raising the prices secured by members to a higher level than those secured by non-members. A comparison of the prices of members and non-members discloses this fact, as does the testimony of several buyers who purchased from both classes of producers.<sup>53</sup> The conspiracy, if there was one, was of an innocuous kind. In the face of the facts here reviewed, it is difficult to understand what incentive there could have been for producers to conspire to raise prices when buyers were willing to take their stocks at any price, almost, that they cared to designate, even at times offering a higher price than producers were quoting.

From the standpoint of avoiding prosecution at the hands of the Government, at least, the action of the secretary of the American Hardwood Manufacturers' Association, in interpreting statistics to members in such a way as to elucidate to them the course of action that their self-interest should lead them to take, seems indiscreet, and is so regarded by the Eddy association secretaries. The latter appear to be careful not to do more than convey information bearing on actual transactions, leaving members free to come to an independent decision regarding their price and production policy. There is no evidence that the secretary attempted to influence members in their price and production policy in any other way than through these market letters. Neither does it appear that this association has been guilty of issuing price lists, with the intent of bringing about

<sup>51</sup>Ritter, W. H., Exhibit, *Open Letter to Hardwood Manufacturers and their Patrons*. *Record*, Vol. II, p. 1277.

<sup>52</sup>*Minutes of Meeting held at Cincinnati, Ohio, June 10, 1919, Record*, Vol. I, Exh. No. 388.

<sup>53</sup>See chart No. 1, Chapter 9; see also Dulweber, B. F., *Record*, Vol. III, p. 1653; Bayer, J., *Record*, Vol. III, p. 1617.

uniformity among members in their price quotations, as have most of the other lumber associations.

The failure of the secretary to obtain all the data from members contemplated in the original plan illustrates how very difficult it is to operate successfully an open price plan where the association membership is large and scattered over a wide area of territory.

#### PUBLIC AND ECONOMIC ASPECTS OF THE LUMBER INDUSTRY IN THEIR RELATION TO THE OPEN PRICE PLAN

There are certain serious evils attending the production and distribution of lumber which exercise a detrimental effect not only upon the best interests of manufacturers themselves, but also upon those of the public, in their capacity of consumers of lumber. The aim of this section will be to discuss, first, the character of these detrimental influences, and second, such remedies as seem applicable to the situation, giving special emphasis to the rôle that the open price plan can play, perhaps, as a remedial measure.

The chief evils associated with the lumber industry may be traced back to two leading sources. One finds its fountain head in the feverish speculative activity in timber lands that has gone on in the past; the other in the character of the industry itself. Disregarding the forces that have led to this speculative activity, its result has been to build up an excessive burden of timber investment. Excessive timber investments have created a need for meeting current charges thereon. In order to obtain the funds with which to meet these charges investors have been constrained to produce as much lumber for the market as possible, with the result that the lumber industry has been built up beyond its needs.<sup>54</sup> This close alliance with timber speculation, has made lumber manufacture "the tail of the dog, existing not as a business in itself, conducted on its own merits, but solely as a means of getting rid of timber when speculative

<sup>54</sup>*Some Public and Economic Aspects of the Lumber Industry*, Report No. 114, by the Forest Service of the Department of Agriculture, issued Jan. 24, 1917. Exhibit "A," *Record*, Vol. II, p. 1177.

<sup>56</sup>*Ibid.*, p. 1181.

interests dictated."<sup>55</sup> Excess mill capacity, taken together with the burden of meeting obligations to pay interest on bond issues and principal on maturing bonds have been a pressure for the steady running of mills which has led to periodic overproduction.

The character of the industry itself, by giving rise, among manufacturers, to a strong spirit of individualism, has had its effect on the production and distribution of lumber. The nature of the industry has been such as to isolate manufacturers from one another. Sawmills have been numerous and have been spread over a wide area of territory because timber is spread out over a wide area, is of great weight and low value and can therefore not be shipped long distances to be manufactured.

The very spirit of self-reliance and independence fostered by the rough, physical conditions characteristic of the lumber industry has been a source of weakness as well as strength. Not being willing to submerge their individuality to the extent of acting together in a common program, manufacturers have looked askance at associated activity intended to better conditions in the industry. Such associations as have come into existence have been sponsored chiefly by the more progressive and intelligent class of producers. They have been very distinctly in the minority. In consequence there has been a lack of common understanding concerning the situation in the industry. This lack of cohesion in the industry has been further accentuated by the fact that the lure of speculation has drawn into the industry men from many walks of life differing widely in experience and point of view. The lack of common understanding concerning the problems confronting the industry, growing out of the failure to cooperate, has no doubt had its influence in bringing about periodic overproduction.<sup>56</sup>

One of the best illustrations of this diversity in point of view is the manner in which the various producers have coped with depressed market conditions. Some operators have met the situation by curtailing their output; others by running double shift in an effort to decrease cost of production.<sup>57</sup>

Some alleviation from the effects of overproduction might have

<sup>55</sup>*Ibid.*, pp. 1179-1182.

<sup>57</sup>*Ibid.*, p. 1182.

been secured if operators only could have known how to widen the market for their product, but, engrossed as they have been in overcoming the difficulties with which the production of lumber has been fraught, they have overlooked the importance of learning to merchandise their product properly.

What has made matters worse is the change that has taken place in the character of consumption. Operators have gone on producing on the assumption that there is a more or less fixed demand for lumber. As a matter of fact the demand for lumber has been changing from year to year. The use of substitutes has been mainly responsible for the more or less regular decline in the consumption of lumber that has been taking place in the past few years.<sup>58</sup> Ineffective adjustment of output to changes in the volume of consumption is therefore another of the reasons for overproduction.

Periodic overproduction has led to severe price fluctuations.<sup>59</sup> Occasional years of high earnings have usually been followed by periods of small profits or actual losses. It may be remarked in passing that a small percentage of overproduction is sufficient to cause a material drop in prices because of the inelastic character of the demand for lumber.<sup>60</sup> Instability of market conditions has been a bane to operator and buyer alike. Many financially weak operators have been forced to liquidate their investments. This weeding out process, altho of value in some instances, in eliminating inefficient producers, may be carried too far; it may lead to monopoly, unless ways and means are found of protecting those who produce efficiently but find themselves the victims of unstable market conditions. In some instances buyers have declared that if the open price plan has the effect of stabilizing prices no objection to its adoption among operators will be raised by them. What the buyer desires above everything else is a stable market. In this connection the secretary of the Ohio Association of Retail Lumber Dealers has written the following: "I am rather of the opinion that this method of stabilizing market conditions will one day be insisted upon as

<sup>58</sup>*Ibid.*, p. 1167.

<sup>59</sup>*Ibid.*, p. 1134.

<sup>60</sup>*American Lumberman*, Oct. 6, 1917.

essential to economical distribution and stable market conditions."<sup>61</sup> When prices fluctuate severely buyers are uneasy lest their competitors shall succeed in buying their requirements at a lower figure than they have been able to do, and in consequence undersell them.

The public also feels the effects of the unstable conditions resulting from periodic overproduction. With a radical decline of prices many financially embarrassed operators feel impelled to lower the cost of production by dumping an increased output on the market. The economic demand is not such as to warrant this increased output; lumber is therefore wasted. Further waste is brought about because of the fact that on a declining market it becomes unprofitable to market the lower grades of lumber, the result being that they remain unutilized. In his argument before the Supreme Court in the *Hardwood* case, Mr. Boyle, attorney for the defendants said, "If you have a declining market in this industry, as all of the members of this court know, it must follow that when you get to the point where production cost is equal to the price paid, only the best part of the log will be brought to the saw, and as a result millions upon countless millions of feet of timber are wasted every year, because they cannot afford to bring it to the mill."<sup>62</sup> Of course the public has to foot the bill for this waste.

The remedies for the situation that confronts the lumber industry as pointed out in the report of the Forest Service may be summarized as follows: 1. A more adequate supply of capital for the purpose of properly financing operations. 2. Reductions in excess mill capacity. 3. More efficient equipment and technical methods. 4. Better use of raw material. 5. Better merchandising of the product. 6. Sounder methods of accounting. 7. Current publication of prices.<sup>63</sup>

The work that lumber associations can do in bringing about improvements along the lines indicated above is apparently

<sup>61</sup>Torrence, Findley M., Secretary of the Ohio Association of Retail Lumber Dealers, letter dated Dec. 31, 1920.

<sup>62</sup>Boyle, L. C., Oral Argument before the Supreme Court of the U. S., *American Column & Lumber Co. vs. U. S.*, Oct. 20, 1920.

<sup>63</sup>Report dated Jan. 24, 1917, Gadd, Exhibit "A," *Record, American Column & Lumber Co. vs. U. S.*, Vol. II, pp. 1190-1195.

deemed of considerable value, for the report goes on to say: "A number of large trade organizations seeking the last word in the efficiency of each department would undoubtedly benefit the whole industry in extending its markets, exploiting its by-products, and developing standards of efficiency in all branches. And they would unquestionably benefit the public through improved service."<sup>64</sup> Following this the report proceeds to name and describe the functions which such associations may properly undertake. Among these prominent mention is made of the gathering, compiling, and disseminating of trade statistics: "Current trade statistics necessary to keep lumber manufacturers informed on the condition of the market . . . include data on the volume of orders, shipments, and lumber stocks on hand, the prices which are being paid for various grades, special demands for certain grades or products, the price and supply of competing materials; in a word, the information needed to keep the lumber manufacturer in touch with the market which he supplies."<sup>65</sup> Then follows a brief in defence of open price work: "This activity of associations does not involve manufacturers' agreements to curtail output or fix prices. Such restraints of competition would be facilitated by the statistical work of associations, but they are totally different things. The function of the association is to give each operator individually the facts which he needs to conduct his business intelligently in relation to the changing conditions of his market. This function is doubly necessary when the market is at a great distance from the mills.

"There is a clear cut line between these services to individual operators through an open price association and activities in restraint of trade. With adequate safeguards the public should encourage such forms of coöperation among manufacturers as a necessary means of making the lumber industry more efficient. The activities of trade associations should be safeguarded (1) by the coöperation and control of a responsible public agency like the Federal Trade Commission, and (2) by systematic publicity."<sup>66</sup>

<sup>64</sup>*Ibid.*, p. 1195.

<sup>65</sup>*Ibid.*, pp. 1197-1198.

<sup>66</sup>*Ibid.*, p. 1198.



In a later report on the lumber industry, the Forest Service of the Department of Agriculture makes a rather positive statement regarding the stabilizing influence on prices of the exchange of price information, and its consequent benefit to seller and buyer alike: "Solely as a matter of information, the current distribution of prices received by different members of the association tends to unify the rates at which lumber is offered for sale and to make increases or decreases in accordance with the fluctuation in the market more nearly similar at all producing plants. The same information would doubtless be of equal value to buyers of lumber, particularly to the small buyers less able to keep posted upon market fluctuations, if available to them."<sup>67</sup>

No doubt the public would profit immensely if remedies could be invoked which would prevent the tremendous waste of timber that occurs when, through overproduction, prices decline so radically as to make it unprofitable for operators to attempt to market the lower grades of lumber. The exchange of information among producers, is, as the report of the Forest Service makes clear, not the sole remedy, but it certainly has a very important part to play in eliminating unsatisfactory conditions. This is particularly true because it has been found next to impossible to arrive at the cost of producing individual items of lumber. In the logging operations, "it is almost impossible to allocate the cost to the various species, altho there is known to be a difference in the cost of handling them, by reason of difference in the size of the logs, the relative positions in which the various species grow in the forest, etc. Even if such difference could be ascertained so that the logging cost would be allocated properly to each species, or even to each log, the continuity of this allocation could not be maintained, because various grades and sizes of lumber are produced from each log."<sup>68</sup> Therefore in establishing a selling price for each grade the producer has no cost basis to guide him. It costs no more to

<sup>67</sup>Report by the Forest Service, U. S. Department of Agriculture, *Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, issued June 1, 1920, p. 68.

<sup>68</sup>Stark, M. W., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1246.

produce the better grades than it does the poorer, but a considerable proportion of the latter will not bring a price that will cover the cost of production. In order to secure a profit a good enough price must be obtained for the better grades to insure that the average price received on all varieties of grades and kinds is higher than the average cost of production.<sup>69</sup> It is clear from these statements that in establishing a selling price for each grade the producer has a very inadequate cost basis to guide him. Finding that he cannot use costs as a proper basis for determining selling price, he is at sea regarding a solution, unless he can obtain information of a kind that will give him an idea of the trend of the market. Hence he finds that a knowledge of conditions, such as is afforded him by membership in an open price association is a most valuable asset in formulating a selling policy.

No doubt a widespread knowledge among producers of the vital market and trade statistics would go a long way toward eliminating the conditions which are responsible for the maladjustment of demand and supply, and which leave a heritage of economic waste that must be borne by the public. Being well informed, producers probably would find it to their interest to direct their production in such a way as to bring about a more normal adjustment of supply to demand. If, for instance, they should find that the stocks of a certain item are low, and orders seem to be well sustained, they would undoubtedly accentuate production of that item in the hope of getting the benefit of higher prices that might be expected to result from the low condition of stocks. On the other hand, if orders for an item should show signs of declining, while stocks seemed to be well supplied, and in reflection of these conditions, prices should show signs of sagging, no doubt the well informed producers would cut down production of the item affected. In the one case, where production is stimulated, a stringency of supply, accompanied by an abnormally high price, is prevented. In the other case, where production is diminished, an oversupply, accompanied by an abnormally low price, is prevented. In other words, supply comes to be adjusted to demand at more or less normal price levels. As

<sup>69</sup>*Ibid.*, p. 1247.

a consequence the sudden dips of prices that have so often made it unprofitable to attempt to market any but the best grades of lumber tend to be eradicated. With prices confined to normal levels, the prospects for profitably marketing the poorer grades are greatly enhanced. On the assumption that this is the result, the public profits thereby through the conservation of its timber resources.

## CHAPTER VIII

### REGULATORY ASPECTS OF OPEN PRICE ACTIVITY

The aim in this chapter is not to pass an opinion upon the legality of the open price plan, but, first, to call attention to such court cases as attorneys consider have a bearing on the plan; second, to review such opinions relative to the plan as may have been expressed by prominent members of the legal fraternity; third, to briefly recount activities engaged in by so-called open price associations that may be considered in contravention of law and suggested remedies for these abuses; fourth, to interpret the attitude assumed by various departments of the Federal Government toward the plan.

Members of the open price associations are in a quandary as to their standing before the law. The question at issue is whether the activities of these associations are in violation of State and Federal anti-trust laws. Perhaps the fundamental proposition involved reduces itself to this question: are members within their lawful rights in associating for the purpose of furnishing each other with accurate information of conditions in the industry in which they are engaged, including stocks on hand, rate of production, and prices at which the product has been sold, and does such association cease to be lawful because, being informed by the knowledge so obtained, but without agreement of any kind, the individual members may ask different prices or produce in different quantities, than they would have done had they not been so informed?

For the first time an opportunity has been afforded the Supreme Court of the United States of determining the legality of the open price plan. The defendants involved are the members of the American Hardwood Manufacturers' Association. They made an appeal from the final decree of the District Court in the Western District of Tennessee, Western Division, in a proceeding

brought by the United States under the Sherman Anti-Trust Act, to enjoin them from continuing an alleged combination to enhance the price of hardwood lumber. There were 329 corporations, firms, and individuals involved. All were members of the "Open Competition Plan" of the association. The alleged conspiracy to enhance prices began in January, 1919, and continued to the date of the filing of the bill of complaint in February, 1920.

The alleged means of accomplishing this conspiracy may be briefly described as follows:

1. Compiling and distributing monthly stock reports and production reports.

2. Printing and distributing monthly bulletins which called attention to a shortage of hardwood lumber and admonished members to exact higher prices, but not to meet the shortage by increasing production.

3. Compiling and distributing weekly sales reports.

4. Printing and distributing a bulletin containing excerpts from commendatory letters which the secretary received from members, and which were alleged to have been explanations by members of the manner in which the reports of sales were used in enhancing future prices.

5. Discussing prices at monthly group meetings "so as to produce mutual approval for high prices received, and mutual oral predictions that high prices would continue."

6. Compiling and distributing monthly replies to questionnaires "constituting an exchange of written predictions by the defendants that prices would continue high."<sup>1</sup>

The main attack of the Government was directed at the market letters which the Manager of Statistics issued to members at irregular intervals. The defendants in their answer admitted that they were exchanging information of the kind described in the bill of complaint but denied that this activity was carried on as a means of accomplishing by collusion the enhancement of prices or the curtailment of production.

The judge in the case decided that there was "a common note running through all the evidence," namely "increase in prices,"

<sup>1</sup>*Brief for the United States, American Column & Lumber Co., et al. vs. U. S., pp. 2, 3.*

and therefore granted an injunction which permanently forbade defendants to participate in any open price activity.

On appeal, the case went direct to the Supreme Court. Hearings were held on October 20, 1920. Apparently the Court has not been satisfied with the evidence then presented because there is to be a rehearing on April 11th, 1921. Business men who are interested in the open price plan hope that the Court will give the question of legality of the open price plan a broad and comprehensive treatment and that some fixed general rules of a constructive nature will be laid down which will make clear to what extent coöperation may be legitimately carried on.

To enter into the merits, pro and con, of the Hardwood case from a legal point of view would lead the writer into a ramification of legal discussion such as he, as a layman, does not feel competent to undertake.<sup>2</sup> At all events it is thought that such a discussion would lead away from the real point at issue, namely the legality of the open price plan taken in the abstract. The reason for this point of view is that the charges made by the Government against members of the American Hardwood Manufacturers' Association may be regarded as being directed, not against the plan as conceived by Mr. Eddy, but against an abuse of the plan. Statements were made in meetings and bulletins which the Government alleges were evidence of a conspiracy to suppress competition. These statements were not necessary accompaniments of the open price plan. In fact, it is thought that an open price association under the guidance of Mr. Eddy or his associates would never have allowed loose statements of the kind made by the Manager of Statistics and members of the Hardwood association to gain currency. The Government took occasion to condemn the open price plan because it seemed to be the instrument by which the alleged conspiracy was consummated. If it was so used it constituted an abuse of the plan. Even if the court did establish that the plan was so abused, that fact could not be regarded in the light of a demonstration that the plan when not so abused would be illegal.<sup>3</sup>

<sup>2</sup>In ch. 7 is a short discussion to the effect that the rise in price of hardwood lumber can be explained by attributing it to natural causes. See pp. 145-148.

<sup>3</sup>Felix H. Levy, a prominent attorney of New York City, states in a letter to the

The writer, however, does feel justified in recording an objection to the method employed by the Government in presenting its evidence in the Hardwood case. Isolated excerpts from letters or minutes of meetings were cited or quoted, and then strung together so as to fit in with the theory of the Government. As a result, in reading the evidence, one gets an entirely different conception of its character than he would if the phrases were read in connection with their context. In many instances the evidence so presented is grossly distorted or misleading—as one will discern by reading the letters or minutes of the meetings themselves.

#### DECISIONS APPLICABLE TO THE OPEN PRICE SYSTEM

Barring the opinion handed down by the Missouri Supreme Court in the Yellow Pine case,<sup>4</sup> such case law as seems to touch on the legality of open price work is limited to opinions rendered in the lower Federal courts. In the Hardwood case Judge McCall, who handed down the decision, did not state under what circumstances, if any, open price work would be considered legal. He confined his remarks to a condemnation of the criminal acts alleged to have been committed, these being of a character that may properly be designated as an abuse of the open price plan.<sup>5</sup>

The opinion most often cited by proponents of the open price plan as indicating specific approval of this character of activity was given by Judges Buffington, Hunt, McPherson, and Wooley in the famous Steel case. In commenting on the Gary Dinners they quoted with approval the Government's concession in the original petition: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade," and added, "when the business is manufacturing, of course all

writer, "You will find that the matters complained against by the Government went far beyond the usual procedure commonly described as 'open competition'. Therefore the decision of the Court in overruling the demurrer cannot be deemed to mean a specific finding of illegality against the 'open competition' principle."

<sup>4</sup>For an extended account of this case see ch. 7, pp. 132-137.

<sup>5</sup>See opinion of Judge McCall, Dist. Court of U. S. Western District of Tenn. Western Division, in equity No. 751; U. S. vs. American Column & Lumber Co. et al., p. 61.

this has a direct bearing on the subject of prices, and these conferences may therefore consider that subject specifically."<sup>6</sup> However, the judges went further than this, and made it clear that it would be permissible for individuals who were really acting for themselves to make announcement of future prices but implied that what may be granted to an individual may be denied an association of individuals. The language used was as follows: "And if each individual should choose to announce at such a meeting the specific price he intends to charge for his wares, we are aware of no law that forbids him so to do. But at this point we approach debatable ground, for an individual is permitted to do some things that are denied to an association of individuals.<sup>7</sup> In concluding this phase of the opinion, it was stated that a decision as to the legality of this procedure would depend upon the fact as to whether the action in announcing future prices "was really taken by each individual acting for himself, or whether those present were in fact pursuing a common object."<sup>8</sup>

Attorneys associated with open price associations have construed this opinion to mean that there exists an implied distinction between past and future prices. Mr. Eddy constructed the open price plan on the theory that, altho a discussion and declaration of intent as to future prices in all probability would result in an agreement as to future prices, no such danger would be confronted if discussions and declarations were confined to past prices. However, it may be interpolated that this line of distinction might become exceedingly fine. As the Manager of Statistics of the American Hardwood Manufacturers' Association once remarked, "If you know what your competitor has done up to last week or last night, you are pretty close to knowing what he will do tomorrow and you can act accordingly, with intelligence and wisdom."<sup>9</sup>

<sup>6</sup>U. S. vs. U. S. Steel Corporation, 223 Fed. Rep., 154-155; also Todd, G. C., Argument before the Supreme Court, Oct. 20 1920, American Column & Lumber Co. vs. United States.

<sup>7</sup>*Ibid.*, p. 155.

<sup>8</sup>*Ibid.*, p. 155.

<sup>9</sup>*Annual Report of the Manager of Statistics*, Dec. 1919, *American Lumberman*, Dec. 20, 1919.



In the Chicago Board of Trade Case<sup>10</sup> the court stated: "It is an unhealthy condition of affairs where men are compelled to buy and sell without adequate knowledge of actual market conditions." In this case it was decided that a rule adopted by the Chicago Board of Trade fixing the price at which members should buy grain from country dealers and farmers between the closing of the exchange on one day and the opening on the next did not have the effect of suppressing or destroying competition, but only to reasonably regulate it. One of the grounds for sustaining this rule was that it purposed to correct evils that had resulted from ignorance of market conditions.<sup>11</sup> This decree is often cited by attorneys representing open price associations in support of their assertion that even tho it be true that open price work has a regulatory effect on competition, the illegality of such activity is therefore not established, because as was stated in the Steel case, the Sherman Act "does not compel competition, nor require all that is possible."<sup>12</sup> Attorneys for open price associations contend that the only manner in which open price work "regulates" competition is in the sense of enabling members to determine their price and production policy in the light of accurate knowledge of conditions in the industry.

In the case of the United States vs. Reading Company it was disclosed that there had been an exchange of information among carriers and producers of anthracite coal under the auspices of "The Bureau of Anthracite Coal Statistics." To this bureau members reported monthly their tonnage, their sales at New York Harbor and Brooklyn and prices charged. From these data the secretary of the bureau made up a composite report showing the tonnages, sales at New York Harbor and Brooklyn, and the prices of each member. The report was sent to members of the plan. The court held that this arrangement was not in violation of law.<sup>13</sup>

<sup>10</sup>246 U. S., 231.

<sup>11</sup>Board of Trade of Chicago vs. U. S., 246 U. S., 231, quoted in *Brief, American Column & Lumber Co. vs. U. S.*, p. 52.

<sup>12</sup>U. S. vs. U. S. Steel Corporation, 223 Fed. Rep., quoted in argument of Todd, G. C., before Supreme Court, Oct. 20, 1920, *American Column & Lumber Co. vs. U. S.*

<sup>13</sup>U. S. vs. Reading Company, 183 Fed. Rep., quoted in *Argument of Todd*,

In the case of the United States vs. Aileen Coal Co. et al, it was charged that members had combined to enhance the price of coal by agreement. One item of evidence related to the exchange of information among members regarding their sales and prices. In giving his instructions to the jury, Judge Grubb said in part as follows:

"It is the right of every man in business involving the sale of his product to seek to acquire as full information as to the conditions in the market in which he is selling his product as he can, and it is also entirely within the right of persons in the trade to share that information openly among themselves. Nor does the mere fact that they accompanied this interchange of information with statements as to what each expects to try to obtain for his product in itself constitute such action a combination within the meaning of this Act."<sup>14</sup>

In the case of the State vs. Arkansas Lumber Co., the court held: "If in the instant case there had been touching this price current matter no antecedent unlawful acts of the Yellow Pine Association, if this association had not for years promulgated as current prices lists which falsely represented and arbitrarily fixed the prices of yellow pine lumber pursuant to the adopted report of a committee on values, and if Smith, the secretary of the association, pursuing the lawful methods originated by him of obtaining reports from correspondents of actual sales, had fairly compiled and averaged such reports into a list of current prices of yellow pine lumber, we would not say that Smith's acts or the acts of the association in his behalf were unlawful."<sup>15</sup>

In the case of the United States vs. the Eastern States Retail Lumber Dealers' Association, the principle was laid down that when information is exchanged for the obvious purpose of suppressing competition or raising prices, it becomes illegal to distribute such information. The defendants who were retail lumber dealers compiled and distributed among themselves from

G. C., before Supreme Court, Oct. 20, 1920, American Column & Lumber Co. vs. U. S.

<sup>14</sup>U. S. vs. Aileen Coal Co. et al., U. S. District Court, Southern District of N. Y., *Brief for Appellants*, American Column & Lumber Co. vs. U. S., p. 64.

<sup>15</sup>State vs. Arkansas Lumber Co., 169 S. W., 177.

time to time lists of manufacturers of lumber and wholesale dealers who sold directly to consumers. The object in doing so was "to cause retailers receiving these reports to withhold their patronage from listed concerns." The court held that this object, namely to boycott those who sold direct to consumers, was illegal, and members were enjoined from continuing to distribute this class of information.<sup>16</sup> A similar decision was handed down in a case involving members of the Northwestern Lumbermen's Association, i. e. *United States vs. Hollis et al*, where the purpose also was to prevent manufacturers and wholesalers from selling direct to consumers.<sup>17</sup>

The cases here reviewed were brought into evidence by the defence in the *Hardwood* case in an attempt to prove the validity of the furnishing of information through the medium of an open price association when the object is merely to keep members posted on market conditions, no purpose of using such information to restrain trade being in contemplation. The Government cited no decisions involving the question as to the validity of exchanging information through the medium of a trade association. The cases cited may therefore probably be considered representative of the drift of court opinion. The legality of the practise has apparently been sustained in every case. These decisions may, of course, be disregarded in the opinion which it is expected the Supreme Court will hand down in the near future.

#### EXPOSITIONS OF THE LAW RELATING TO THE OPEN PRICE PLAN

Turning to a consideration of the point of view of attorneys, a considerable number hold that the collection and distribution of business statistics through the medium of an open price association, when properly conducted, is legal beyond doubt. Mr. Arthur Jerome Eddy, the "father" of the open price plan, was to the time of his death<sup>18</sup> the most conspicuous defender of

<sup>16</sup>*Eastern States Retail Lumber Dealers Association vs. U. S.*, 234 U. S. 600, quoted in *Brief for Appellants, American Column & Lumber Co. vs. U. S.*, p. 71.

<sup>17</sup>246 Fed., Rep., 611, quoted in *Brief for Appellants, American Column & Lumber Co. vs. U. S.*, p. 71.

<sup>18</sup>Mr. Eddy died in July, 1920.

the plan. Others are Judge Dickinson, who was prosecutor for the Government in the Steel case; Mr. Elmer H. Adams, of Adams, Childs, Bobb & Westcott, Chicago; Mr. B. K. McCloskey, of Kinnear, McCloskey and Best, Pittsburgh; Mr. Henry A. Wise, late United States District Attorney, New York City; Mr. Rush C. Butler, of Butler, Lamb, Foster and Pote, Chicago; Mr. Wm. J. Mathews, of Wetton, Mathews & Pegler, Chicago; Mr. James L. Bruff, New York City; Mr. Clark McKercher, former assistant to the United States Attorney General, of McKercher & Link, New York City; and W. F. Lehmann, of Lehmann and Lehmann, St. Louis.

What is considered the most famous exposition of the law relating to open price activity is that which Mr. W. F. Lehmann gave to the secretary of the Yellow Pine Manufacturers' Association, in a letter dated April 8, 1909. Mr. Joseph E. Davis, Commissioner of Corporations, regarded this exposition of sufficient worth to incorporate in the volume devoted to "Trust Laws and Unfair Competition" which came out as a publication of the Bureau of Corporations of the Department of Commerce, March 15, 1915. The Commissioner describes Mr. Lehmann as "an eminent member of the American bar."<sup>19</sup> As far as the writer's observation goes, expositions of the law contributed by other attorneys have been essentially a rehash of the arguments presented in this document. Because of its importance, as embodying the interpretation put upon the law by a large number of prominent attorneys who firmly believe in the validity of the open price plan, it is here given in full:

"Mr. George K. Smith,  
St. Louis, Missouri.

"Dear Sir: I have given due consideration to the matters we talked about on Tuesday and have found no occasion to change the opinion then expressed.

"You have the undoubted right to collect and distribute the fullest information you can get of what is being done in the lumber field, with all details as to the amount of production from day to day, the stock on hand, prices asked and received, etc.,

<sup>19</sup>Davis, Joseph E., *Trust Laws and Unfair Competition*, p. 715.

and every man who receives this information has the right to act upon it as he thinks proper. If he thinks more is being produced than can be sold, he can reduce the amount of his cutting, or cease cutting altogether if he chooses, until conditions improve.

"Beyond this, however, you can not go. There can be no agreement or understanding between two or more lumbermen to limit their production and therefore no course of conduct from which such an agreement could be inferred by a court or a jury.

"If some man should go from one lumberman to another getting from each a statement or a promise that he would limit his output in the future and what each man thus said was communicated to the others, and if this were followed by a limitation of the output, a court or a jury would be very likely to infer, despite all protestations to the contrary, that the limitation of output was the result of an agreement or understanding.

"So, too, if one lumberman after another declares that he will hereafter curtail his production and they inform each other of this purpose and then act in accordance with their declarations, a court or a jury would be very likely to infer that this was all in pursuance of an agreement or understanding.

"What is in fact being done, each and all have a right to know. This is no more than is done every day by the market reports in our newspapers. They show, for example, the daily receipts of grain and livestock, the prices received, information as to the visible supply, etc., and farmers individually govern themselves accordingly. The man not pressed for money does not ship his grain or livestock to a glutted market. The lumberman may undoubtedly get like information as to his business and may determine his conduct by it.

"But the action based upon this information must be individual and independent. If he concludes for himself that the market is overloaded and that he cannot produce at a profit, he may curtail or cease producing altogether and for as long a time as he pleases, but if he concludes that he will continue as he is doing, unless his competitors will also curtail or cease production, and there is a curtailment or a cessation as a result

of any sort of a preconcert, agreement or understanding, the law is violated.

"The conditions of the trade, however bad; the price of lumber, however low; the persistence of lumbermen in cutting an amount above the market demands will not legalize an agreement among any number of them to limit the output of their commodity or to fix the price of it. The policy of the law is free competition and it plainly requires that each producer shall conduct his business independently of any compact with his competitors. This does not prohibit any producer from taking into account all the conditions of business in determining his own conduct, and it does not forbid coöperation for the purpose of obtaining information that is useful to each and all.

"I repeat, however, that beyond the collection and distribution of information as to what is being done, you cannot go, and can not state too strongly that any agreement or understanding, no matter how indirect the means by which it is brought about, falls under the ban of the law.<sup>20</sup>

"Respectfully yours,

F. W. LEHMANN."

Some attorneys apparently believe that the operation of the open price plan must inevitably lead to a violation of the law because the plan provides exceptional facilities for the accomplishment of illegal acts,<sup>21</sup> but, as far as the writer's observation goes, few, if any, take the ground that the open price plan, considered in the abstract, is in and of itself illegal.

The practise of members exchanging price lists through the medium of a secretary, regarded in many quarters as an integral part of the open price plan, and engaged in by fully as many associations as pursue the other method of reporting only actual transactions, has, however, met with disapproval. Mr. Eddy, the "father" of the open price plan, is among those who declare the interchange of price lists to be illegal. During the Babson

<sup>20</sup>Davis, Joseph E., *Trust Laws and Unfair Competition*, p. 715.

<sup>21</sup>Mr. Samuel Untermyer, an attorney of repute practising in New York City, holds this point of view. See Hearings before the New York Joint Legislative Committee on Housing, *Record*, pp. 4598-4666.

conference on Coöperative Competition held in October, 1914, various open price plans then in operation were discussed and a final composite opinion of a plan which would cover many lines of business was drawn up. Section three of the plan provided that "Each member shall, without previous consultation or agreement upon the subject with any other member, make up a price list of net prices or discounts as each class of goods may require, which shall be the lowest prices at which he cares to sell, and forward such list to the secretary before a date to be specified by vote of the Association."<sup>22</sup> Mr. Eddy criticized this provision as follows: "In my opinion the law does not permit the filing of price lists as provided in this paragraph, and plans along these lines have been severely criticized. I know of no authority which permits members of an association to file a list of prices, either lowest or highest, 'at which he cares to sell!'"<sup>23</sup> Upon the receipt of these lists the plan provided that the secretary should make up a composite list, stating thereon "the lowest comparative prices found on any of the individual lists submitted to him," and immediately send a copy of this list of lowest prices to each member of the Association.<sup>24</sup> Mr. Eddy criticized this provision as follows: "The precise duty of the secretary is not clearly outlined in this paragraph, but, as worded, the paragraph is clearly open to the objection that it permits the issuance of a more or less arbitrary list for the guidance of the trade; and if so, such practise has been specifically condemned by the courts."<sup>25</sup>

Mr. Felix H. Levy, former Special United States Government Attorney, now practising in New York City, in a speech before the National Pipe and Supplies Association, held at New York City, April 22, 1914, gave it as his opinion that the interchange of price lists was in violation of the Sherman Act. In developing his line of argument he cited an instance where a certain association of manufacturers of machinery devised a plan for interchanging price lists through the medium of their secretary, the purpose being, that "if a buyer came and said so and so is

<sup>22</sup>*Babson's Reports on Coöperation*, C. C-10.

<sup>23</sup>*Ibid.*

<sup>24</sup>*Ibid.*

<sup>25</sup>*Ibid.*

quoting a certain price, the manufacturer could look it up and tell whether or not it was true."<sup>26</sup> The existence of this practise—so the argument runs—implied that members had faith in the veracity of the reports of prices contained in these price lists. The mere fact of the presence of these prices in the price lists constituted no proof in itself of their authenticity, unless members were in some kind of agreement to abide by them. In other words there was present an element constituting a promise, express or tacit, to the effect that members would "stick" to the prices named in their price lists. This, according to the exposition of Mr. Levy, constituted an agreement in violation of the Sherman Anti-trust Law.<sup>27</sup>

Even the most staunch supporters of open price associations among attorneys are frank to admit that members of open price associations are strongly tempted by the facilities afforded them through the operation of the open price system to commit acts condemned by law. Some attorneys regard the open price plan as nothing more than a subterfuge for effecting agreements to enhance prices. The following record of questions and answers taken in the Hearing before the New York Legislative Committee on Housing is illustrative of the points, first, that staunch defenders of the plan admit that it really lends itself to abuse; second, that the plan is regarded as a cloak for the perpetration of illegal practises. Mr. Samuel Untermyer is conducting the examination. Mr. Wm. J. Mathews, a former associate with Mr. Eddy in the practise of law, and now counsel for several open price associations organized by Mr. Eddy is on the witness stand:

Q. "Do you subscribe to this?" reading from Mr. Eddy's book, *New Competition*, page 109: "It is almost needless to point out—referring to these associations of the character that you represent—that the danger ahead of such frank and friendly coöperation is—as the law now stands in this country—the agreement that suppresses competition."

"Given an association in any trade or industry based upon the single agreement to exchange information, there would be the temptation for groups of members to agree upon their bids, to

<sup>26</sup>*Domestic Engineering*, Vol. LXVII, May 9, 1914, p. 203.

<sup>27</sup>*Ibid.*, p. 203.



apportion work and so secure for the time being arbitrarily high profits, by suppressing competition.' You agree to that, don't you?" A. "Yes, the effect of that is . . ." <sup>28</sup>

Q. "That that is the temptation of these associations?"

A. "That the temptation would thereby be afforded. \* \* \*"

Q. Reading: "It is almost as common to hear men say, 'We have an association, but we don't agree upon prices.'

" "What do you do?"

" "Why, I get up and say, 'My price is so and so,' and the others get up and say their prices are so and so.'

" "And the result is, the price of everybody is 'so and so.'

" "Naturally, but we don't agree they shall be, we just exchange views and let prices take care of themselves."

"Do you remember that?" A. "Yes."

Q. "Do you agree that that can be done, that the law is going to be whipped around the stump that way?" A. "No, Mr. Untermeyer. . . ."

Q. "Do you agree to that?" A. "To the effect that they made statements as to what their prices had been. Beyond that I do not agree that they can state what their prices will be. If that means that they can state what their prices shall be I don't agree with that."

Q. "You are skating on pretty thin ice, aren't you, on that proposition?" A. "Sure, it is a very thin line."

Q. "Pretty fine line, so fine it disappears when you look at it?" A. "No, it doesn't."

Q. "Of course you know that business men do not travel across the continent in order to tell one another what their prices have been; don't you know that? Because competitors are supposed to know what their prices have been?" A. "They don't know it and that's one of the purposes of this society."

Q. "You think that competitors in these great industries with their swarms of salespeople out, one man doesn't know what the other man's prices are?" A. "Sure; they find it out very quickly."

Q. "So they don't get together to suggest what their prices

<sup>28</sup>Mathews, Wm. J., *Record*, Hearings before the New York Joint Legislative Committee on Housing, p. 4629.

are or have been—they get together to suggest what their prices should be?” A. “They don’t do that in any of our societies. \* \* \*”<sup>29</sup>

Q. “The principle of the Eddy Plan is coöperation, isn’t it?”

A. “Yes, but not to eliminate competition.”

Q. “You are of the opinion, are you, that there can be coöperation, combination and still competition, are you?” A. “Yes, sir.”

Q. “It doesn’t strike you that those are absolutely contradictory terms, does it?” A. “It does not. \* \* \*”

Q. “Don’t you know that coöperation between competitors is unsafe to the public unless it is guarded by governmental supervision and regulation, so that the public shall not be taken advantage of; don’t you agree to that?” A. “I can see that it can be abused.”

Q. “Now, then, we have at present no governmental regulations over competition, have we, that is opposed to the principle of the present economic system?” A. “Yes.”

Q. “Now, in the absence of government regulation of agreements between competitors, don’t you see the peril of such agreements to the public safety?” A. “Oh, sure.”

Q. “Therefore, until we get government regulation, don’t you see that coöperation among competitors must be suppressed for the safety of the public?” A. “No.”<sup>30</sup>

Mr. Gilbert H. Montague, of the New York Bar, and counsel for defendants in numerous prosecutions under anti-trust laws also has emphasized the danger of open price work leading to violations of the law. Speaking of open price associations he is quoted as saying: “So long as its members enter into no agreement to fix prices or control competition, some say the legality of such an association can hardly be questioned. Probably this is so, but the question will remain, how far removed from fixing prices and controlling competition are the results of such an association? It is a hair line that divides many trade associations from admittedly unlawful combinations in restraint of trade, and during the past five or six years [this statement was made in

<sup>29</sup>*Ibid.*, p. 4624.

<sup>30</sup>*Ibid.*, p. 4629.

1920] there has been an increasing laxity on the part of many trade association officials and some of the lawyers who have been advising regarding the proper limits of trade association activities. Interchange of information, while always dangerous wherever prices are touched upon, would seem to be no impossible feat for trade associations lawfully to accomplish provided always that they observe proper safeguards and precautions."<sup>31</sup>

The Forest Service of the Department of Agriculture, in its recent report on the lumber industry, concludes that the open price system is susceptible of abuse at the hands of those who would divert its activities into improper channels, but apparently there is no thought that open price activity must inevitably lead to violations of the law, for, altho "the assembling and distribution of prices received by different members of these associations obviously forms a possible vehicle or medium for reaching more or less definite agreements or understandings controlling the prices at which lumber is offered, the extent to which they may serve as such a medium depends upon the policy followed by the particular association as to the degree of publicity given to data of this character, upon the efforts which the association may make to induce its members to price their product in conformity with the highest rates shown by the current reports, and upon the extent to which the individual lumber producers or selling organizations may use the data as a basis for price-control agreements or informal understandings. Properly employed, particularly with a large degree of publicity, such information should serve to stabilize the lumber market to the advantage of both producer and consumer."<sup>32</sup>

In the face of the statements made by the staunchest supporters of the open price plan, tantamount to an admission that the interests of the public may all too easily be jeopardized by the unrestrained operation of such a system, it appears that unless open price associations are to be forbidden their existence,

<sup>31</sup>*Printers Ink*, June 24, 1920, p. 44.

<sup>32</sup>*Report of the Forest Service of the U. S. Department of Agriculture on Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber Ownership*, June 1, 1920, p. 68.

some means of regulation or control must be sought, looking toward the end of confining the activities of these associations to their proper channels. Before considering the remedial measures that have been proposed, it may be well to give particular notice to some of the more common methods employed by so-called open price associations in their endeavor to maintain or enhance prices unlawfully.

#### ILLEGAL ACTIVITIES AND SUGGESTED REMEDIES

In the attempt to maintain or enhance prices by means of concerted action, reports pertaining particularly to production, shipments, stocks, costs, and prices play an important part, for they serve to illuminate the competitive situation in such a way as to make clear the course of action that should be adopted in order to accomplish the object in view. If it is thought desirable to seek to achieve the end in view indirectly by curtailing production, a particular study is made of production, order, and stock reports. After learning the conditions of supply and demand therefrom, it becomes possible to determine approximately the percentage of curtailment that is necessary to net members the maximum profit. In the case of the Yellow Pine Association reports of this character were made the basis for determining the percentage of curtailment. Action to curtail was decided upon by resolution. Not only were the reports used for the purpose of determining the percentage of curtailment but the secretary used them after the resolution to curtail had been passed to determine whether members were complying or not.<sup>33</sup>

The use of cost information as a basis for enhancing prices in concert is often resorted to because the circuitous method involved in this procedure is helpful in camouflaging from the gaze of the public the true character of the activity engaged in. Incrimination is therefore less likely to result than if some more direct means were used. In its report on the *Causes of High Prices of Farm Implements*, May 4, 1920, the Federal Trade Commission exposed the practise in vogue among the associations of implement manufacturers of perverting the study of costs to the end of controlling prices. In effect what was done was to

<sup>33</sup>State vs. Arkansas Lumber Co., et al., 169 S. W., p. 160.

have cost comparison meetings at which inflated costs were compared with the tacit understanding that prices would be advanced the same percentage shown by the inflated costs. The standardization of implements, and the equipment that was furnished therewith, was pushed with energy because by means of this achievement not only prices but also costs could be made comparable. With some degree of standardization accomplished, cost committees could proceed to arrange a cost schedule, assigning arbitrary inflated costs to each kind of implement and equipment, these having no necessary relation to actual costs, but serving as a basis for "recommendations" to members that the percentage of increase in costs would justify a like advance in prices. There appeared to be no direct price agreements; no doubt it was appreciated that there lay less risk of detection in controlling prices through cost education. As the report of the Federal Trade Commission states, the "connection between cost study and prices of members was one of subtle group suggestion and unity of group opinion created at meetings rather than one of direct price agreement or other formal action taken to influence prices of members."<sup>34</sup> Reports of prices submitted by members were used to check up their activities to see whether they were following the course indicated by cost study. It is apparent that the cost work done by these associations was not for the legitimate purpose of educating members in proper methods of cost keeping so as to make it possible for them to ascertain their actual costs, but the purpose clearly was to encourage members to advance prices by disseminating among them studies of inflated costs.<sup>35</sup>

There remain to be discussed the various legal abuses attending the exchange of price information. The exchange of price information may take the form of correspondence and conversations indicating prices to be charged or it may be confined to past prices. Most so-called open price associations have been

<sup>34</sup>*Report of the Federal Trade Commission on the Causes of High Prices of Farm Implements*, May 4, 1920, p. 427.

<sup>35</sup>Accounts of the cost activities of the farm implement manufacturers' association may be found on pages 308, 309, 318, 414, 459, 460, 526, 584-587, in the *Report of the Federal Trade Commission on the Causes of High Prices of Farm Implements*, May 4, 1920.

rather circumspect about exchanging information of future prices, because it has been generally believed the courts would look upon activity of this character as almost prima facie evidence of an agreement to enhance or fix prices. However, manufacturers of implements have been exchanging such information among themselves, but they have been careful not to involve their associations as such, in this activity. The following letter of F. G. Allen, General Manager of the Moline Plow Works, to W. B. Brinton, President of the Grand Detour Plow Co., September 17, 1915, is illustrative of their methods:

"It has been our intention since the Bloomington Tractor demonstration to raise the price of our tractor plow. We made a price on our plow which seemed to us to net a legitimate profit, and find that we are below the other people who are making this class of goods, and are disposed to get all we can for our goods, even tho the price we are making nets us an adequate profit. \* \* \* \* We could not see how they could have the courage to demand so large a profit, but we assure you that it is our intention of raising prices just as soon as we can get to it, and that we think will be within a few days."<sup>36</sup>

Prostitution of the system of reporting past prices to the end of maintaining or enhancing prices is most commonly achieved, first, by members, in their individual capacity or through their association leaders, urging each other to strive toward the accomplishment of these objects; second, by the acts of association officers in disseminating data with the purpose of influencing members to direct their energies toward this result.

If dissemination of price data is decided upon, the central office may choose the method of withholding some of the price information received from members, disseminating only that which will seem to indicate that going prices are higher than they really are, or the method may be adopted of issuing to the membership, "suggested" lists of prices purporting to reflect the character of going prices, but in reality being "boosting" prices. Most of the lumber associations have resorted to both methods. In the case of the Yellow Pine Association, the secretary assembled reports of all prices charged by members, but he compiled

<sup>36</sup>*Ibid.*, p. 343.

and disseminated only those which reflected the highest prices secured. This was characterized by the court as a price boosting device.<sup>37</sup> The American Hardwood Manufacturers' Association also adopted the same scheme but very soon abandoned it on the advise of counsel.<sup>38</sup> Mr. L. C. Boyle, attorney for this association, upon being questioned regarding the legality of the practise, replied in part:

"It is my judgment that it is unwise, especially at this time, to circularize this form of market report of high sales and this because the conclusion is liable to be reached that the high peaks are designedly given for the purpose of forcing up the general market."<sup>39</sup>

It has been suggested earlier in this chapter that in some quarters it is considered illegal to interchange lists of prices actually being quoted by members; however this may be, the illegality of distributing "suggested" price lists is unquestioned. This device has been very commonly used in the lumber industry in an effort to maintain or enhance prices. A description of this practise has been given elsewhere.<sup>40</sup>

By the interchange of information pertaining to past prices officers and members alike may learn to what extent fellow-members are adhering to such arrangements, understandings, or agreements as may be in force. Being possessed of this knowledge, they can use it as a basis for bringing pressure to bear on those who seem to be out of line with the general policy of the association. It is no longer customary to exact hard and fast agreements calling for penalties in the event of violations thereof; exhortations, recommendations and resolutions have taken their place. Little trace of compulsion exists. Unity of opinion developed at meetings and by means of correspondence is relied upon to carry out recommendations made and resolutions passed.

To illustrate: In an investigation of the book-paper industry<sup>41</sup>

<sup>37</sup>See account given in ch. 7, pp. 132-137.

<sup>38</sup>Gadd, F. R., *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1110.

<sup>39</sup>Gadd, F. R., Exh. 5, *Record*, Vol. II, p. 1242.

<sup>40</sup>See ch. 7, pp. 129-131.

<sup>41</sup>*Report of the Federal Trade Commission on the Book Paper Industry*, pursuant to Senate Resolution No. 122, dated August 15, 1917.

the Federal Trade Commission found that, while ostensibly the duties of the secretary of the statistical bureau to which most of the manufacturers belonged was to compile and distribute certain statistical information, in reality he was principally engaged in inciting members to increase their prices, this being done by correspondence, use of the telephone and telegraph, attending meetings, and holding personal conferences with members.<sup>42</sup>

In the farm implement industry members often took it upon themselves to give notice to fellow-members when their prices were found to be out of line with those "recommended" by committees. On January 19, 1917, C. S. Brantingham, president of Emerson-Brantingham Co., wrote to one of his sales managers as follows:

"My attention has been called by a competitor to the fact that our recent instructions sent out to branches and competitors show sulky plows with an advance of fifteen per cent instead of ten per cent as was arranged. You can perhaps imagine my humiliation in getting this information from this source, inasmuch as they have before this called my attention to errors in getting out our price instructions."<sup>43</sup>

The issuance of "recommendations" by committees of members is a common device for working up a unified sentiment that may be counted upon to crystallize into price maintenance or price enhancement activity. This practise has been particularly prevalent in the lumber industry. For instance, in its report before the Fall Meeting (1914) of the Michigan Hardwood Manufacturers' Association, the Market Conditions Committee stated in part:

"Your committee has carefully studied all recent sales as reported to your secretary and the attached price list is their best judgment as to present prices. We want you to study more carefully than you have heretofore statistics as to stock as prepared by your secretary. If you will study them carefully, we feel sure that each and everyone of you will decide to curtail your production all you possibly can and then some."<sup>44</sup>

<sup>42</sup>*Ibid.*, p. 17.

<sup>43</sup>*Report of the Federal Trade Commission on the Cause of High Prices of Farm Implements*, May 4, 1920, p. 312.

<sup>44</sup>*American Lumberman*, Oct. 24, 1914, p. 42.



Not only have recommendations and resolutions been used for the purpose of exerting a direct effect on price policy, but they have been used for the purpose of affecting the price policy of members indirectly through regulation of terms of payment. It is the writer's observation that nearly every trade association in the textile and lumber industries advocates standardization of terms. The Eddy associations appear not to countenance this form of activity. The Babson Statistical Organization once quoted to Mr. Eddy the opinion of a correspondent that terms of payment might properly be put upon a standard basis and asked Mr. Eddy to comment on this point of view. Mr. Eddy replied in part:

"It seems to be the opinion of your correspondent that while men may not advance prices directly, they may do so indirectly by shortening the terms of payment, etc. It is needless to say that all such attempts to control the freedom of the individual to run his business as he pleases, are contrary, not only to the Sherman Law, but to the laws of practically every state in the Union, and no open price association is permitted to do anything of the kind, except with the coöperation and consent of customers obtained in advance of the adoption of the new regulations."<sup>45</sup>

The foregoing discussion, it is thought, makes clear without further demonstration that open price associations, or any other trade association for that matter, can all too easily extend their activities to the point where they become a detriment to the public welfare. The Federal Trade Commission, as a result of its investigations of numerous trade associations, concludes that "such associations are frequently tempted to extend their activities beyond the useful function of collecting trade information regarding supply and demand and prices, and to engage in activities tending to artificially control prices and the channels of distribution."<sup>46</sup> It is generally recognized that the present law enforcement machinery is inadequate to prevent lawless trade association bodies from committing abuses. Proposals for remedies have been made, but they are general and superficial in

<sup>45</sup>Babson, R. W., *Reports on Coöperation*, C. C.-9.

<sup>46</sup>Quotation in *American Lumberman*, Dec. 22, 1917, from *Annual Report of the Federal Trade Commission for the Fiscal Year ended June 30, 1917*, p. 31.

character—just what one might expect, considering the newness of the problem. The chief remedies proposed have been along the lines of greater publicity and more governmental supervision. A combination of these is advocated by Mr. Samuel Untermyer, New York attorney:

“The real way of preventing injury from these combinations,” he is quoted as saying, “is to subject them to publicity, and all their acts to rigid governmental supervision.”<sup>47</sup> His plan for controlling their activities by means of a State Trade Commission is the most concrete proposal for a remedy yet presented. The chief points called for by this plan may be briefly summarized as follows:

1. Creation of a State bi-partisan Trade Commission of six members.

2. Require every trade organization that is subject to the jurisdiction of the State to file with the commission a copy of its charter and by-laws, with the names of its officers, directors, and members.

3. Require all those engaged in business in the State to file a report with the commission disclosing all trade associations of which they are members, and any “agreement, arrangement or understanding, whether written or oral” with anyone else engaged in a similar line of business.

4. Prohibit those who do not make proper disclosures from remaining affiliated with any trade associations.

5. Permit members to participate in agreements, arrangements or understandings intended to regulate or affect or fix prices, or output, or the division or apportionment of territory, or the “reporting or exchange of cost prices, or the names of customers, or reports of sales, or that otherwise deal with any subject that tends or is intended to regulate or restrain competition,” provided “such agreement, or understanding, whether written or oral, shall have first been submitted to the commission and approved by it.”

6. No agreements, arrangements, or understandings are to be approved by the commission “unless or until the commission shall have approved the prices at which commodities are to be

<sup>47</sup>*The World*, Sept. 15, 1920.

sold which may not permit of a profit beyond that which the commission deems to be reasonable, nor unless all the terms and details have been exposed to the commission and have been approved by it."

7. Failure on the part of members who are parties to agreements, arrangements, or understandings to comply with the provisions as above outlined shall make them guilty of a misdemeanor and upon conviction they shall be punished, etc.

8. The Trade Commission shall have the same powers of supervision and visitation, etc. "as are now possessed by the Federal Trade Commission with respect to interstate corporations."<sup>48</sup>

Mr. E. H. Gaunt, a prominent secretary of several open price associations, favors legislation that would give the Federal Trade Commission power to permit trade associations to fix the price of articles sold by their members, this price to be a fair one based on accurate costs. "This could be done," says Mr. Gaunt, "in the same manner as the Public Service Commissions of various States control the price of gas, electric lights, railroad rates, and street-car fares by requiring trade associations to file with the Federal Trade Commission their proposed changes in prices."<sup>49</sup>

The policy of price fixation involved in both Mr. Untermeyer's plan and that of Mr. Gaunt has its obvious drawbacks. To review the arguments for and against this feature would extend the scope of this chapter unduly. Suffice it to say, that many economists of eminence as well as prominent men in other professions hold that price fixing under control of Government commissions is not desirable. Perhaps their leading argument is that such a course has the effect of checking technical development, because with prices fixed, incentive to improve processes with a view of increasing business by lowering prices below those of competitors is diminished.<sup>50</sup> A study of war experiences with

<sup>48</sup>For a more detailed account of the Untermeyer Plan, see *The World*, New York City, Sept. 15, 1920.

<sup>49</sup>Gaunt, E. H., *Coöperative Competition*, Providence, R. I., Jan., 1918, p. 32.

<sup>50</sup>Clark, J. B., "The Possibility of Competition in Commerce and Industry," *Annals of the American Academy of Political and Social Science*, Vol. XLII, No. 131, p. 63.

government price fixing ought to contribute a vast amount of data of value in determining the advisability of adopting a plan involving this feature.

The Babson Statistical Organization contends that most violations of the law result from ignorance on the part of business men as to what they may or may not do under the law; this institution accordingly advocates legislation conferring power upon the Federal Trade Commission to advise business men in advance whether their acts will be legal or illegal.<sup>51</sup> Others have contended that the Department of Justice should do the same thing.

However, Mr. Colver, a member of the Federal Trade Commission, has asserted that it is not possible to give "rulings in advance." "To begin with," Mr. Colver is quoted as saying, "no man can say what his conduct is going to be for the next year, the next week, or the next hour. Even if he did, no man knows what the reflex of any act which he may do may have upon some other man. He looks at his line of conduct from his own point of view, and may be sincere and honest in believing it to be a good thing; but he does not and can not know how, in the complex web of modern commercial relations, his conduct may react upon another. That seems to bring us to an impasse. We cannot repeal the law; the lawyers cannot tell you what it means, and the Federal Trade Commission cannot prophesy. That leaves business in doubt, and doubt breeds suspicion and fear and despair; sometimes it breeds defiance of law."<sup>52</sup>

As a result of their study of trade associations both the Federal Trade Commission and the Forest Bureau of the Department of Agriculture have concluded that throwing the light of publicity on the activities of these associations offers at least a partial remedy for abuses now rampant. The Forest Bureau thinks that the activities of trade associations can be safeguarded by the coöperation and control of a responsible public agency like the Federal Trade Commission, and by systematic publicity.<sup>53</sup>

<sup>51</sup>Babson, R. W., *Reports on Coöperation*, C. C.-6.

<sup>52</sup>Quoted in the *American Lumberman*, June 19, 1920, p. 44.

<sup>53</sup>This report refers more particularly to trade associations in the lumber industry. See Report of the Forest Service, *Some Public and Economic Aspects of*

In its annual report for the year 1917, the Federal Trade Commission recommends that "all trade association files should be made public records."<sup>64</sup> "Such publicity," declares the commission, "would extend the knowledge of all producers and consumers regarding conditions of supply and demand and help to prevent abnormal trade fluctuations in supply and prices. It would also tend to curb association activities of an objectionable character."<sup>65</sup>

Neither the Forest Service Bureau nor the Federal Trade Commission has done more than suggest the direction in which to seek a remedy. In other words the suggestion is not accompanied by a working plan. It is believed that a study of the possible means for putting into practise this plan of publicity will reveal some very knotty problems to be overcome before the plan can be put into operation. Our study, thus far, has revealed that membership in even the most successful associations represents only a moderate proportion of the persons who are eligible to membership. The inducement to membership is, first, that the association is a benefit to the industry as a whole; second, that the association is, in a direct and personal way, of benefit to the individual members. It goes without saying that usually the second inducement must be strongly present in order to impress prospective members sufficiently to cause them to join. The average association member has joined because of the belief that by so doing he can acquire valuable information that would otherwise not be accessible to him. But suppose that the association records were, as contemplated in the plan of the Federal Trade Commission, made freely open to the public, would not that take away the chief incentive that members have for joining? Why pay out material sums to cover the expense of collecting and disseminating these facts when non-members may secure them without contributing anything? It is manifest that the suggestion of the Forest Service and the Federal Trade Commission would have to be accompanied by

*the Lumber Industry*, June 24, 1917, Gadd Exh. "A," *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1198.

<sup>64</sup>Quoted in *American Lumberman*, Dec. 22, 1917, p. 26.

<sup>65</sup>*Ibid.*

provisions that would make their plan of publicity workable and equitable.

It is thought that trade associations honestly endeavoring to operate along legitimate lines would find it distinctly to their advantage to take the initiative, themselves, in admitting the public to a share of the results of the knowledge which they are pooling. The statistics published might be of such a character as to be instructive to the public and yet not disclose information of more particular value to members themselves, thereby preserving, perhaps, the incentive that under the present arrangement of things seems to be needed to induce membership. The statistics made public might relate to the industry as a whole, showing, for instance, the character and amount of annual output; the percentage of fluctuation in amounts on hand from year to year; the relation of prices to cost of production; and of profit to capital. Sketches of any developments in the industry such as amalgamations, new issues of capital, changes in directorates, et cetera could also very well be made public.

A policy of frankness, such as a step of this kind would entail, might help trade associations to break down the prejudice, suspicion, and distrust to which the public in a large degree makes them the object, and which is reflected to their disadvantage in hostile government action. With adequate data at their disposal, the public could in a large measure arrive at their own conclusions regarding the reasonableness of prices, wages, profits, et cetera. Many unfounded and exaggerated suspicions would be dispelled thereby, and many allegations of profiteering or exploiting now blindly hurled at the undeserving as well as the deserving would fall of their own weight. The educating effect on the consumer, investor, legislator, and business man would itself be helpful to the trade associations themselves as well as to the recipients of this education; in the course of time these various groups would come to understand the possibilities involved in helpful coöperation.<sup>56</sup>

Trade associations engaged in illegitimate trade practises that now find it possible to thrive unmolested because of the

<sup>56</sup>The gist of this line of argument is taken from an article, entitled "Trade Combinations," by C. Ernest Fayle, appearing in the *Edinburgh Review*, July, 1919.

prevailing state of public ignorance of their operations, would undoubtedly be obliged to reform were the glaring searchlight of publicity turned upon them.

The rise of trade associations may itself be taken as evidence that the policy of secrecy in business is being rapidly exploded. Open price associations go further in sanctioning publicity than do other trade associations, but even they show a disposition to confine the information at their disposal to their own members. It is believed that in the future the public will insist on sharing the benefit of the knowledge that is being pooled by these associations. Certainly in its capacity of purchaser, the public will be at a relative disadvantage unless it possesses knowledge of market conditions equivalent to that possessed by members in their capacity of sellers. However, if the public is to insist on having the benefit of this accumulated knowledge it must not demur at sharing the expense which is necessarily associated with gathering, compiling, and disseminating information.

#### ATTITUDE OF THE FEDERAL GOVERNMENT

It is the writer's conviction that trade associations would be less secretive with reference to their activities if they had some assurance that by doing things publicly they would not be laying themselves open to attacks by the Government. In other words many associations have sought cover because of the hostility shown them in the past. The misdeeds of some trade associations have resulted in enveloping all, good or bad, in a storm of public and governmental disapproval.

The conception has prevailed in governmental circles that the only true competition is competition carried on in secret and in ignorance. Thus trade associations have been shown hostility because they have tried to make their members intelligent competitors. The point of view that business men should compete in ignorance is well illustrated by the tenor of the questions put to Mr. Wm. J. Mathews, counsel for several open price associations, by Mr. Samuel Untermyer who was appointed to conduct the hearings before the New York Joint Legislative Committee on Housing:

Q. "Now we are talking about competition and you are talk-

ing about coöperation, which is to my mind the antithesis of competition. Now in an economic system such as ours in this country, based upon competition, you understand?" A. "Yes."

Q. "Don't you see how absolutely incongruous is the idea that every competitor should know every other competitor's business?" A. "Absolutely not."<sup>87</sup>

However, there is evidence on every hand that the attitude of governmental bodies toward coöperative activities is changing.

In the case of the United States vs. United States Steel Corporation, the Department of Justice made the following concession in its original petition: "It is not here alleged that merely assembling and mutually exchanging information and declaration of purpose amount to an agreement or a combination in restraint of trade."<sup>88</sup>

A letter written by President Wilson to Edward N. Hurley, then vice-chairman of the Federal Trade Commission, dated May 12, 1916, has been widely quoted as indicating the attitude of the administration under the Wilson régime. In this letter Mr. Wilson said in part:

"Your suggestion, that trade associations, associations of retail and wholesale merchants, commercial clubs, boards of trade, manufacturers' associations, credit associations, and other similar organizations, should be encouraged in every feasible way by the Government seems to be a very wise one. To furnish them with data and comprehensive information in order that they may more easily accomplish the result that they are organized for is a proper and useful Government function. These associations, when organized for the purpose of improving conditions in their particular industry, such as unifying cost accounting and book-keeping methods, should meet with the approval of every man interested in the business progress of the country."<sup>89</sup>

Significant of the trend of opinion is the passage of the Webb-Pomerene Law permitting combinations of American business

<sup>87</sup>Hearings before the New York Legislative Committee on Housing, Dec. 29, 1920, *Record*, p. 4638. For an account of the writer's conception of true competition, see ch. 3, pp. 44-47.

<sup>88</sup>U. S. vs. U. S. Steel Corporation, 223 Fed., 155.

<sup>89</sup>Quoted by E. N. Hurley in his article entitled, "Present Attitude of the Gov-



men in promoting and preserving foreign trade. This bill received the active support of the Federal Trade Commission and President Wilson.

Mr. Robert E. Belt, then Chief Accountant for the Federal Trade Commission, in an address before an association of hardwood manufacturers, January 30, 1917, endorsed the work done by open price associations in the following language: "My observation has been that the associations that are accomplishing most in a legitimate way, for the individual members and for the industry, are those associations where the members meet periodically to exchange information, compare experiences, discuss trade problems, and profit by the interchange of ideas. It appears to me that coöperative work of this character is essential to the economic and financial strength of our industries, and to the full development of our domestic and foreign trade."<sup>60</sup>

Those who are identified with the work of open price associations appear to view favorably the turn taken in the point of view of those in control of governmental affairs. Mr. Clark McKercher, former assistant to the United States Attorney General, now counsel for a number of open price associations, is quoted as saying early in 1917: "General business believes that the Government is now on the right track. \* \* \* \* \* Government espionage, once feared as a counter irritant to all industrial disturbances, has under the intelligent guidance of the Federal Trade Commission turned out to be an admirable corrective and a beneficial stimulant. With a restricted jurisdiction, the Commission has been decidedly encouraging in its helpful activities. It is making good on the promise of Commissioner Hurley, who, after speaking of the assistance rendered to business by the Interstate Commerce Commission, Department of Agriculture, and the Federal Reserve Board, said, 'To do for general business that which these other agencies do for groups ernment towards Trade Associations,'" *Heating and Ventilating Mag.*, Sept. 1916, Vol. XIII, pp. 46-47.

<sup>60</sup>Belt, R. E., *Improved Accounting Methods and Business Practises*. An address before the Hardwood Manufacturers' Association of the United States, Jan. 30, 1917, *American Lumberman*, Feb. 3, 1917.

to which I have referred was the thought behind the creation of the Federal Trade Commission.'"<sup>61</sup>

The recent action of the Federal Reserve Board, acting through the Federal Reserve Banks, in developing a system under which trade data are to be collected and distributed much in the same manner as is done by the typical open price association is highly significant because it amounts to an admission on the part of an important branch of the Government that the methods employed by these associations have a distinct value. The fact that the Federal Trade Commission some months ago worked out a plan almost identical to that of the Federal Reserve Board is of added significance. The plan of the Commission had to be abandoned because its facilities were unequal to the task.

The plan promulgated by the Federal Reserve Board is described in a general way in a pamphlet entitled *How is Business*, published early in 1920 by the Federal Reserve Bank of Philadelphia. In brief, the purpose is to secure from representative firms in each of the more important lines of industry, certain figures relating to their production, stocks, unfilled orders, et cetera. The same firms will be asked to make these reports at monthly intervals. The figures collected are then to be compiled so as to show certain facts for the industry as a whole, such as the increase or decrease in production "from a known standard;" the increase or decrease in unfilled orders, and the increase or decrease in raw materials and finished product on hand. The work of assembling and disseminating such figures as these has already been begun in some fields, notably in the textile and wholesale grocery lines.<sup>62</sup>

Indorsement of open price activity, at least as applied to the lumber industry, has also been given by the Forest Service Bureau of the Department of Agriculture. In its report on the lumber industry issued in 1917, it specifically recommended that associations furnish lumber manufacturers with the current trade statistics necessary to keep them informed on the condition of the market, in order that they might "adapt their own business to its changing requirements," these statistics to include data

<sup>61</sup>New York *Journal of Commerce*, Jan. 3, 1917.

<sup>62</sup>Federal Reserve Bank of Philadelphia, *How is Business?*, pp. 2, 4, 6.

on the volume of orders, shipments, lumber stocks on hand, and prices. The report concludes that "with adequate safeguards the public should encourage such forms of coöperation among manufacturers as a necessary means of making the lumber industry more efficient."<sup>63</sup>

That the various branches of the Government are veering into the position of recognizing the value of open price activity, when it is not perverted to the end of maintaining or enhancing prices, seems to be amply demonstrated in what has gone before. No doubt the war did much to bring about this revolutionary change in the attitude of the Government toward trade associations, altho it is probably true that it would have come about had there been no war, for signs of such a change were clearly visible prior to that event. Nevertheless, had not the war intervened, the change would undoubtedly have come about more slowly than it did. During the war the Government fell into the habit of depending upon trade associations for aid in lining up the various industries so as to achieve maximum efficiency of production. In fact, the Government, during the last few months of the war, told firms and individuals who were not then members of trade associations, that if they wished to do business with the Government they would be obliged to get into organizations and do business as organizations and not as individuals.<sup>64</sup> It may confidently be predicted that governmental recognition of the necessity for industrial organization will not lapse even tho the pressing circumstances which were instrumental in calling it into being are no longer existent. The Government has taken a step which it is not likely to retrace.

<sup>63</sup>Report of the Forest Service Bureau, *Some Public and Economic Aspects of the Lumber Industry*, Jan. 24, 1917, pp. 1197-98.

<sup>64</sup>Kellogg, R. S., *The Legitimate Functions of Trade Organizations*; an address delivered before the Business Secretaries Forum, Chicago, Illinois, Jan. 25, 1918, p. 7.

## CHAPTER IX

### SOME CONSIDERATIONS INVOLVED IN A STUDY OF THE INFLUENCE OF OPEN PRICE ACTIVITY ON PRICES

To attempt to ascertain with any degree of accuracy the effect on prices exerted by open price activity is indeed a most difficult task. The youthful character of the open price association taken together with the numerous and confusing influences at work, particularly during the last few years, makes the value of a study of this character problematic. Moreover, the data upon which to base such a study are difficult of access. Those who are in control of open price associations hesitate to permit outsiders to avail themselves of the information that has been accumulated—especially of the kind bearing on prices. Perhaps their attitude may be chiefly ascribed to a fear that such information, were it released, might come into the hands of those who would attempt to use it to jeopardize the interests of open price associations, or perhaps they are actuated by the feeling that as custodians of the information which members have imparted to them they are not privileged to make common property of it, and that to do so would be to violate the confidence members have reposed in them.

Altho the inaccessibility of competent price data makes it futile to attempt to formulate any conclusions based on statistics respecting the effect of open price activity on prices, it is believed that some progress looking toward an ultimate solution of this knotty problem can be made by pointing out, first, the probable method of approach in the solution of such a problem; second, influences at work tending to vitiate the accuracy of results derived from a study of this character; third, influences tending to confine prices to channels in which they would be expected to run if their course were not upset by open price operations;

fourth, influences tending to swerve prices away from the course that they would be likely to take in the absence of open price activity; fifth, the probable effect on prices of the interaction of these conflicting influences.

#### METHOD OF ASCERTAINING INFLUENCE ON PRICES

It is believed that the best method to pursue in determining the influence of open price activity on prices is to compare price data of two kinds. The first kind involves a comparison of prices obtained by members of open price associations with those received by non-members. The object of this investigation is to determine, first, if all members are getting the same prices as non-members or higher or lower prices; second, if periodic fluctuations in members' prices are more pronounced or less so than those of non-members. The second kind involves a comparison of the prices obtained by members themselves. The object of this investigation is to determine to what extent, if at all, prices show a tendency to become uniform.

The commodities involved must, of course, be of like kind. Likewise the investigation should cover a period of several years. It should also be established that the non-members whose prices are used have had no access to the information pooled by members.

Information bearing on prices received by members of open price associations can most conveniently be obtained from the compiled reports of sales issued at periodic intervals to the membership by the central office of each of these associations. Most of these compiled sales reports not only show the individual membership reports of prices, but also give the average of all prices reported for the period. It is thought that sufficiently accurate results can be secured by using these reports of averages. To get accurate price data pertaining to competitors who are not members of open price associations in their industry, it would seem necessary to go to the records of non-members themselves. No doubt it is very difficult to obtain adequate data from a sufficient number of competitors to make these data representative. Probably very few non-members can be found who have preserved records of sales for several consecutive years.

The question might be raised why prices given in trade journals, or in the reports of the Bureau of Labor Statistics or other recognized sources of price information may not properly be used to represent the prices obtained by non-members. The difficulty with this proposal is that these prices are a composite of prices received in the industry as a whole; for this reason they are representative of neither the group of non-members nor the group of members but of both groups. If the industry were wholly within the control of an open price association, figures taken from these sources might be of some value when compared with figures covering a period prior to the existence of the association, provided that proper allowance could be made for such changes in the economic situation as might have occurred in the course of the transition from one period to the other.

Altho it appears exceedingly difficult to obtain competent data at the present time, even if no other sources of information are made available, no doubt future litigation involving open price associations, or investigations made of them by the Federal Trade Commission, will reveal much information of an illuminating character bearing on prices received by non-members as well as members.

The record of the *United States vs. The American Column and Lumber Co. et al.* offers the first considerable contribution of price data available for study. In this case the defendants introduced several charts indicating prices received during 1919 for different kinds of hardwood by competitors who were not members of the "Open Competition Plan". This open price plan was that in use by the American Hardwood Manufacturers' Association.<sup>1</sup> In addition the defendants introduced copies of all the sales reports compiled by the manager of statistics and disseminated among the membership during the year 1919. This was done in order that comparisons might be made between prices charged by members and prices charged by non-members, the contention of the defendants being that such comparison would reveal that members were neither maintaining fixed prices nor were they obtaining prices any higher than those received by outside competitors. The Transcript of Record, which was all of

<sup>1</sup>See account of plan in ch. 7, pp. 137-148.

the record that was accessible to the writer, contains charts giving the prices that were received by certain non-members for the entire year of 1919,<sup>2</sup> but the reports of sales, showing prices received by members during 1919, are not given in their entirety in the Transcript of Record.<sup>3</sup> The Manager of Statistics, however, placed at the writer's disposal all of the sales reports issued during 1919. It was found possible to extract price data from these reports of sales which were comparable to the data contained in one of the charts showing prices received by a non-member. Prices received by non-members as shown in the other charts could not be made comparable with prices contained in the reports of members' sales because kinds, grades, or thicknesses of lumber did not correspond. In the instance where it was found possible to make a comparison, the graphs which the writer plotted to show the trend of prices in each case disclosed that the average prices received by members of the association for the year 1919 were no higher than those received by this particular non-member.<sup>4</sup>

The writer also prepared a chart with four graphs, three of them showing the average weekly prices received by three leading members of the association, the fourth showing the average weekly prices of all members. The period covered was from July 26th, 1919, to December 27th, of the same year. An examination of this chart reveals at a glance that the prices received by each of these manufacturers varied widely from time to time; nor can one trace any existing relationship between the prices received by the manufacturers and the average prices received by all the members.<sup>5</sup> Assuming that the trend of these prices may be considered typical of that of all the other members, the inference to be drawn therefrom is that open price activity among members of the Hardwood Manufacturers' Association did

<sup>2</sup>*Record*, American Column & Lumber Co. vs. U. S., Vol. III, Krebs Exh. No. 1, p. 1509; May, Exh. No. 1, p. 1513; Wertz Exh. No. 1, p. 1613; Thomas Exh. No. 1, p. 1398.

<sup>3</sup>Reports of sales are shown for the month of January, 1920, *Record*, Vol. I, Exh. "A," p. 33.

<sup>4</sup>See chart No. 1, in this chapter, p. 178.

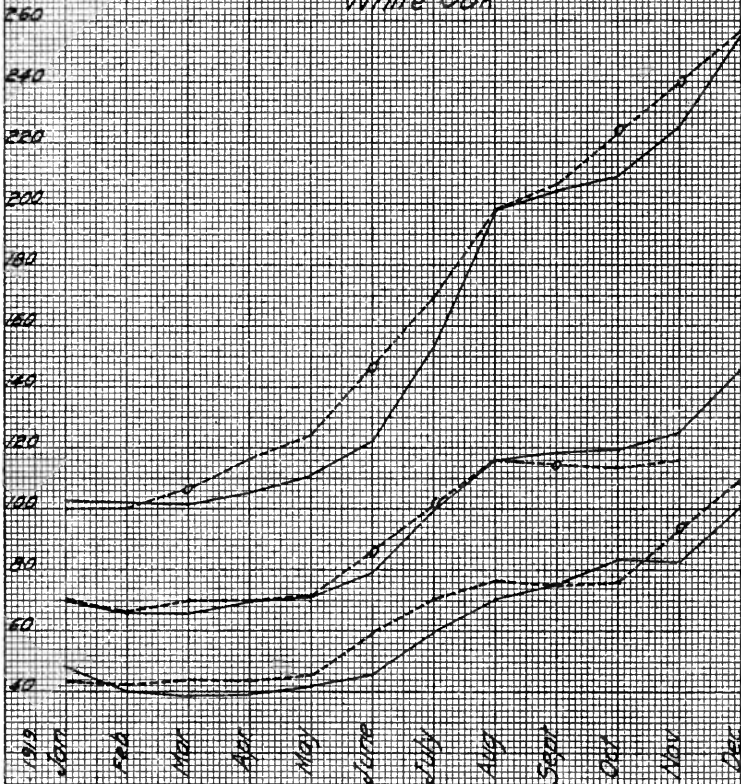
<sup>5</sup>See chart No. 2, in this chapter, p. 179.

COMPARISON OF MONTHLY AVERAGE PRICES RECEIVED BY MEMBERS OF AMERICAN HARDWOOD MANUFACTURERS ASSOCIATION WITH THOSE RECEIVED BY A NON-MEMBER

Dollars  
per  
1000 ft.

CHART NO. 1

White Oak



Graph I - First and Second Quartered White Oak

Graph II - First and Second Plain White Oak

Graph III - No. 1 Common Plain White Oak

Full American Hardwood Manufacturers Assn.

Dotted - McLean Hardwood Lumber Co.

"s" indicates that no sales were made that month.

Prices for Cairo, Illinois





not lead to uniformity in price policy, at least during the year 1919.

That the statistical conclusions indicated on the charts drawn by the writer, altho inconclusive in themselves because based on inadequate data, truly depict the character of the prices received by members during 1919 is attested to by several purchasers who stated that the prices paid by them to different members were neither uniform nor were they any higher than those paid to non-members.<sup>6</sup>

In this connection it must be pointed out, however, that the price data taken from the association reports of sales cannot properly be used as a basis for determining the effect of open price activity on prices, because, as indicated elsewhere,<sup>7</sup> only to a very small extent did members use the sales reports issued in 1919 as a guide to the trend of the market, for by the time that they were received from the manager of statistics (a week or two subsequent to the time when the sales listed were made) current market prices had advanced so far ahead of those listed on sales reports, that the latter, if they had been taken as a guide would in a great many instances have resulted in sales at prices below the current rate. Only the class of small manufacturers seem to have derived any benefit from studying the sales reports. Even tho the prices listed on the sales reports were below the best market prices then prevailing, yet they were higher, apparently, than the ones these small manufacturers had been accustomed to receive prior to their entry into the association. Of the numerous letters received by the manager of statistics in commendation of the Open Competition Plan, all of those which pointed to the fact that the plan had enabled members to get better prices, were from small manufacturers.<sup>8</sup> An unprecedented demand, accompanied by a shortage of supply, resulted in such a rapid advance in prices that the sales reporting system proved unequal to the task of keeping members properly apprised of the latest price developments. It is obvious, therefore, that the results obtained by the writer

<sup>6</sup>See *Record*, Vol. II, pp. 1372, 1367, 1394, 1395; Vol. III, p. 1563. See Chart No. 3, in this chapter, showing variation in prices received by members during 1919. p. 181.

<sup>7</sup>Ch. 6, pp. 124-125.

<sup>8</sup>Boyle, L. C., Argument before the Supreme Court, p. 68.

APPENDIX A

GADD EXHIBIT "J"

Compilation which discloses the wide variation of prices received by the members for the same species, grade and thickness, collated from the sales reports and used in charts marked exhibits.

One inch No 1 Common (and selects where the Grade is combined) Hardwood Lumber

F. O. B. CAIRO, ILLINOIS

F. O. B. CINCINNATI, OHIO

Date of Report 1919	Plain Red Gum		Sap Gum		Plain White Oak		Cotton-wood		Poplar		Chestnut	
	High	Low	High	Low	High	Low	High	Low	High	Low	High	Low
Jan. 3							35.00	35.00	57.50	53.00	40.00	39.75
10	38.50	37.50					30.75	30.75	57.00	57.00	55.00	55.00
15					51.25	46.75			57.75	52.50		
25			33.75	25.50	42.50	38.25	36.00	32.00	57.00	50.00	47.50	47.50
Feb. 3	36.50	27.75	31.00	27.50	42.25	36.25	36.50	35.00	58.00	47.75	45.00	35.50
8	38.25	31.50	31.75	28.00	45.50	38.50	40.50	40.50	57.00	54.50	46.00	40.00
15	41.25	33.00	31.75	27.50	43.25	38.25	35.75	34.25	55.25	44.75	42.75	38.25
22	40.00	33.75	33.00	27.75	46.25	38.00	36.50	24.50	53.00	38.75	46.00	35.25
Mar. 1	40.00	33.25	36.00	26.75	46.25	39.75	38.75	32.75	64.00	39.50	45.75	30.00
8	40.50	32.50	30.75	26.75	45.50	36.75	35.00	34.00	58.00	46.00	43.00	38.25
15	38.50	33.00	30.50	27.50	46.25	39.00	37.25	34.00	56.25	48.00	46.50	38.00
22	49.25	33.50	37.75	27.50	41.75	37.75	36.75	34.75	61.00	42.25	40.00	37.75
29	43.25	32.00	34.50	26.25	49.75	38.25	37.25	33.50	55.00	43.00	45.50	38.25
Apr. 5	41.75	27.25	32.00	28.00	44.00	38.25	36.50	33.75	55.50	43.00	46.00	38.25
12	41.00	33.75	30.75	27.50	42.25	38.75	37.00	33.00	55.00	45.25	51.00	38.50
19	39.75	33.75	32.75	28.00	46.75	34.25	37.25	35.00	59.00	49.75	46.75	38.50
26	40.00	29.50	37.75	26.75	48.75	36.50	37.00	33.00	56.50	48.00	45.00	34.00
May 3	41.75	33.00	32.25	26.75	47.00	36.25	36.75	35.50	57.00	51.00	43.00	38.50
10	43.25	33.50	33.50	27.25	48.75	39.50	37.75	33.25	64.00	48.75	46.50	38.25
17	43.75	35.25	37.50	27.25	50.75	36.25	37.50	35.50	61.00	47.00	51.00	38.50
24	44.25	35.75	34.00	26.75	48.50	39.25	40.25	35.00	61.00	46.50	44.00	38.25
31	47.00	35.00	36.00	29.50	51.50	38.25	39.00	33.75	56.00	45.50	46.50	38.50
June 7	49.75	38.25	36.50	28.50	53.50	45.50	43.50	35.25	57.50	48.50	48.50	40.50
14	52.75	37.00	40.25	29.75	60.00	38.00	42.00	36.50	63.00	48.50	46.00	42.00
21	56.25	42.00	37.00	28.75	59.50	41.75	42.50	33.75	60.50	48.50	48.50	37.75
28	66.50	40.75	43.50	31.25	75.00	40.00	40.25	36.50	67.00	52.50	47.50	47.75
July 5	63.75	42.75	41.50	32.00	69.50	49.00	39.25	38.00	65.00	48.75	48.50	41.00
12	70.25	36.75	47.00	30.75	74.25	61.00	41.00	41.00	66.00	52.50	52.00	43.00
19	71.75	53.75	47.00	32.50	77.25	52.75	50.25	39.25	71.00	55.50	45.00	45.00
26	76.00	52.25	44.50	31.25	79.50	54.75	45.75	35.50	72.25	54.25	61.00	46.00
Aug. 2	84.00	53.00	54.75	36.25	81.00	49.25	46.75	37.00	65.25	47.50	61.00	47.00
9	77.75	54.25	49.50	32.75	84.00	58.25	46.75	45.50	73.75	55.00	53.50	52.00
16	86.00	64.25	55.00	32.25	85.00	60.00	49.75	43.00	73.25	57.50	47.50	47.50
23	82.50	65.25	51.25	41.25	84.00	67.25	47.50	44.50	75.50	58.25	53.25	51.00
30	81.50	58.25	48.50	41.50	81.50	59.50	48.50	44.50	70.50	58.50	63.00	53.50
Sept. 6	81.75	66.50	52.25	41.25	85.50	47.00	51.00	46.50	72.00	39.75	61.75	61.75
13	83.00	68.50	51.50	40.00	79.50	70.25	46.00	46.00	83.50	50.00	57.00	50.25
20	80.75	70.75	49.50	40.75	83.50	72.25	47.00	46.50	80.00	51.50	77.00	41.00
27	78.75	70.00	50.50	38.00	88.00	66.00	48.50	43.00	86.50	55.50	59.50	59.50
Oct. 4	80.00	68.75	52.25	42.00	81.50	49.00	50.00	44.75	79.00	60.00	68.00	55.25
11	82.25	67.00	52.50	38.50	83.50	72.50	51.50	43.75	83.25	61.00	66.00	66.00
18	79.00	67.00	50.25	41.75	83.75	57.25	50.25	45.00	71.25	71.25	72.00	59.00
25	79.25	68.00	53.25	41.50	86.00	73.00	45.75	40.50	75.00	65.00	61.75	57.25
Nov. 1	85.25	70.25	51.75	41.00	92.50	69.50	52.75	41.75	70.50	56.75	65.50	61.50
8	85.00	74.25	55.00	42.00	105.50	71.25	51.25	45.50	80.50	54.00	66.00	57.00
15	93.75	76.75	52.00	41.75	98.75	73.00	53.25	48.50	78.25	55.50	69.00	44.50
22	116.25	72.00	59.00	43.25	96.00	76.00	54.75	47.50	84.00	51.50	69.50	60.75
29	107.00	71.75	61.25	45.75	107.50	80.00	56.75	56.75	81.00	65.00	78.50	48.00
Dec. 6	116.00	78.00	66.25	41.00	107.00	80.75	56.00	48.75	81.75	74.50	73.25	73.25
13	115.50	91.25	69.00	48.00	109.75	93.00	64.00	55.50	96.00	68.50	85.25	55.75
20	128.50	93.75	71.75	45.50	114.25	93.75	71.00	55.50	106.00	67.50	84.50	61.00
27	140.50	121.00	73.25	40.25	110.00	94.50	64.00	49.25	91.75	74.00	93.00	92.00
1920 Jan. 3	134.00	116.25	76.00	46.25	130.75	93.50	76.25	76.25	85.00	72.00	82.50	82.50
10	156.00	82.00	84.50	55.75	132.50	102.25	74.00	50.75	88.25	65.00	82.00	60.75
17	156.00	112.00	83.25	64.00	140.00	103.75	81.75	64.50	116.00	80.25	99.50	62.00
24	161.00	122.00	81.50	55.00	153.75	99.50	89.00	67.75	116.00	83.50	123.25	81.50
31	157.75	134.50	95.25	69.50	149.00	100.00	89.00	77.25	130.00	76.75	103.50	103.50
Feb. 7	171.00	127.00	92.00	58.75	149.50	117.25	85.00	69.25	130.00	71.75	109.75	98.25
14	166.00	140.75	96.25	76.25	150.00	128.25	101.00	82.75	131.00	93.00	102.50	102.50
22	167.00	147.00	98.50	77.00	158.50	122.00	91.00	79.00	121.25	100.00	119.50	106.75
28	171.50	132.75	99.00	80.75	162.75	93.25						

CHART NO. III.

from a study of these sales reports reveals nothing of importance respecting the influence exerted by the open price system on prices. Perhaps it is reasonable to assume that on a rapidly declining market sales reports would have been equally worthless as an index of the trend of prices.

The failure of the sales reporting feature of the Open Competition Plan to fulfil its mission in this instance points to the important conclusion that, when confronted by abnormal conditions, the system may prove too inflexible to adapt itself to the new situation, the consequence being that the course of prices is less affected, perhaps, than it would otherwise be. Probably the course of prices would not be totally unaffected, because other features of the open price system might continue to function more or less normally. The open price machinery involved in the interchange of information pertaining to stocks, output and the like might continue to operate effectively.

#### THE NEED OF EXERCISING CARE IN CHOOSING DATA FOR STUDY

Considerable discretion must be exercised in making a choice of open price associations for study. Many so-called open price associations are in reality combinations in restraint of trade, seeking to conceal their real identity by calling themselves open price associations. Associations of this character accomplish their purpose to curtail production, or maintain or enhance prices by "educating" members to act in harmony in pursuance of a common policy.<sup>9</sup> In its report on the lumber industry the Forest Bureau of the United States Department of Agriculture concluded that there was a clear-cut distinction between the services performed by open price associations and activities in restraint of trade.<sup>10</sup> No doubt this is true, but as has been indicated in the preceding chapter, some so-called open price associations are so clever in their "educational" activities that only the most discerning are able to properly discriminate between these activities and those carried on by true open price associations which exist for the legitimate purpose of keeping members properly

<sup>9</sup>See Ch. 8, pp. 175-182.

<sup>10</sup>Report entitled "Some Public and Economic Aspects of the Lumber Industry," Jan. 24, 1917, *Record*, American Column & Lumber Co. vs. U. S., Vol. II, p. 1198.

informed of market conditions. If an investigator making a study of the influence of open price activity on prices were to commit the error of choosing for study an association more properly termed a combination, the results obtained from such an investigation would obviously be vitiated as far as being a reflection of true open price activity is concerned. Results of this kind would not only have no scientific worth, but, if given currency, might work a grave injustice to the cause of legitimate open price activity.

#### INFLUENCES AT WORK

It has been argued elsewhere<sup>11</sup> that a knowledge on the part of buyers and sellers of their own interest, implying a knowledge of all conditions that might have a bearing on the supply of and the demand for a given unit of commodity, together with the ability and willingness to act intelligently thereon, would result in similar exchanges taking place on similar terms; or to state the proposition in terms of price, it would result in the naming of an equilibrium price "for the same unit of the same quality of the same article in the same market." Jevons expresses the same thought when he says, that "in the same market, at any one moment there cannot be two prices for the same kind of article."<sup>12</sup> The concept here conveyed is undoubtedly at the basis (consciously or unconsciously) of the arguments of those who contend that open price work enhances competition and stabilizes prices.<sup>13</sup>

<sup>11</sup>Ch. 3, pp. 44-47.

<sup>12</sup>Jevons, W. Stanley, *The Theory of Political Economy*, p. 91.

<sup>13</sup>By way of illustration of the point of view that open price activity tends to stabilize prices, an extract from a report rendered to members of the American Hardwood Manufacturers' Association by a committee appointed to look into the merits of the open price plan and devise a system applicable to the hardwood industry is quoted:

"By making prices known to each other they will gradually tend toward a standard in harmony with market conditions, a situation advantageous to both buyer and seller. The committee does not expect this plan to result in one price for any one grade and the difference between even the same grades of various manufacturers is well recognized. It is contended, however, that in a very short time the extreme range of prices on any one grade will be materially reduced and eventually the prices obtained will be in direct relation to the character of the grade offered and the prevailing market conditions." *American Lumberman*, Feb. 30, 1917. The Forest Service of the U. S. Dept. of Agriculture also concludes that open price

If all the factors in operation in the case of open price activity are identical with those which find expression in the law of supply and demand (i. e. the economic principle described above), it seems reasonable to conclude that open price work does lead to exchanges taking place on similar terms, with uniform rates emerging as a matter of course. It is conceivable, however, that price uniformity can emerge through association work, despite differences in the factors at work, but it is not thought that such uniformity will ensue as a result of sellers acting independently of each other in their capacity of bargainers, but rather that it will come as a result, not necessarily of direct agreement, but of the power of suggestion, perhaps, conveyed to members by precept or example emanating from leaders. By a long stretch of the imagination it is possible to conceive of price uniformity being achieved without premeditation—if members form the habit, for instance, of guiding their own price policy by that of one or two of the outstanding leaders in the industry. In fact, the consummation of such a result may be facilitated by the very ignorance of buyers. Lacking the power that comes with knowledge they are likely to look upon the competitive situation which confronts them as being unchangeable

work tends to unify rates. See *Report on Timber Depletion, Lumber Prices, Lumber Exports, and Concentration of Timber ownership*, June 1, 1920, p. 68.

The view that open price work increases competition may be illustrated by an extract taken from testimony given by W. M. Stark, a manufacturer of hardwoods, in the Hardwood case:

"Affiant says that from his observation of the Open Competition Plan, he is convinced that there is nothing whatever in the nature of the plan itself or its use by the American Hardwood Manufacturers' Association which has tended or will tend to suppress or restrict competition, but on the contrary, it tends to create a freer and broader and more unrestricted market in which all sellers and buyers may and do freely, actively and intelligently compete. While knowledge of market conditions will naturally and properly enable some persons to sell to better advantage than if dealing in the dark, this is only an incident of any open market against which should be considered the general effect on market conditions as a whole and in the long run. From this aspect, information which directs the production and selling efforts of lumbermen to supplying the market needs for which and market points at which there is the greatest demand, necessarily increases competition and works for the benefit of the buyers and consuming public. Obviously and properly, it also works for the benefit of the lumberman, as they can only profit by supplying the demand." *Record, American Column & Lumber Co. vs. U. S.*, Vol. II, p. 1260.

and may accept such prices as are quoted them out of a spirit of helplessness born of the feeling that they are powerless to do otherwise.

The problem which we face, then, is to determine to what extent there is justification for believing that open price work is a realization of the ideal kind of competition contemplated by the law of supply and demand, presupposing the existence of an open market in which numerous buyers and numerous sellers, each conscious of the bids and offers of the others, work out a common price. Assuming for the present that sellers, through open price work, possess sufficient knowledge of market conditions to enable them to act with intelligence in the furtherance of their interests, are also buyers in this happy position? The burden of the argument in chapter three is that they are not.<sup>14</sup> In that chapter the reader's attention was called to the fact that Mr. Eddy designed the open price plan primarily from the point of view of the seller. Moreover the observation has also been made elsewhere that with a few exceptions, open price associations are not disposed to give buyers access to information which they have accumulated.<sup>15</sup>

Previous to the inauguration of the open price movement, buyers held the advantage in bargaining. By making wide inquiries for bids they were enabled to ascertain roughly, at least, what ruling prices were—and the accuracy of these prices was of course unquestioned. But the seller, as a rule, was in ignorance regarding the prices that competitors were asking, except in so far as salesmen and buyers kept him informed. The latter found it profitable to misrepresent to the seller the character of prevailing prices, with the result that the seller was often deceived into meeting prices which had never been quoted, the prices thus made being less than market conditions justified.

<sup>14</sup>See pp. 48-49.

<sup>15</sup>See ch. 4, p. 56, where it is stated that membership is usually limited to manufacturers in the particular line of business involved. The Federal Trade Commission in a report submitted to President Harding, April 17, 1921, is quoted as saying: "The collection and public dissemination of statistical data might make the operation of such associations (open price) of benefit to the producer and the consumer alike, but unfortunately the tendency is here manifested to confine the information to members." *Chicago Tribune*, April 18, 1921.

A notable exception is the American Hardwood Manufacturers' Assn.

With the initiation of the open price movement, however, buyers find the tables turned against them. They discover that they are at a disadvantage in bargaining, principally, first, because they do not know what other buyers are paying; second, because they are ignorant of the character of demand and supply; third, because they are unable to make accurate predictions of future market conditions. They lack the data upon which calculations of this kind are based. Much of these data, such as information bearing on production and stocks, for instance, is not obtainable by buyers except with the coöperation of the sellers. We have here, then, a situation in which the sellers as a class are well informed of market conditions, whereas the buyers as a class are poorly informed. Since one of the important premises to the law of supply and demand, namely, that both buyers and sellers must be acquainted with all conditions affecting their competitive situation, is violated, it follows that similar exchanges among buyers and sellers cannot take place on similar terms. Jevons specifically mentions imperfect knowledge of the market as one of the "extraneous circumstances" which interfere with the undisturbed functioning of this economic principle.<sup>16</sup> The advantage enjoyed by the seller over the buyer in consequence of his superior knowledge of market conditions probably will express itself in the exaction of a higher price than would otherwise obtain. One must conclude, then, that members of an open price association are in a position to exact higher prices than they could were buyers equally well informed or were not open price activity existent.<sup>17</sup>

This conclusion, however, is based on the assumption that members are able to press their advantage to the limit without hindrance. Such a situation, of course, obtains only in theory. This invites the question: to what extent in practise may open price associations be able to utilize the theoretical advantage

<sup>16</sup>*Theory of Political Economy*, p. 91.

<sup>17</sup>The Secretary of the National Association of Purchasing Agents writes in part: "The real function of the open price association, as we see it, is to permit producers to charge for their commodities not on the basis of their production costs or real competition values, but on the basis of all that the market will stand. Naturally purchasing agents cannot be expected to sympathize with this view point." Letter from L. F. Boffey, Feb. 16, 1921.



enjoyed by them in consequence of their superior facilities for obtaining adequate market information? The task involved in bringing to light the numerous influences that are undoubtedly wrapped up in this situation is one that is difficult if not impossible of achievement. A study of those influences which suggest themselves to the writer convinces him that in practise open price associations are little able to utilize their superior knowledge of the market to the end of imposing higher prices upon the buyer.

Influences at work tending to minimize the effect of open price work on prices can be traced to the following sources: first, defects in the operation of the reporting system; second, failure of members to utilize the information conveyed to them through the reporting system; third, the limited sphere of control exercised by open price associations.

Defects in the operation of the reporting system manifest themselves chiefly in the following ways: first, by incomplete standardization of the articles about which price information is exchanged, making price comparisons more or less worthless; second, by the unreliable character of information collected and disseminated.

Obviously price comparisons can not be made if the articles about which price information is exchanged are not comparable in every respect. Differences in size, shape, quality, workmanship, and the like, are bound to reflect themselves in differences in price. Where these differences persist there is lacking the common basis for comparison that is needed if interchange of information is to have any effect on the course of prices. Standardization sufficiently adequate to make prices comparable is difficult of achievement. This fact has been commented upon in another connection.<sup>18</sup>

To what has been stated there by way of elucidation of some of the difficulties involved, may be added some comments by Mr. C. H. Rohrbach and John Allen Murphy taken from an article of theirs which appeared in *Printers Ink*: "The prices of leading makes of talking machines are not alike and no amount of price information could get them on the same basis, because they are not alike in quality and workmanship. Take leather

<sup>18</sup>Ch. 6, pp. 118, 125, 126.

belting, corsets, air compressors, office furniture, overalls, knit goods, hydraulic pumps, silverware, clocks, vacuum cleaners, etc.—some of which have and others have not an open price association. There are too many dissimilarities in these products to permit their getting on a uniform basis, and altho the open price idea may be of use in some such cases, it can only be of limited help to the individual manufacturer in determining what he shall get for his product. It can not establish a uniform price.”<sup>19</sup>

In chapter six where the advantages and disadvantages associated with open price work received attention, it was pointed out that the usefulness of the open price association is very frequently seriously impaired because the information interchanged is either inaccurate, misleading, or obsolete. If, for any of these reasons, members become distrustful of the reliability of the sources of information which they receive they are likely to act independently of that information and in consequence prices are less influenced than would otherwise be the case.<sup>20</sup>

Failure of members to utilize the information conveyed to them through the operation of the open price system may be due either to a deliberate disregard of such information, or to inability to understand it, or to inability to act upon it even tho understood.<sup>21</sup> One secretary writes that members have frequently addressed letters to him inquiring what ruling prices for certain commodities were, whereas the sales reports containing this information were probably lying on their desks at the very time when they were mailing their letters. Many members, no doubt, disregard the reports received because to properly understand and interpret them these reports must be given time and thought, and this they are unwilling to do. No doubt there are also those who cannot understand the reports. More often, perhaps, information is not utilized because members find themselves in a position where they are unable to act upon it. To give one instance,—information received from the central office may make

<sup>19</sup>Rohrbach, C. H., and Murphy, J. A., “The Reverse Side of the Open Price Association,” *Printer's Ink*, June 24, 1920, p. 41.

<sup>20</sup>See pp. 122, 124.

<sup>21</sup>*Ibid.*, pp. 119, 120, 121.

it clear that market conditions are such as to make it feasible to cease manufacturing for a period. The necessity of meeting heavy overhead expenses may force the manufacturer to continue operations, despite the fact that his better judgment would dictate a policy of curtailment. Failure to utilize information is therefore another factor operating to prevent open price work from influencing the course of prices.

It is thought that because of the serious obstacles operating to prevent the spread of open price activity, particularly in the larger industries where competitors, as a rule, are relatively numerous, if statistics could be made available, they would disclose that open price associations do not enjoy a controlling influence in many, if any, of the larger industries.<sup>22</sup> If this be true, there is ample reason to believe that open price associations, as constituted at present, are able to exert little influence on price movements. Their sphere of influence and control is confined within too narrow limits. They find themselves more or less helpless to influence the price situation, first, because of the presence of indirect and potential competition; second, because of the power exerted over price movements by competitors who are not association members. By reason of the danger of competition from substitutes and new capital, prices are likely to be confined to narrower limits of variation than would otherwise be the case. What these limits will be, assuming that no other conflicting factors enter into the situation, will largely depend, on the one hand, upon the ease with which potential competition can become actual competition, and on the other hand, upon consumers' willingness and readiness to resort to substitutes.<sup>23</sup>

If the sphere of control is insufficient to permit the educating influence of the association to be felt by competitors in whom are represented a substantial proportion of the total productive capacity of the industry, it appears more than probable that the competitors outside the sphere of this influence will be more

<sup>22</sup>For discussions bearing on this matter, see ch. 1, pp. 5-6; ch. 6, pp. 113-126.

<sup>23</sup>Mr. H. R. Tosdal, in an article on "Open Price Associations," concludes that, "in the absence of some basis for monopoly, the condition of higher than normal return would attract new capital and eventually the rate of return would be restored to normal." See *American Economic Review*, Vol. VII, No. 2, June 17, 1917, p. 352.

instrumental in determining the price situation than will association members. Competitors outside the ranks of membership are presumably less well informed about conditions affecting the market than are members. As a class their knowledge of the costs of doing business is less thoro.<sup>24</sup> Lacking information bearing on the character of the competitive situation, and being relatively ignorant of costs, it is very probable that in their anxiety to make sales they will permit themselves to quote lower prices than they would if they were acquainted with all the facts. The disposition of many buyers to take advantage of the ignorance of sellers, inducing them through misrepresentation to quote lower prices than competitive conditions warrant, gives added weight to this prediction. Knowledge brings power. Lacking knowledge, it becomes almost a certainty that competitors outside the ranks of membership in an open price association will obtain lower prices than those inside. Many manufacturers of hardwood lumber, particularly those who had no sales organization, attested to the fact that they had sustained losses which they could have averted if they had had proper market information. Other manufacturers, not belonging to the American Hardwood Manufacturers' Association, who had sales organizations, fared a little better because their salesmen kept them acquainted in some degree with the trend of the market.

If low priced competitors are present in an industry in sufficient numbers they are likely to exert the principal determining influence in the establishment of market rates for purchasers will give their custom to those who make the best prices, assuming that all other conditions entering into the situation are equal. The fact that all other conditions are not on a par of equality probably accounts in some degree for the fact that prices which are recognized as being typical of the market are somewhat higher than those obtained by the lowest priced competitors. For one thing the lowest priced competitors may lack the necessary

<sup>24</sup>Mr. E. N. Hurley, former chairman of the Federal Trade Commission has stated that only 10 per cent of manufacturers and merchants know the cost to manufacture or sell their products; that 40 per cent estimate what their costs are and 50 per cent have no method of determining their costs but price their goods arbitrarily. See article in *Metal Worker, Plumber & Steam Fitter*, "Trade Associations and Business Methods," Vol. CXXI, p. 473, Jan. 9, 1916.

productive capacity to handle large orders; then, too, their product may not be up to standard, or they may be unreliable in some other way. Nevertheless, the influence of these low prices, as well as those not so low, quoted by non-members, exposes members to the danger of losing some of their custom. If the productive capacity represented by these outside competitors is sufficiently great, members will be compelled to place their rates in line with theirs in order to insure for themselves the share of business to which they have been accustomed.

That some open price associations are cognizant of the fact that their limited sphere of control makes them more or less helpless to exert any substantial influence on the price situation is evident from the following extract taken from a letter received by the writer from the Secretary of the Northern Hemlock and Hardwood Manufacturers' Association:

"In view of the fact that the members of our Association produce only a part of the lumber produced in this territory, in view of the further fact that this territory produces only a small part of the lumber consumed in its markets, we cannot say that the information we have supplied our members has had any particular effect on market value fluctuations.

"There is about sixteen times as much Pine produced as there is of Hemlock from our territory and six or seven times as much Western Lumber and all of these come into direct competition in the Chicago market belt.

"Freight rates have long been so adjusted as to bring this about. Our Hemlock prices are determined by the market values of Southern Pine and Western Fir and our Hardwood values are determined by the market values of Oak, Gum and Ash, all of which are produced in much greater quantities in other sections of the country, but adopted to the same uses as our Birch, Beech and Maple.<sup>25</sup>

No doubt there will be found many instances where individual members have succeeded in getting better prices as a result of participation in open price work. That does not mean, however, that the association (assuming that it does not enjoy a controlling influence in the industry) has succeeded in raising

<sup>25</sup>Swan, O. T., Letter dated Jan. 4, 1921.

prices in the industry as a whole, nor is it probable that in the instances where members have been able to obtain better prices, those prices have been any higher than the ones current among outside competitors.

The data brought out in the Hardwood case point to the conclusion that in the instances where members did obtain better prices, they succeeded in doing so because open price work enabled them to exact the so-called market price, whereas before they had been unable to do so. As previously stated, it is significant that of the numerous letters received by the manager of statistics of the American Hardwood Manufacturers' Association, in commendation of the Open Competition Plan, every letter asserting that the plan had enabled members to get better prices was from a small manufacturer. Testimony reveals that as a class the small producer was unable to command the market price of hardwood lumber because buyers took advantage of his ignorance of market conditions to beat down prices. The following extracts taken from affidavits submitted in the Hardwood Case are illustrative:

"Affiant maintains no sales organization and markets his products largely to wholesalers. \* \* For this reason the sales reports of the Open Competition Plan were of especial value, for the reason that the wholesalers, from the nature of their business, are constantly in touch with the market, and when purchasing naturally desire to buy at as low a figure as possible. These sales reports were a check against their statements. By virtue of these reports, he was enabled to get nearer the market price from the wholesalers. \* \* Before introduction of the Open Competition Plan, certain unscrupulous middlemen made a practise of misrepresenting the prices at which they had purchased lumber from neighboring producers, and thereby forced the small producer to make an abnormally low price. This practise has been done away with by the Open Competition Plan. In the opinion of affiant, this is one of the chief benefits derived from the Open Competition Plan, especially as to the small producers, who are not in touch with the market."<sup>26</sup>

<sup>26</sup>Affidavit of J. M. Morgan, quoted in Argument of L. C. Boyle before the U. S. Supreme Court, American Column & Lumber Co. vs. U. S., p. 70.

Another small operator attested to the following:

"As an operator of a comparatively small mill, which maintains no sales force, he found these reports and letters of great value to him. Previously to belonging to the Association he was largely at the mercy of the wholesaler, to whom he has always sold the bulk of his production. For instance, in 1919 his concern sold 3,331,000 feet to wholesalers and 1,733,000 feet to consumers. Before joining this association and receiving these reports, in June of 1919, he sold first and second quartered white oak to wholesalers for \$88.00 per thousand at the mill, or \$105.00 per thousand in Boston. For which these wholesalers obtained from the consumers the prevailing price of \$250.00 per thousand. This condition of ignorance of market conditions worked a hardship on him and was of no benefit whatever to the consuming public, the wholesaler reaping all the profit on the transaction.

"That a small producing mill without a sales organization cannot, under present conditions, intelligently do business unless through some association or other means that keeps him in touch with market conditions. In his opinion, the Open Competition Plan has been of great benefit to the small producing mills and has worked no hardship whatever on the consuming public, but has resulted in reducing to a considerable extent the abnormal profits obtained by the wholesalers and middlemen generally."<sup>27</sup>

One small operator wrote to the manager of statistics:

"From my experience as a small manufacturer, this (sales report) is one of the most important services the Association has given me. Before becoming a member of the Open Competition Plan, I know I have sold a good many cars of lumber \$3.00 or \$4.00 under the market to wholesalers, upon which they have reaped the benefit of my ignorance."<sup>28</sup>

The testimony here given is typical of many other sworn statements submitted by small manufacturers—all of which point to the conclusion that the chief financial benefit accrued to the small

<sup>27</sup>Affidavit of J. W. Bailey, quoted in Argument of L. C. Boyle before the U. S. Supreme Court, *American Column & Lumber Co. vs. U. S.*, p. 44.

<sup>28</sup>Bohlson, H. G., *Record*, *American Column & Lumber Co. vs. U. S.*, Vol. II, No. 1138.

manufacturer, participation in open price work enabling him to exact prices nearer to the general run of the market. The prices received by the larger producers were no higher than those received by competitors who were not members of the Open Competition Plan. As previously stated, numerous buyers attested to this fact.<sup>29</sup>

Incidentally it may be remarked that in so far as open price work does enable some producers to obtain prices which approximate more closely the so-called market level, to that extent prices become more uniform than they would otherwise be.

Respecting the influence of open price activity on prices, the following summing up is made by way of recapitulation:

1. Altho theoretically members of open price associations can take advantage of their superior knowledge of market conditions to exact higher prices from the buyer than would be possible if the latter were equally well informed or open price work were non-existent, yet in practise, it is thought that in most industries, at least of the larger type, buyers suffer no such disadvantage, for the reasons, first, that the effectiveness of open price associations is compromised by defections in the open price system itself and by slackness in its manner of use by members; second, that the sphere of influence of open price educational activity is in most cases too limited to overcome the influence exerted on prices by (1) outside competitors, (2) potential competition from substitutes or new capital.

2. Altho open price work probably has not operated to raise the general run of market prices extant in the industry as a whole, in certain individual instances better prices have been obtained, these inuring in the main to the smaller producers, who, prior to their entry into open price work, were seldom able to exact prices recognized to be the current market rates, but found themselves more able to do so in consequence of the better acquaintance with market conditions derived from membership in the open price plan.

3. Rates are not likely to attain any degree of uniformity (except in so far as the higher prices obtained by low priced competitors through participation in open price work contributes

<sup>29</sup>See p. 147.



toward such uniformity), unless members exercise a controlling influence over the industry, in which case uniformity may be attained, not through more free competition ensuing from a competitive situation in which both buyers and sellers are conscious of all influences affecting demand and supply and therefore awake to their interests, as is held in contemplation by the law of supply and demand, but through the very ignorance of buyers, resulting in docile acceptance of a rate made more or less uniform, if not by direct agreement among members, perchance by the power of suggestion, emanating from leaders, perhaps in the form of precept or example.

## CHAPTER X

### OPEN PRICE ASSOCIATIONS AND THE PUBLIC WELFARE

In estimating the value of the open price association, the all-important question is, what influence does its operation have on public welfare? Is it likely to prove a detriment or a benefit? When one reflects that the open price movement is but in its infancy, and that therefore the fund of experience and data is necessarily incomplete, it seems indiscreet, indeed, to make a positive assertion one way or the other. Despite the inconclusive character of data based on observation and experience, perhaps a consideration of such of the theoretical aspects of the problem as suggest themselves will be helpful in seeking out a solution.

On the assumption that competition in business is the condition of trade most conducive to public welfare, does open price activity give promise of ushering in a regime more akin to the ideal kind of competition held in contemplation by the law of supply and demand, or is it likely to place obstacles in the path of an approach to more free competition? Mr. Eddy evidently thought that in creating the open price system, he was giving the commercial world an instrument calculated to bring about a new competitive regime wherein the much sought after stability of business conditions would be achieved through intelligent competition replacing ignorant and secret competition. The conception underlying his plan, to-wit, that knowledge is the essence of competition, Mr. Eddy undoubtedly believed to be an original contribution to economic thought, whereas the truth of the matter is that economists in their formulation of the law of supply and demand, have hypothecated their law of competition upon the very assumption that buyers and sellers possess enough knowledge of the factors influencing the competitive situation to make them conscious of their own interests as bargainers. Not only is the

concept, that knowledge is the essence of competition not original with Mr. Eddy but his statement that true competition will ensue "only where there are two or more competitors<sup>1</sup> competing under conditions that enable each to know and fairly judge what the others are doing" is untenable for the law of supply and demand assumes that all parties to a competitive situation are well enough informed to be capable of acting in accordance with their interests. "All parties" include the buying class as well as the selling class. Obviously, any concept of competition which leaves out of consideration the buying class is utterly inadequate as a solution to the problem of achieving true competition. The acceptance of Mr. Eddy's point of view would mean an endorsement of the idea that a nearer approach to ideal competitive conditions will ensue if the salient facts of competition are made known to sellers, leaving buyers to continue in a state of comparative ignorance. The mere statement of this proposition convinces one of its fallaciousness. Obviously buyers cannot hold their own in their capacity of bargainers if sellers are well informed and they are not. Inasmuch as the open price plan as devised by Mr. Eddy embodies this fallacious concept and is heralded by him as a practical scheme for ushering in true competition, it also must share the same criticism. Neither the open price plan nor the concept upon which it is founded give promise of solving the problem of achieving true competition. The plan is devised from the point of view of the seller, the purchaser having no part to play in its organization. All that can be claimed for it is that it gives promise of offering some redress to one industrial class, namely sellers, particularly sellers who are manufacturers.

Prior to their entry into open price work, manufacturers were no doubt the chief sufferers from the ills attending the regime of competition conducted in ignorance and secrecy. Buyers were at least always able to ascertain with some degree of accuracy the character of current market rates by calling for numerous competitive bids, but manufacturers had to rely for their information either upon the statements of buyers or upon those of

<sup>1</sup>Mr. Eddy uses the term "competitors" in its commonly accepted meaning of denoting sellers in competition with each other for the custom of the buyers.

salesmen. The small manufacturer without a sales organization had practically no other source of information than that coming from the buyer. Both buyer and salesman have been interested in deceiving the manufacturer into thinking that going rates are lower than they really are. The buyer has practised deception in order to "beat down" prices; the salesman in order to excuse his action in making easy sales at abnormally low prices, his false plea being that certain alleged low quotations made by competitors have had to be met.

Having once associated themselves in open price work, however, the mastery of the competitive situation falls to the sellers—at least in theory, for they have now come into possession of market knowledge which is superior to that of buyers. In practise, however, sellers thus organized find it difficult, if not impossible, to make capital out of their superior educational facilities, either because the open price system fails to function properly, or because members do not represent a sufficient percentage of the productive capacity of the industry to give them a controlling influence over price matters, or because potential and indirect competition keep prices close to pre-existing levels. How powerful these deterring influences are can only be determined from observation and experience carried on over a period of years. The instances on record where individual members have succeeded in bettering their prices, seem confined to small producers, who, prior to their entry into open price work, were unable to exact the best market prices but who subsequently succeeded in utilizing open price information to obtain for themselves better prices.

It is not probable that the public welfare is prejudiced by the fact that small producers, by availing themselves of market information put at their disposal, are enabled to exact rates more nearly approximating those recognized as the current rates. In fact, it is probably nearer the truth to assert that the public welfare is promoted thereby. The public suffers a large loss of specialized capital and labor skill every year by reason of the numerous bankruptcies that occur among small producers. These bankruptcies are not always brought on by the inability to produce as efficiently as larger competitors, but, as often as not,

they are the consequence of a failure to properly gauge market conditions. With adequate market information at their disposal they are less apt to make the mistakes which so often lead to bankruptcy. Another important consideration is that, in so far as prices of small producers are placed on a more even keel with those of the larger competitors, the danger of monopoly ensuing in consequence of ruinous price cutting is materially decreased. Those who are in favor of the survival of the small business institution may find considerable comfort in the thought that open price work makes the small business man better able to hold his own with his larger and more powerful competitors.

The chief danger of jeopardizing the public interest comes when an open price association enjoys a controlling influence in the industry with which it is identified. It is under such a circumstance that attempts to enhance prices directly, or indirectly through curtailment of production, carry the best prospects for successful accomplishment. Success or failure in enhancing prices probably would depend mainly upon the effectiveness of the restraining influence exerted by potential and indirect competition. It is conceivable that a considerable margin of increased profit might be secured, if not permanently, at least for extended periods of time, before new capital would be attracted into the industry or a resort made to the use of substitutes. These enhanced prices might ensue solely as the result of the advantage enjoyed by members over buyers in the way of superior knowledge of market conditions, no resort to collusion being made; however, the temptation to pool knowledge in such a way as to accomplish price enhancement by means of collusion would be exceedingly strong, as is admitted by the staunchest defenders of the open price plan, the inducement being especially great by reason of the fact that members would be aware of their controlling influence in the industry. Collusion might be achieved in a manner so subtle as to defy all detection by officers of the law.

As far as the writer's observation goes, no open price association has as yet succeeded in obtaining a controlling influence in any of the important industries. A few instances are known where small industries are completely within the control of an

open price association, but it is thought that no large industry is sufficiently dominated by any open price association to give one ground for believing that the course of prices for the industry as a whole has been materially affected by its operations. The obstacles that militate against the rapid growth of membership in these associations are sufficiently serious to make one wonder if they ever can succeed in gaining a controlling influence in the larger industries. The open price movement, however, is very young. The future may tell a different story.

To summarize, then, the leading thoughts which suggest themselves with reference to the value of open price associations as viewed from the standpoint of public welfare, we find, first, that they give no promise of solving the problem of achieving true competition, as is maintained by Mr. Eddy and his followers; second, that they do offer some promise of redress from the evils attendant upon the old competitive regime of secrecy and competition, not for buyers, but for sellers, particularly those of small productive capacity; that in the event of a future increase in control and influence over industry, they may wield a power detrimental to the public interest.

Assuming that future observation and experience verify these conclusions, what deductions may be made regarding the proper destiny of open price work? One consideration is paramount: irrespective of whether it is found feasible or not to permit associations of business men to engage in open price work, the work itself must not be abandoned. The information side of business is rapidly becoming an exact science. The trend of the times is in the direction of greater insistence upon the accumulation of precise and accurate business information of a statistical character. A mere statement that business is good or business is dull will not for long be accepted as a sufficient criterion of the trend of business conditions. Manufacturers as a class will not be long in insisting on having at their finger tips actual figures for the industry showing, for instance, the increase or decrease in production from a known standard; the increase or decrease in unfilled orders, and the increase in raw materials and finished product on hand—all this in order that they may have an index to the volume of trade. Among other things, manufacturers are

coming to learn that in order to avoid to the greatest practicable extent the periodic disturbances to production that come from unrestrained overexpansion, now recognized to be largely due to a general lack of broad insight into business conditions, they must possess themselves of information of the character expounded above.

It behooves the Government to come to a full recognition of the fact that it is a mistaken public policy, and is also utterly futile, for it to attempt the task of forcing business men to compete in ignorance and secrecy. Our hope for improving competitive conditions lies, not in forcing business men to conduct their businesses like moles, but in giving them all the enlightenment possible as to the factors that influence the competitive situation. The open price movement has sprung into existence in response to the growing desire of business men to govern their business operations intelligently in the light of existing business conditions. They have tried to do for themselves what the Government does in a small way for the farmers. At great expense to itself, the Government issues crop reports to the farmers for the express purpose of enabling them to market their products more intelligently. Since it is clear that an approach to more wholesome competitive conditions must come through the wider dissemination of more exact knowledge of the factors influencing business conditions, it seems ill-advised and even unfair to force associations whose efforts are dedicated to these purposes to cease their activity on the ground that prices happen to be increased thereby—unless the Government is prepared to assume the responsibility for seeing that open price work of equally efficient character is carried on by some other less objectionable agency, either private or public. To put a ban on open price activities without offering something in their stead would be to discourage a valuable incentive directed toward the achievement of greater efficiency in bargaining. The greater the development of efficiency in bargaining, the nearer is the approach of actual competitive conditions to ideal competitive conditions.

If future observation and experience point to the conclusion that members of open price associations are securing too liberal returns on their investment in business education, at the expense

of buyers' ignorance, the proper solution lies, not necessarily in prohibiting them from engaging in open price activity, but in widening the sphere of open price influence so that not only members of open price associations may receive the benefit of it but also all others who have an interest in the competitive situation. With all bargainers equally well equipped with scientific business information, no group of men associated for the purpose of disseminating information of this character among its membership would be in a position of dominance in any industry, for they no longer would possess a monopoly of such information. If the necessary machinery could be constructed for putting both buyers and sellers in every industry in possession of all information necessary to make them intelligent bargainers, one of the most serious causes of friction of the many that now prevent actual competitive conditions from approaching ideal competitive conditions will have been eliminated. Only then will the much maligned law of supply and demand be afforded a sufficient opportunity to demonstrate its worth before the world.

It is not within the scope of this dissertation to consider the practical aspects involved in extending the sphere of open price activity beyond its present confines. No doubt a proper solution of the problem of extending open price activity into every industry in such a way that all who are interested may profit thereby can best be achieved by a painstaking and exhaustive investigation conducted with facilities for research such as no one individual is likely to possess. Only the Government, it is thought, has command of the facilities necessary to make a successful investigation. The chief question on which such an investigation must seek to come to an intelligent decision is whether the function of collecting, compiling, and disseminating business statistics should be left in the hands of associations of business men in each of the industries, without, however, confining membership to one industrial class as is now the case, but extending it to include the class of purchasers; or whether this function should be turned over to the Government to administer.

The burden of the argument in this study appears to uphold the latter procedure as offering the greater assurance for success,



at least as far as conducting open price work in the larger industries where buyers and sellers are relatively numerous is concerned. Even making allowance for the fact that the open price movement is young, the results achieved in one of the largest industries, the lumber industry, do not hold out much promise for the future. We have seen that even in the most successful association of the many in the lumber industry doing open price work, namely the American Hardwood Manufacturers' Association, it was found well nigh impossible to secure sufficient coöperation from competitors to make the plan successful. Early in 1919, after an existence of about two years as a consolidation of two associations which had existed for several years previous, the membership had not yet reached the four hundred mark; thousands of small mill owners were not members. In 1919 the membership controlled but twenty-eight percent of the total hardwood production of the industry. Membership was comprised mainly of the larger producers. The small mill owners were the very ones most in need of business information, for as a rule they had no sales organizations, and in their isolated locations, they had poor means of keeping in touch with the market. Moreover, even a large percentage of those who did become members showed themselves very dilatory in furnishing the information called for by the manager of statistics. Obviously, under these circumstances, such statistics as were reported by members did not give totals which could be considered representative of the hardwood industry as a whole. It is quite conceivable, not to say probable, that an investigation into the workings of open price associations in the other large industries where they are now in operation, would reveal conditions similar to those found in the lumber industry. The writer is convinced that there will always be a large percentage of business men in every industry who, for one reason or another, will not participate in open price work conducted by a voluntary organization.

In order to obtain statistics sufficiently representative of each industry to be a real index to the trend of business conditions, it would seem necessary to introduce an element of compulsion into the situation, such as only the Government could successfully bring to bear. Business men could be required to furnish

vital business statistics to the Government much in the same manner that it is made compulsory to furnish statistics to the Census Bureau.

One Government agency evidently believes it feasible as well as needful to obtain accurate and precise data pertaining to market conditions in each industry, for the Federal Reserve Board, working through the Federal Reserve Banks, is establishing a reporting system for the purpose of obtaining from representative firms in each of the more important lines of industry certain figures relating to production, stocks, unfilled orders, and the like. Its main purpose in gathering this information is to use it as a basis for making a scientific study of bank credit. However, as an inducement to manufacturers and others to contribute information, those who submit the required reports will be sent the figures that are compiled for their particular lines. The returns received for any given line are to be compiled and published in the form of percentages, giving conditions in the industries as a whole, so as to avoid the possibility of disclosing information relative to any particular firm, presumably of a confidential nature.

Obviously the scope of the work of this Board is limited, and in consequence its effectiveness is impaired, by reason of the fact that data are to be obtained only from those who volunteer their coöperation. Probably there will be a better response to the Board's appeal for coöperation than has been accorded to the average open price association, because the Board carries the expense associated with the compilation and dissemination of statistics, whereas open price associations must require contributors to bear this expense. But, as previously intimated, among a large percentage of those who actually become members of open price associations, thus indicating that they have not demurred at the expense involved, a very serious laxness in reporting has been manifested. The same laxness is likely to be shown by those who report to the Federal Reserve Board.

The greatest assurance of success would seem to be promised by the establishment of one great statistical bureau for the whole country under the direction and control of an agency such as the Department of Commerce, this agency to be empowered to

require manufacturers and others to submit at stated periods reports of prices, production, stocks, costs, and the like, whereupon these reports would be compiled in such a way as to reveal the salient facts of competition without divulging figures of individuals and then disseminated in published form among those interested. Inasmuch as this government statistical bureau would have no authority over industry except to require that reports be submitted at stated intervals, there would be little ground for fearing that the establishment of such a bureau would mean too much Government in industry. Neither would the stock objection raised against government ownership, to wit, that government officials lack the initiative and energy to successfully operate business enterprises, apply here, for the collection, compilation, and dissemination of statistical data, when once successfully launched into operation, would require little more than the establishment of a set routine of procedure. The system established should be such as to insure promptness in the issuance of reports. An open price system utterly fails of its purpose unless reports can be issued with sufficient dispatch to enable recipients to use them as indices of market conditions.

By way of experiment the Department of Commerce might make a beginning in a few of the basic industries where fluctuations in market rates are particularly severe. Probably it would be desirable, first, to make a start in industries from which the Federal Reserve Board is not yet receiving reports, thus avoiding duplication of effort. Ultimately, if the experiment of the Department of Commerce should prove successful, the Federal Reserve Board would no longer find it necessary to gather its own statistics to guide it in its banking policy, but could utilize those available in the Department of Commerce. Since it probably would take a long time for the Government to develop an open price system adequate to serve the needs of the whole country, open price associations might be permitted to function until such time as the success or failure of the Government experiment shall have been definitely ascertained. If the results achieved by the Government should prove successful, open price associations probably would not need to be legislated out of existence; they would no doubt cease the open price phase of their activi-

ties of their own accord, and in all probability would confine themselves to ordinary trade association activities. Even if they should fail to abandon their open price activities, little harm would result, for they would no longer possess a monopoly of business information. In the event that the experiment of the Government should turn out to be a failure, the machinery developed by open price associations would be at hand as a basis for putting into operation some plan looking toward an association of buyers and sellers in each industry, organized for the purpose of gathering, compiling and disseminating vital business statistics among themselves.

## APPENDIX

### EXHIBIT I

#### ASSOCIATIONS REPUTED TO BE DOING OPEN PRICE WORK

1. American Hardwood Manufacturers' Association.
2. American Tack Manufacturers' Association.
3. \*Architectural Iron and Bronze Manufacturers.
4. Asbestos Brake Lining Association.
5. Asbestos Paper Manufacturers' Association.
6. Asbestos Textile Manufacturers' Association.
7. Associated Metal Lath Manufacturers.
8. Automobile Accessory Dealers' Association.
9. \*Bar Iron Institute, National.
10. Beet Sugar Manufacturers' Association.
11. Belt Buckle Society.
12. Blanket Association.
13. \*Bolt, Nut and Rivet Institute.
14. Box Manufacturers, National Association of.
15. Boys' Blouse & Shirt Manufacturing Association, National.
16. Brass Manufacturers, National Association of.
17. Brass and Copper Statistical Exchange.
18. \*Bridge Builders' and Structural Society.
19. Broom Handle Manufacturers' Association.
20. Builders' Supply Association, National.
21. California White Sugar Pine Manufacturers' Association.
22. Canadian Pulp & Paper Association.
23. Cash Check Manufacturers' Association.
24. Chair Manufacturers, National Association of.
25. Chicago Retail Lumber Dealers' Association.
26. Coal Association, National.
27. \*Cold Roll Strip Steel Institute.

\*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.

28. Cordage Institute.
29. Cotton Textile Association.
30. Cotton Thread Manufacturers' Exchange.
31. Cut Sole Manufacturers' Association.
32. Drill and Reamer Society.
33. Duck Association.
34. \*Eastern Bar Iron Society.
35. Eastern Shook and Wooden Box Manufacturers' Association.
36. Electrical Contractors' Exchange.
37. Electrical Supply Jobbers' Association.
38. Electric Wire Manufacturers' Association.
39. \*Explosives, Institute of Makers of.
40. Fine Cotton Goods Exchange.
41. \*Finishers of Cotton Fabrics, National Association of.
42. Gas Appliance Manufacturers' National Exchange.
43. Gingham Association.
44. Gold Filled Chain Manufacturers' Exchange.
45. Hack Saw Manufacturers' Association.
46. Hard Yarn Spinners' Association.
47. \*Hollow Metal Door Institute.
48. \*Hoop Band Strip Steel Association.
49. Indiana Millers' Association.
50. \*Institute of Electrical Contractors.
51. \*Institute of Lighting Fixture Manufacturers.
52. Institute of Paper Package Manufacturers.
53. \*Institute of Tool Manufacturers.
54. Knife Information Bureau.
55. Knit Goods Manufacturers of America.
56. Lamp Standardization Exchange.
57. Lead Institute.
58. Leather Belting Exchange.
59. Lime Manufacturers, National Association of.
60. Linseed Oil Institute, Armstrong Bureau of Related Industries.
61. Lithographers' Coöperative Association.
62. Lithophone Institute.

\*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, founder of the open price movement.

63. Lumbermen's Statistical Bureau.
64. \*Manganese Steel Founders' Society.
65. \*Manganese Track Society.
66. Master Dyers' Exchange of New England.
67. Men's Belt Exchange.
68. Meter Manufacturers' Exchange.
69. Michigan Hardwood Manufacturers' Association.
70. Michigan State Millers' Association.
71. Mid-West Credit and Statistical Bureau (Cement).
72. Millers' Exchange, Southwest.
73. Northern Hemlock & Hardwood Manufacturers' Association.
74. Ohio Millers' State Association.
75. Optical Manufacturers' Association.
76. Padlock Manufacturers' Bureau.
77. Pickle Manufacturers' Association.
78. Piano Bench & Stool Manufacturers, National Association of.
79. Pipe Fittings and Valve Exchange.
80. Pressed Metal Association.
81. Pressed Steel Association.
82. Range Boiler Exchange.
83. Rigid Conduit Manufacturers' Association.
84. \*Ring Travellers' Society.
85. \*Rolling Steel Door Society.
86. \*Roofing Manufacturers' Association.
87. Sales Book Manufacturers' Association.
88. Salt Producers' Association.
89. Sewer Pipe Association.
90. Sheet and Tin Plate Manufacturers' National Association.
91. Shoe String Association.
92. Slack Cooperage Industrial Bureau.
93. Society of Manufacturing Confectioners.
94. South Dakota and Southwestern Minnesota Millers' Association.
95. Southeastern Millers' Association.
96. Southern Illinois Millers' Association.
97. Southern Statistical Bureau (Cement).

\*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.

98. Stationers' and Manufacturers' National Association.
99. Steel Barrel Manufacturers' Association.
100. \*Steel Founders' Society of America.
101. Steel Furniture Manufacturers, National Association of.
102. Steel Locker & Shelving Manufacturers' Exchange.
103. Tanners, National Association of.
104. Tap & Dye Institute.
105. \*Tool Steel Society.
106. Tubular Plumbing Goods Exchange.
107. The United States Potash Producers' Association.
108. Waxed Paper Manufacturers' Association.
109. Webbing Products Manufacturers' Exchange.
110. West Coast Lumbermen's Association.
111. Western Paving Brick Association.
112. Western Petroleum Refiners' Association.
113. Western Pine Manufacturers' Association.
114. Western Red Cedarmen's Association.
115. \*Window Shade Manufacturers.
116. \*Wire Fence Manufacturers' Association.
117. Woolen Goods Exchange.

\*Wherever the asterisk is used it indicates that the association thus designated was organized by Arthur J. Eddy, the founder of the open price movement.



## EXHIBIT II

## MINUTES OF THE MEETING OF THE MEMBERS OF THE OPEN COMPETITION PLAN OF THE AMERICAN HARDWOOD MANUFACTURERS' ASSOCIATION, HELD AT THE GRUNEWALD HOTEL, NEW ORLEANS, LA., FEBRUARY 24TH, 1919.

Mr. F. L. Adams acted as Chairman, in the absence of Mr. J. B. Robinson.

The composite market report was distributed, and a discussion of market conditions followed.

Mr. Sparks said that he found the market in better shape than it was thirty days ago.

Mr. Ryan said that he believed the Southern Manufacturers were light on stocks. That he had taken up with the U. S. Bureau at Houston the question of furnishing labor. The reply that he received indicated that there was plenty of labor. They failed to furnish any, however, and upon writing them they again replied that there was plenty of labor, but that it would not leave the cities. Believed that labor conditions were getting to be a serious problem.

Mr. Deutch said he found many wholesalers buying up stocks with the view of taking advantage of the better prices bound to come, and because they expect stocks to be hard to get in the near future. When the ocean rates become stable there will be a stampede of buying for the foreign market, as Europe was in need of large stocks, and everything that is dry will be moved. He believed that when this occurred prices would be better than before.

Mr. Brewer stated that it looked as if the wholesalers had taken on a lot of business at any old price and cleaned up the small manufacturers of their stocks. He had found his inquiries to have increased heavily during the past week.

Mr. Bohlssen said he found that the Texas box manufacturers were buying heavily and offering \$20.00 at the mill.

Mr. Smith said that it looked as if No. 3 Oak was going to be a bad seller.

Mr. Cleveland, who had just made a swing around the buying circle, said that he found manufacturers well stocked and most

of them hampered because of the failure of the Government to effect settlements on contracts. He looked for a heavy demand for No. 2 Gum. Stated he was holding Sap Gum for \$37.00 at mill.

Mr. Adams stated that his mill had been shut down since last November because of weather conditions, and had a little over two million feet of stocks on hand. He said that Louisiana had experienced a thirty inch rainfall in ninety days, and of course there was no production.

Mr. L. C. Cornelius, of St. Louis, who was present, said he found furniture factories buying better. He was asking \$50.00 for his Ash, but manufacturers were quoting \$45.00 to \$47.00. Believed there would be a better demand for Red Gum. The demand for box material was off. This was due to packers' production being reduced as a result of the Armistice. Looked for an average price on No. 1 and No. 2 Gum, and better prices on F. a.s. Sap. Ash stocks very low.

Mr. Stanford said he had more timber orders on hand at satisfactory prices than his mill could produce.

Mr. Patterson said that his commissary man reported prices coming down but the consumer could not find the reduction when he paid his monthly bills. Said that returned colored soldiers were bent more on trouble than work.

Mr. Geissler stated that he believed the Association method of advertising might better be carried out by a campaign to educate the public to the fact that lumber was the cheapest of all building materials and that it had at no time advanced as had other commodities. He did not believe that the public needed education as to the uses of hardwoods, but that they did need to be educated to the fact that hardwood prices had advanced hardly any beyond the cost of production.

Mr. Geissler stated that he did not believe that those present realized the exaggerated idea of the public as to the prices that manufacturers were obtaining and the profits they were making. Believed if public were educated to the fact that mills were compelled to close down because they could make no profit on the present price basis it would be a good thing.

Mr. Gadd then related the movement on foot at Washington

to plan the return of industry to normal conditions, and read statements by Secretary Redfield relating thereto.

Mr. Ryan thought the Government ought to cut the strings and get out of the price fixing business.

There followed a discussion as to the value of Oak and Gum Stumpage.

There being no further business, the meeting adjourned.

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Secretary.

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Chairman.

## EXHIBIT III

### CONSTITUTION

#### ARTICLE I

##### NAME

This organization shall be known as \* \* \* \*1

#### ARTICLE II

##### OBJECTS

The purpose of this Institute shall be:

1. The stimulation of acquaintance, confidence and cordial relations amongst its members and throughout the trade.

2. The improvement of the \* \* \* \* \* manufacturing business by striving toward the correction by all proper and legitimate means, of *unintelligences, faulty standardization and abuses in the trade*, and the *promotion of publicity in the transaction of business*.

3. The development of methods for the removal of false impressions and in their place to disseminate correct information and to collect and distribute accurate statistics regarding the entire industry.

4. To devise a scientific system of cost accounting, *suitable for the industry*, to the end that each manufacturer engaged in the industry may accurately know the cost of his output. *In this connection it is not the purpose of the Institute to impose upon any member any cost items or to use, in any manner, the cost system as a means for controlling prices.*

5. The encouragement of the true spirit of "*coöperative competition*" by *bringing out into the open*, all competitive conditions and introducing the open price policy.

6. To coöperate along the lines of metallurgical research in the securing of better steels for use in manufacturing \* \* \* \* \* so that the result would be to raise the standard of quality to its highest point of efficiency, thereby making a great saving to the consumer.

Further to coöperate in the standardization of sizes, dimensions and tolerances of the product manufactured by the Institute.

<sup>1</sup>The writer has been requested not to reveal the identity of this association.

To avoid the use of the Institute as a price fixing or trade controlling device;—to this end, no information will be received, distributed or exchanged relative to actual selling prices previous to the making of an actual and bona fide quotation or bid, or effecting an actual sale,—or relative to any customers with whom or territory in which the members intend to do business, and no member shall enter into any agreement, direct or indirect, with any other member that has to do with any prohibited practises, or any other arrangement that will interfere with free, open and active competition among members or with any other person. All information received and distributed shall be absolutely accurate.

8. To coöperate with the Federal Trade Commission to expose and suppress unfair methods of competition.

9. To eliminate secrecy either as to the meetings or operations of the Institute. All its proceedings shall be reduced to writing and carefully preserved.

### ARTICLE III

#### MEMBERSHIP

Section 1. Any individual, firm or corporation, engaged in the commercial manufacture and sale of \* \* \* \* \* shall be eligible for membership in the Institute.

Section 2. All who have become members before July 1st, 1920, shall be charter members. Thereafter applicants for membership will require for election the affirmative vote of three-fourths of the members present at any regular meeting.

Section 3. All memberships are for full periods of a year and are automatically renewed from year to year unless thirty days prior to the termination of a full year of membership a member shall give notice of his resignation in writing. A member may resign from the Institute at any time during his year of membership on thirty days' notice of his desire so to do, but no resignation shall be accepted until the members resigning shall have completed the payment of all dues for his then full current year.

### ARTICLE IV

#### OFFICERS

Section 1. The officers of the Institute shall be a President, a Vice President and a Secretary-Treasurer.

Section 2. All officers shall be elected at the annual meeting and shall hold office for one year or until their successors have been duly elected .

Section 3. The Executive Committee shall consist of the President, Vice President and three other members to be elected at the annual meeting.

## ARTICLE V

### MEETINGS

Section 1. The Institute shall hold its regular annual meetings on the same day as its regular monthly meeting in the month of April of each year; the first of such annual meetings to be held the year next following the meeting for organization of the Institute. The annual meeting shall be held at such place as shall be determined by vote of the members.

Section 2. The regular monthly meeting of the Institute shall be held at such convenient hour of the Thursday immediately preceding the second Friday, of each month and at such place as shall be designated by the Executive Committee. Special meetings of the Institute may be called by the President, or on request of three members to the President, but such call shall state the purpose of the meeting and no other business shall be transacted at the special meeting except as is announced in the notice. Notices of all meetings of the Institute shall be mailed to members ten (10) days before the day of meeting.

Section 3. A quorum of all regular and special meetings of the Institute shall consist of a majority of its members.

## ARTICLE VI

### MEMBERSHIP FEES AND DUES

There shall be two distinct funds, (a) *Membership Fund*, (b) *Principal Fund*.

The Membership Fund shall be provided by the payment of a membership fee of One Hundred Dollars by each member, and this fund shall be maintained thereafter by special, equal assessments, when necessary, such special assessments to be ordered at any regular meeting of the Institute by a majority vote of all members present.

The Membership Fund shall be within the custody of the

Secretary-Treasurer, but shall only be used on warrants drawn against this Membership Fund by the Secretary-Treasurer and countersigned by the President to cover the extraordinary expenses of the Institute such as luncheons or other entertainment expense, traveling expenses of the Secretary-Treasurer, postage and printing expense on all materials mailed to the general public or the trade, other than members, upon the instructions of the Institute, and all printed matter, etc., furnished to the members for their convenience in reporting, etc. The expenditures under this fund shall be directly and entirely within the control of the Institute or its Executive Committee.

The Secretary-Treasurer shall keep an accurate record of all items of disbursements of the Membership Fund, and be prepared at all times to exhibit vouchers for such disbursements.

The Principal Fund shall be provided through the payment by each member of monthly dues, payable on the first day of each month. The amount of dues to be paid by each member shall be in approximate relation to his annual volume of sales; and be pro rated on a basis fixed by the Executive Committee.

The Principal Fund shall be paid directly by the members to the Secretary-Treasurer, and such payments shall constitute the entire Principal Fund, and shall be used by the Secretary-Treasurer to cover all expenses of the maintenance of the Institute, such as clerk hire, office rent, office equipment, telephone and telegraph charges, printing, postage, expressage and the compensation of the Secretary-Treasurer; in fact, every expense incidental to the conduct of the Institute, except such items as are specifically covered by the Membership Fund.

## ARTICLE VII

### AMENDMENTS TO THE CONSTITUTION

These Articles may be amended by a two-thirds vote of the members present at any regular or special meeting provided notice of such amendment shall be forwarded to each member ten (10) days in advance.

\* \* \* \* \*

### BY-LAWS

Section 1. PRESIDENT AND VICE PRESIDENT—The President

shall perform the usual duties of the chief executive officer of such organization, and, in the event of his absence, the Vice President shall act in his stead.

Section 2. SECRETARY-TREASURER—The Secretary-Treasurer shall be the only paid officer and shall be from outside of the trade.

It shall be the duty of the Secretary-Treasurer:

(a) To take care of the finances and funds of the Institute in accordance with the provisions hereinafter set forth.

(b) To provide and operate a regulated central office for the proper care of the business of the Institute.

(c) To keep in close personal touch with all members at meetings and by personal visits.

(d) To conduct the correspondence between the Institute and its members and serve as a bond between the concerns in the trade, whether members of the Institute or not.

(e) To maintain and increase the membership of the Institute.

(f) To serve as a clearing house between the members for the exchange of credit information with the object of reducing losses.

(g) To attend all meetings of the Institute and keep accurate stenographic records thereof.

(h) Under the instructions of the Executive Committee to develop and distribute information and statistics of educational value relating to costs of production, selling markets, trade and labor conditions.

Section 3. EXECUTIVE COMMITTEE—The Executive Committee shall manage all of the affairs of the Institute and shall have absolute powers to perform any and all acts in furtherance of the purposes of this Institute, as set forth herein. The Executive Committee shall meet at the call of the President or at the request of any two members on five days' notice, and three of such committee shall be a quorum.

Section 4. VOTING POWER—At all meetings each member shall have but one vote, but may be represented by two or more persons.

Section 5. DROPPING OF MEMBERS—By a two-thirds vote of the members present at any meeting, a member, provided he



has been given a ten days' notice of the proposed action and an opportunity to be heard, *may be dropped for failure to pay any assessments, within thirty days after same are made or for filing false or misleading information.*

Section 6. REGULAR COMMITTEE—Standing Committees may be appointed by the Executive Committee subject to the approval of the Institute.

Section 7. ORDER OF BUSINESS—The Order of business shall be as follows:

- (1) Calling of Roll
- (2) Reading of minutes of previous meeting
- (3) Election of New Members
- (4) Reports of Officers
- (5) Reports of Committees
- (6) Communications
- (7) Unfinished Business
- (8) New Business
- (9) Reports of Members on Conditions affecting the Industry.

Section 8. GOVERNANCE OF MEETINGS—Roberts' Rules shall govern at all meetings.

Section 9. AMENDMENTS TO BY-LAWS—These By-Laws may be amended by a two-thirds vote of the members present at any regular or special meeting provided notice of such amendment shall be forwarded to each member ten days in advance.

\* \* \* \* \*

We, the undersigned, endorse the purposes and subscribe to the Constitution and By-Laws of the \* \* \* \* \* Institute.

Upon notification from the \* \* \* \* \* we will pay to the Secretary-Treasurer of the Institute a membership fee of One Hundred Dollars and monthly dues thereafter as fixed by the Executive Committee.

Name..... Address.....

By.....

Name.....

By.....

# EXHIBIT IV

## MEMBERS REPORTING FORM

Name of Member.....  
 Date Reported..... Prices Effective.....  
 Remarks:.....

N. B.—Where "Box" quotations are made quote "Count Goods" except where weight is stated.

Classification	Style	Package	Memo.	Wt.	Count	No. to Lb.	Price
<b>BUTTER CREAMS</b>	Large.....	Pails.....					
	Mixtures, Small.....	Boxes.....					
	Mixtures, Small.....	Pails.....					
	Corn, Small.....	Boxes.....					
	Corn, Small.....	Pails.....					
	Corn, Small.....	Boxes.....					
<b>CARAMELS</b>	Chocolate Dipped.....	Pails.....	Pockets				
	Machine or Enrober.....	Pails.....	Layers.....				
	Cheapest Wrapt.....	Cases.....		50			
	Cheapest Wrapt.....	Cases.....		45			
	Cheapest Wrapt.....	Pails.....		25			
	Cheapest Wrapt.....	Boxes.....					
	Cheapest Wrapt.....	Boxes.....					
	Whipped Cream, Wrapt.....	Pails.....					
	Whipped Cream, Wrapt.....	Cases.....					
	Whipped Cream, Wrapt.....	Boxes.....					
	Butterscotch.....	Pails.....					
	Butterscotch.....	Cases.....					
	Butterscotch.....	Boxes.....					
<b>COCOANUT WORK</b>	Bonbons No. 1.....	Pails.....					
	Bonbons, No. 2.....	Pails.....					
	Caramels, Pure Crystallized.....	Pails.....					
	Cheapest Caramels, Crystallized.....	Pails.....					
	Tea Biscuits.....	Boxes.....					
	Macaroons.....	Boxes.....					
	Caramels.....	Boxes.....					
	Jap.....	Boxes.....					
<b>CHOCOLATES</b> Machine Dipped	Chocolate Drops.....	Pails.....					
	Chocolate Drops.....	Pails.....					
	Chocolate Drops.....	Pails.....					
	Chocolate Chips.....	Pails.....					
	Solid.....	Boxes.....					
	Chocolate Chips.....	Pails.....					
	Honeycomb.....	Boxes.....					
	Nougats.....						
	Peanuts.....						
Almonds.....							
<b>CREAM BONBONS</b> Crystallized <b>CREAM WAFERS</b> .....	Plain.....	Pails.....					
	Fancy.....	Pails.....					
		Pails.....					
<b>CREAM AND GUM</b> <b>MIXED</b> —Crystallized 50% Gum Work 50% Cream Work	Large.....	Pails.....					
	Small.....	Pails.....					
<b>GUM WORK</b>	A. B. Crystallized.....	Pails.....					
	Sugar Crystallized.....	Pails.....					
	A. B. Sugar Rolled.....	Bbals.....					
	Soft Sugar Rolled.....	Bbals.....					
	Spiced Drops and Strings.....	Boxes.....					
Licorice Drops.....	Boxes.....						

NOTE: The complete form is comprised of three sheets.

## EXHIBIT V

### DAILY SALES REPORT

Fill in your Sales (Orders Received) on this blank and mail EVERY DAY to the North Carolina Pine Association, Norfolk, Va.

In DELIVERY column under RAIL show the RATE BEYOND Norfolk, and under the heading WATER show POINT of delivery—such as Phila., N. Y., Long Island Sound, etc.

In TIME OF SHIPMENT column state if sale is made for Future Shipment, Contract, etc. When no time is shown in this column it will be understood the order is for Prompt Shipment.

Enter PRICE under the Proper Price Column, it being understood that the terms "Less 5%" and "Net" refer to the matter of Commission and have no bearing on the customary cash discount.

The number below is your identification in the Secretary's office. You need not sign this report.

No. .... 192....

Quantity Ordered Feet	DESCRIPTION (Give full particulars, using as much space as necessary)	DELIVERY		Time of Shipment	PRICE	
		Rail Rate Over Nfk.	Point Water		Wholesale Less 5%	Direct Net

**EXHIBIT VI**  
**AMERICAN HARDWOOD**  
**MANUFACTURER'S ASSOCIATION**  
**OPEN COMPETITION PLAN**  
**SALES REPORT**

Vol. 2. No. 54 Executive Office, Bank of Commerce & Trust Co. Bldg., Memphis, Tenn. Week Ending January 31, 1920

**ACTUAL SALES OF HARDWOOD**

As reported by members of the Open Competition Plan for week ending January 31, 1920

**SOUTHERN TERRITORY**

**GUM**

**FIRSTS AND SECONDS QUARTERED RED GUM FIGURED WOOD**

SOLD BY	Date of Sale	Feet	Thickness	Destination or Territory	Delivered Price Sold to Customer	Which is Equivalent at Cairo to	Current Av. of Sales at Cairo
*151 Sondheimer	1/26	15,000	4/4"	Pacific Coast	232.00	211.00	211.00
<b>NO. 1. COMMON AND BETTER QUARTERED RED GUM FIGURED WOOD</b>							
* 59 New Decmer	1/28	15,000	4/4"	Mississippi	203.50 178.50	206.75 181.75	..... .....
<b>FIRSTS AND SECONDS QUARTERED RED GUM</b>							
*159 H. Ridge	1/28	75,000	4/4"	Elmira Ty	215.00	207.75	200.25
150 Alex. Bros.	1/15	15,000	4/4"	Cincinnati	188.50	186.25	.....
71 Kraetzer	1/29	(1)15,000	4/4"	Virginia	211.00	207.00	.....
<b>NO. 1 COMMON AND BETTER QUARTERED RED GUM</b>							
* 32 Pritch-Wh.	1/26	105,000	8,000	5/4" Kansas	190.00	186.75	186.75
* 67 Faust	1/26	4,000	6/4-8/4"	Mississippi	210.00	213.00	.....
*159 H. Ridge	1/28	37,500	8/4"	Elmira Ty	245.00	237.00	237.00
(1) Kraetzer-Cured, Selects at 191.00							
<b>NO. 1 COMMON AND BETTER QUARTERED RED GUM</b>							
* 44 Rush	1/23	15,000	8/4"	North Carolina	240.00 220.00	233.00 213.00	..... .....
321 Lamb-Gary	1/24	7 500	8/4"	Huntington, W. Va.	211.00 181.00	206.75 176.75	..... .....
*240 Bellgrade	1/23	13,000	8/4"	North Carolina	245.00 225.00	239.00 229.00	..... .....
		<u>35,500</u>					

NOTE\*—Class B—Sales to Consumers. Actual destination not reported. Export Sales Reported on Cairo Rate Basis.

NOTE:—This is the first page; the entire report comprises 70 pages.

# EXHIBIT VII

12/27/20

D. O.  
Page No. 1

## WEST COAST LUMBERMEN'S ASSOCIATION SALES REPORTING DEPARTMENT

### DAILY MARKET BULLETIN No. 487

#### DIRECT

	Total Volume M	High Feet M	Price	Low Feet M	Price	Prevailing Feet M	Price
<b>FLOORING</b>							
1x4 No. 2 VG.....	19	10	55.00	6	51.50		
1x4 No. 3 SG.....	8	8	24.00				
1x6 No. 2 and B SG.....	7	7	32.00				
FINISH No. 2 and B 1x8-10".....	16	1	53.00	15	51.50		
<b>CEILING</b>							
5/8x4 No. 2 and B.....	22	5	28.25	17	28.00	17	28.00
1x4 No. 3.....	3	3	20.50				
1x4 No. 1.....	11	11	24.00				
<b>DROP SIDING</b>							
5/8x6 No. 4.....	6	6	15.00				
1x6 No. 2 and B.....	13	13	31.00				
<b>RUSTIC</b>							
5/8x6 No. 2 and B.....	10	10	32.50				
<b>BATTENS Lin.</b>							
3" Flat.....	11	11	.75				
2 1/2" O. G.....	5	5	.95				
<b>WAGON BOTTOMS Sets</b>							
13/16x38 V. G.....	12	12	3.60				
<b>BOARDS and S/L</b>							
1x4 SIS No. 1.....	3	3	16.00				
1x6.....	6	4	18.50	2	16.50		
Rgh.....	2	2	17.75				
1x8-10".....	42	2	19.50	30	17.50	30	17.50
1x4 and W SIS No. 2.....	8	8	13.50				
<b>DIMENSION S and E</b>							
2x4 12-14 No. 1.....	15	15	15.50				
PLK and SML TBRs.....							
4x4-6 12/16 S4S.....	6	6	21.50				
3x10-12" 12/16 S4S.....	2	2	23.00				
<b>TIMBERS Under 32'</b>							
6x6/8x10 S4S.....	4	4	26.00				
LATH Fir.....	15	10	4.00	5	3.75		

#### WHOLESALE

<b>FLOORING</b>							
1x4 No. 1 VG.....	9	9	57.00				
No. 2 VG.....	44	5	51.00	5	49.00		
No. 3 VG.....	10	10	33.00				
1 1/4x4 No. 2 and B VG.....	5	5	55.50				
1x4 No. 2 and B SG.....	15	15	24.00				
STEPPING No. 2 and B.....	2	2	60.00				
FINISH No. 2 and B 1x8-10".....	6	5	51.00	1	50.00		
CASG and BASE.....	2	2	58.00				
<b>CEILING</b>							
5/8x4 No. 2 and B.....	5	5	26.50				
5/8x4 No. 2 and B.....	5	5	31.00				
No. 3.....	5	5	22.50				
1x6 No. 2 and B.....	5	5	32.50				
<b>DROP SIDING</b>							
1x6 No. 2 and B.....	8	8	31.00				
<b>BOARDS and S/L</b>							
1x4 SIS 13/16 No. 1.....	15	15	15.00				
1x12" SIS 13/16.....	15	15	19.00				
1x6-8" SIS 13/16 No. 3.....	30	30	16.00				
<b>DIMENSION S and E</b>							
2x4 12-14 No. 1.....	13	13	12.00				
PLK and SML TBRs.....							
4x4 12/16 S4S.....	1	1	16.50				
<b>CEDAR SIDING</b>							
3/4x10 Clr Col.....	60	60	70.00				

NOTE: No specified lengths prices are shown on Bulletin. Total volume for day in Bulletin and detail sales 1,288,894 Ft.

## EXHIBIT VIII

### NORTH CAROLINA PINE ASSOCIATION NORFOLK, VIRGINIA WEEKLY REPORT OF ORDERS, SHIPMENTS AND PRODUCTION

No. 102

Norfolk, Va., November 18th, 1920.

For Week ending Saturday, November 13th, 1920.

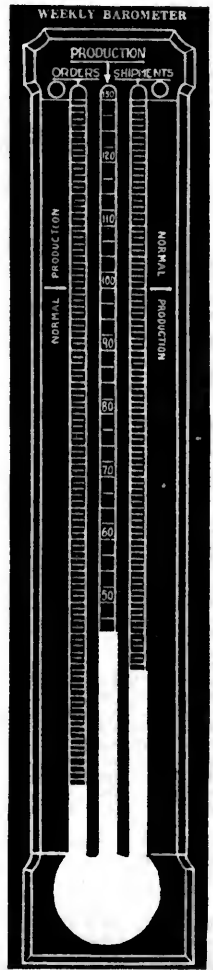
#### 45 MILLS REPORT:

Orders.....	2,654,968 feet	58,999 feet
Shipments.....	4,976,168 "	110,581 "
Production.....	5,707,723 "	126,838 "
Normal Production.....	12,726,000 "	282,800 "

Orders below Shipments.....	2,321,200 feet =	47%
Orders below Actual Production.....	3,052,755 "	= 53%
Shipments below Actual Production.	731,555 "	= 13%
Orders below Normal Production. . .	10,071,032 "	= 79%
Shipments below Normal Production	7,749,832 "	= 61%
Actual Production below Normal . . .	7,018,277 "	= 55%

Increase in Orders compared with last week..... 823,868 feet = 45%

Increase in Number of Reports from last week..... 5



#### PREVIOUS REPORTS

Week Ending	No. of Mills	Orders	Shipments	Production	Normal Production
Aug. 21....	40	5,227,500 feet	5,065,181 feet	5,722,051 feet	12,774,000 feet
Aug. 28.....	36	5,264,100 "	5,052,079 "	5,559,528 "	12,954,000 "
Sept. 4.....	41	3,410,600 "	5,838,799 "	6,134,992 "	14,184,000 "
Sept. 11.....	36	2,420,433 "	4,152,631 "	5,809,137 "	13,692,000 "
Sept. 18.....	34	3,603,000 "	4,047,873 "	6,008,703 "	12,408,000 "
Sept. 25.....	46	4,764,348 "	6,556,171 "	7,456,497 "	13,896,000 "
Oct. 2.....	37	4,949,500 "	5,830,971 "	5,636,717 "	12,234,000 "
Oct. 9.....	42	3,190,800 "	4,498,382 "	7,575,162 "	15,174,000 "
Oct. 16.....	39	2,389,900 "	3,202,174 "	5,555,339 "	12,144,000 "
Oct. 23.....	44	3,859,900 "	4,766,883 "	7,026,060 "	14,778,000 "
Oct. 30.....	43	1,854,000 "	4,261,144 "	6,581,118 "	14,112,000 "
Nov. 6.....	40	1,831,100 "	3,778,269 "	5,424,418 "	13,044,000 "
Nov. 13.....	45	2,654,968 "	4,976,168 "	5,707,723 "	12,726,000 "
Total 3 months.....	45,429,149 "	62,026,815 "	80,287,445 "	174,216,000 "	
Total Year to Date.....	199,458,658 "	254,902,743 "	284,487,000 "	565,254,000 "	

Barometer indicates percentage of Production, Orders and Shipments above or below Normal Production, which is shown as "Base," or 100%.

The above form of Barometer, originated by the Brookmire Economic Service to picture Fundamental Business and Financial Conditions, is used by this Association with their permission.

## EXHIBIT IX

### PRODUCTION AND SALES STATISTICS AND REPORT OF SPECIAL QUOTATIONS FOR THE MONTH OF OCTOBER, 1920.

- (a) Percent actual QUANTITY production to Normal.  
 (b) Percent actual VALUE production to Normal.  
 (c) Percent actual QUANTITY SALES to Normal.  
 (d) Percent actual QUANTITY BOOKS SOLD NEW USERS to Total sold.  
 (e) Time required to complete unfilled orders and contracts.

Member	(a)	(b)	(c)	(d)	(e)	Special Quotation Filed	Sales Below List
1	149.4	232.4	146.3	.....	6 to 7 wks.		
2	77.4	120.1	52.6	24.4	8 to 9 "		1
4	107.3	165.8	74.1	43.4	8 to 9 "		
5	73.9	113.2	62.6	12.6	5 to 6 "		
6	106.2	158.9	75.5	13.3	1 to 2 "		
7	71.8	116.7	85.1	36.3	3 to 4 "		
8	128.1	138.2	73.2	11.6	10 to 11 "		
11	133.1	199.9	85.7	25.2	2 to 3 "		
13	129.9	194.2	71.3	3.9	11 to 12 "		
14	127.0	142.0	93.4	19.4	11 to 12 "		
Whole Industry	105.9	142.4	67.3	17.7	9 to 10 wks.	None	1

(No exchange of information between members.)

### MONTHLY COMPARISON OF PRODUCTION AND SALES FOR WHOLE INDUSTRY FOR YEAR ENDING OCTOBER 30, 1920.

Month	(a)	(b)	(c)	(d)	(e)
November, 1919	95.3	105.8	100.4	19.3	7 to 8 Weeks
December, "	104.0	116.4	111.9	20.7	7 to 8 "
January, 1920	100.7	101.9	121.7	20.7	11 to 12 "
February, "	92.0	97.8	99.0	20.8	11 to 12 "
March, "	99.4	113.2	110.2	22.1	12 to 13 "
April, "	56.0	82.2	119.5	17.8	14 to 15 "
May, "	113.7	127.7	100.6	18.1	14 to 15 "
June, "	110.4	130.1	97.3	16.7	13 to 14 "
July, "	107.0	126.9	81.5	15.0	12 to 13 "
August, "	107.1	138.8	74.5	13.8	11 to 12 "
September, "	111.8	150.4	84.1	14.7	10 to 11 "
October, "	105.9	142.4	67.3	17.7	9 to 10 "
Average	100.3	119.5	97.3	18.1	

## EXHIBIT X

### STOCK REPORT, JANUARY 1ST, 1920

As reported by the members of the

#### AMERICAN HARDWOOD MANUFACTURER'S ASSOCIATION

MEMPHIS, TENNESSEE

Note—The oversold column shows that some of the members are oversold on these various items. The "Unsold January 1st" column shows that some of the members have these various amounts unsold.

FIGURES DENOTE THOUSANDS

### GUM

#### FIRST AND SECONDS QUARTERED RED GUM FIGURED WOOD

Thickness-Width	Jan. 1 Dry	Jan. 1 Green	Jan. 1 Total	Jan. 1 Sold	Jan. 1 Oversold	Jan. 1 Unsold	Dec. 1 Unsold	Stock Increase	Stock Decrease
1".....	90	38	128	28	9	109	35	74	...
1 1/4".....	12	10	22	3	3	22	15	7	...
1 1/2".....	4	....	4	3	3	4	....	4	...
2".....	41	...	41	13	3	31	26	5	...
2 1/2".....	12	...	12	....	....	12	12	....	....
3".....	3	....	3	....	....	3	3	....	....
<b>Total.....</b>	<b>162</b>	<b>48</b>	<b>210</b>	<b>47</b>	<b>18</b>	<b>181</b>	<b>91</b>	<b>90</b>	<b>...</b>

#### NO. 1 COMMON AND SELECTS QUARTERED RED GUM FIGURED WOOD

1".....	73	10	83	33	....	50	41	9	....
1 1/4".....	21	....	21	....	....	21	9	12	....
1 1/2".....	10	....	10	....	....	10	12	....	2
2".....	18	....	18	11	11	18	8	10	....
<b>Total.....</b>	<b>122</b>	<b>10</b>	<b>132</b>	<b>44</b>	<b>11</b>	<b>99</b>	<b>70</b>	<b>31</b>	<b>2</b>

#### FIRST AND SECONDS PLAIN RED GUM FIGURED WOOD

5/8".....	....	....	....	....	....	....	2	....	2
1".....	100	27	127	....	....	127	129	....	2
1 1/4".....	20	10	30	....	....	30	23	7	..
1 1/2".....	3	....	3	....	....	3	3	....	....
2".....	13	10	23	....	....	23	20	3	....
<b>Total.....</b>	<b>136</b>	<b>47</b>	<b>183</b>	<b>....</b>	<b>....</b>	<b>183</b>	<b>177</b>	<b>10</b>	<b>4</b>

#### NO. 1 COMMON AND SELECTS PLAIN RED GUM FIGURED WOOD

1".....	176	45	221	2	....	219	154	65	....
1 1/4".....	13	....	13	....	....	13	11	2	....
2".....	1	....	1	....	....	1	3	....	2
<b>Total.....</b>	<b>190</b>	<b>45</b>	<b>235</b>	<b>2</b>	<b>....</b>	<b>233</b>	<b>168</b>	<b>67</b>	<b>2</b>

#### LOG RUN PLAIN RED GUM FIGURED WOOD

1".....	30	16	46	....	....	46	46	....	....
---------	----	----	----	------	------	----	----	------	------

NOTE: This is the first page; the entire stock report comprises 63 pages.

150



**EXHIBIT XI**  
**DISTRICT TWELVE**  
**OF THE**  
**NATIONAL ASSOCIATION OF BOX MANUFACTURERS.**

Report of business conditions for month of ..... 192.....  
 Unless otherwise stated, answers to questions should be based upon comparison with preceding month.

**MARKET CONDITIONS.**

1. What is the trend of business as indicated by:
- |                |               |                    |               |
|----------------|---------------|--------------------|---------------|
| Demand on      | Lighter _____ | Inquiries on       | Lighter _____ |
| (a) Contracts? | Same _____    | (b) New Business?  | Same _____    |
|                | Heavier _____ |                    | Heavier _____ |
|                |               | (c) Selling Price? | Higher _____  |
|                |               |                    | Same _____    |
|                |               |                    | Lower _____   |
2. Are you in position to take additional business? If so,  
 (a) How much? \_\_\_\_\_; (b) What class of boxes? \_\_\_\_\_

3. List average prices per M feet of all Sales during the month.

Material	Average price per M feet for the month, sales in lots of	50 boxes or less	100 boxes	500 boxes	1,000 boxes
		White Pine	Made up		
	Shooks				
Gum and Yellow Pine	Made up				
	Shooks				
Poplar and Cottonwood	Made up				
	Shooks				

**RAW MATERIAL**

4. (a) Is your lumber stock in yard and purchased { Above Normal? \_\_\_\_\_  
 Normal? \_\_\_\_\_  
 Below Normal? \_\_\_\_\_
- (b) For what period are your entire requirements covered by purchases? \_\_\_\_\_
- (c) Are you in the market now and if so, for what material and in what quantity? { \_\_\_\_\_ M feet \_\_\_\_\_ Material.  
 \_\_\_\_\_ M feet \_\_\_\_\_ Material.  
 \_\_\_\_\_ M feet \_\_\_\_\_ Material.
- (d) Do you wish to offer any of your lumber stock? If so, note quantity and description.  
 M feet of \_\_\_\_\_
5. (a) Is the market on Box Lumber { Lower? \_\_\_\_\_  
 Same? \_\_\_\_\_  
 Higher? \_\_\_\_\_
- (b) List all offerings of Box Lumber.

Offer made by	Quantity	Description	Price per M	f.o.b. what point

(c) List of all purchases of Box Lumber.

Purchased from	Quantity	Description	Price per M	f.o.b. what point

**LABOR**

6. Summarize briefly labor situation.
- \_\_\_\_\_
- \_\_\_\_\_

**GENERAL**

7. Note any special questions you desire to have discussed at the next meeting.
- \_\_\_\_\_
- \_\_\_\_\_

(Signature) \_\_\_\_\_

EXHIBIT XII

\_\_\_\_\_  
(Company)

W. D. Burr,  
1553 Conway Building,  
Chicago, Illinois.

Dear Sir:

Below is a statement of hourly rate of wages paid by this company for the various classes of labor indicated during the month of \_\_\_\_\_ 1920.

<u>Employee</u>	<u>Hour Rate of Wages Paid</u>
Saw Filer.....	_____ Cents per hour.
Rip Sawyer.....	_____ " " "
Cut-off Sawyer.....	_____ " " "
Planer.....	_____ " " "
Planer Helper.....	_____ " " "
Re-Sawyer.....	_____ " " "
Re-Sawyer Helper.....	_____ " " "
Machine Nailer.....	_____ " " "
Matcher.....	_____ " " "
Matcher Helper.....	_____ " " "
Printer.....	_____ " " "
Common Labor (Except Women) {	
Factory.....	_____ " " "
Yard.....	_____ " " "
Women.....	_____ " " "

We are paying at rate of \_\_\_\_\_ for overtime.

Our factory is now working on a \_\_\_\_\_ hour per day basis.

S space for additional remarks in explanation of wage figures given.

\_\_\_\_\_  
(Signed) \_\_\_\_\_

**EXHIBIT XIII**  
**NORTH CAROLINA PINE ASSOCIATION**  
**NORFOLK, VA.**

Operating Costs, For Month of \_\_\_\_\_ 192\_\_\_\_  
(with Analysis)

	Total for the Month				ANALYSIS			
					Labor		Other Expenses	
	Amount	Av. Cost Per M. Ft.	Amount	Av. Cost Per M. Ft.	Amount	Av. Cost Per M. Ft.	Amount	Av. Cost Per M. Ft.
1 Stumpage (Board Measure).....								
2 Logging Expense.....								
3 Log Transportation.....								
4 TOTAL COST OF LOGS AT MILL (Lines 1, 2, and 3.)								
5 Saw Mill.....								
6 Dry Kilns.....								
7 Yarding and Shipping.....								
8 TOTAL COST OF MANUFACTURING (Lines 5, 6, and 7.)								
9 Insurance and Taxes.....								
10 Depreciation.....								
11 General Overhead.....								
12 TOTAL OVERHEAD COST (Lines 9, 10, and 11)								
13 Selling Expense.....								
14 TOTAL COST OF ROUGH LUMBER (Lines 4, 8, 12, and 13)								
15 Planing Mill Cost.....								
16 TOTAL COST OF FINISHED LUMBER (Lines 14 and 15)								

- 17
- 18 TOTAL ROUGH LBR. PRODUCTION  
(B. M.).....M. FEET. NORMAL RUNNING TIME..... HOURS.  
(For the Month)
- 19 TOTAL DRESSED LBR. PRODUCTION  
(B. M.).....M. FEET. ACTUAL RUNNING TIME..... HOURS.  
(For the Month)
- 20 AVERAGE YIELD PER LOG.  
(B. M.).....FEET. LOST TIME..... HOURS.

Mill Number	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	19	20
5	\$6.00	\$7.22	\$5.93	\$5.15	\$11.61	\$6.69	\$4.68	\$16.59	\$2.50	\$3.71	\$1.86	\$8.07	\$5.95	\$70.16	\$5.36	\$75.52	887,687	85
6	6.00	14.23	10.72	30.95	.....	12.03	11.55	24.18	3.13	5.38	4.48	12.99	1.97	69.28	11.30	80.58	712,000	75
0	6.00	23.92	3.00	32.99	9.06	1.81	3.62	14.49	2.01	6.92	4.59	11.62	3.16	63.07	.....	.....	.....	.....
7	6.00	17.73	8.93	32.60	8.37	1.78	5.03	15.18	1.85	1.95	2.50	5.36	2.21	55.44	3.35	57.60	845,520	81
1	6.00	17.43	11.77	35.20	6.19	4.26	1.62	12.07	1.97	2.82	2.19	6.98	.....	94.2	.....	.....	.....	.....
21	6.00	11.79	3.15	20.94	6.24	1.67	3.38	11.29	1.90	3.96	13.27	19.13	.....	92.4	5.89	58.24	2,104,000	.....
26	6.00	15.71	8.39	33.74	6.42	3.61	1.22	10.80	3.07	.74	5.42	9.23	.....	86.8	5.37	54.54	783,983	50
34-a	6.00	16.51	6.10	31.40	6.69	3.67	1.35	8.11	2.02	1.33	1.90	5.25	.....	84.9	5.39	50.82	910,000	.....
29-c	6.00	12.21	6.10	24.31	7.19	5.94	4.86	12.99	1.80	1.68	2.85	6.03	.....	79.4	656,000	.....	.....	
8-d	6.00	8.10	12.31	26.41	5.71	1.15	3.58	10.44	1.85	1.55	2.63	6.02	.....	77.3	7.56	51.32	522,888	127
40	6.00	11.45	8.07	25.52	7.23	1.62	3.60	12.45	1.45	.97	2.72	5.14	.....	73.1	.....	.....	.....	
34-b	6.00	12.68	5.43	23.47	4.42	1.71	1.88	10.05	2.81	1.69	3.61	8.11	.....	61.2	.....	.....	.....	
19	6.00	12.56	5.99	26.30	5.84	1.54	2.85	9.53	3.13	.84	3.57	7.54	.....	59.8	5.78	47.94	500,000	69
23	6.00	8.88	14.81	21.89	5.81	1.43	2.52	8.70	1.26	.....	1.79	3.05	.....	58.2	2.78	43.92	186,927	.....
22	6.00	11.24	8.89	18.13	7.09	1.40	4.74	13.59	1.83	.79	3.26	6.20	.....	53.8	5.67	40.95	374,601	62
20-a	6.00	10.98	9.31	26.29	4.61	.....	3.21	8.23	1.23	1.40	1.87	4.50	.....	40.28	.....	.....	.....	
8-b	6.00	11.43	8.64	26.07	5.48	.....	1.71	8.13	1.73	1.76	2.93	5.12	.....	49.1	3.48	43.69	404,291	54
15	6.00	12.00	3.15	23.15	5.58	.....	2.92	9.30	2.21	1.53	2.60	6.40	.....	45.5	.....	.....	.....	
14	6.00	13.00	6.80	22.00	5.28	.....	1.86	7.44	1.60	1.72	5.24	8.48	.....	43.8	3.37	42.12	593,382	88
18-c	6.00	10.12	6.85	22.97	4.28	.....	.....	7.70	1.91	1.30	2.62	5.83	.....	39.8	5.92	43.37	496,988	72
17	6.00	7.88	3.94	17.66	6.61	.....	3.39	2.48	1.28	.67	4.90	6.85	.....	35.1	2.77	39.98	438,000	73
48	6.00	6.66	3.10	19.06	6.45	.....	5.89	12.34	.....	.....	5.68	8.72	.....	30.8	7.51	44.27	530,000	.....
38	6.00	10.86	3.10	19.06	3.48	.....	1.47	6.09	1.34	1.17	3.68	8.59	.....	29.8	3.52	38.30	620,781	91
72	6.00	7.60	3.79	17.39	6.68	.....	1.11	3.34	1.13	2.00	3.68	5.79	.....	28.8	2.53	38.39	.....	
16	6.00	12.59	2.82	21.41	4.14	.....	1.00	5.64	2.05	2.18	1.68	5.91	.....	34.15	10.33	44.48	779,000	.....
8-a	6.00	8.12	6.04	20.16	4.08	.....	1.43	8.4	1.25	.82	2.61	4.69	.....	17.8	4.43	35.52	1,392,486	73
52	6.00	6.62	3.98	16.60	6.66	.....	2.27	1.88	1.13	1.84	1.69	3.84	.....	6.4	2.46	32.70	361,974	.....
111	6.00	4.00	.....	10. ....	6.00	4.00	.....	10.00	.....	.....	.....	5.00	.....	25.00	2.50	27.50	614,000	.....
Average	\$6.00	\$10.99	\$6.64	\$23.38	\$5.83	\$1.51	\$2.73	\$9.80	\$1.60	\$1.57	\$3.73	\$6.77	\$1.30	\$41.18	\$5.43	46.61	14,051,998	77
Aug. 1920, Costs	Average year to date																	
Aug. 1920, Costs	Average Year 1919																	
Aug. 1920, Costs	Average Year 1918																	
Aug. 1920, Costs	Average Year 1917																	
Aug. 1920, Costs	Average Year 1916																	
Aug. 1920, Costs	Average Year 1915																	
Aug. 1920, Costs	Average Year 1914																	
Aug. 1920, Costs	Average Year 1913																	
Aug. 1920, Costs	Average Year 1912																	
Aug. 1920, Costs	Average Year 1911																	
Aug. 1920, Costs	Average Year 1910																	
Aug. 1920, Costs	Average Year 1909																	
Aug. 1920, Costs	Average Year 1908																	
Aug. 1920, Costs	Average Year 1907																	
Aug. 1920, Costs	Average Year 1906																	
Aug. 1920, Costs	Average Year 1905																	
Aug. 1920, Costs	Average Year 1904																	
Aug. 1920, Costs	Average Year 1903																	
Aug. 1920, Costs	Average Year 1902																	
Aug. 1920, Costs	Average Year 1901																	
Aug. 1920, Costs	Average Year 1900																	
Aug. 1920, Costs	Average Year 1899																	
Aug. 1920, Costs	Average Year 1898																	
Aug. 1920, Costs	Average Year 1897																	
Aug. 1920, Costs	Average Year 1896																	
Aug. 1920, Costs	Average Year 1895																	
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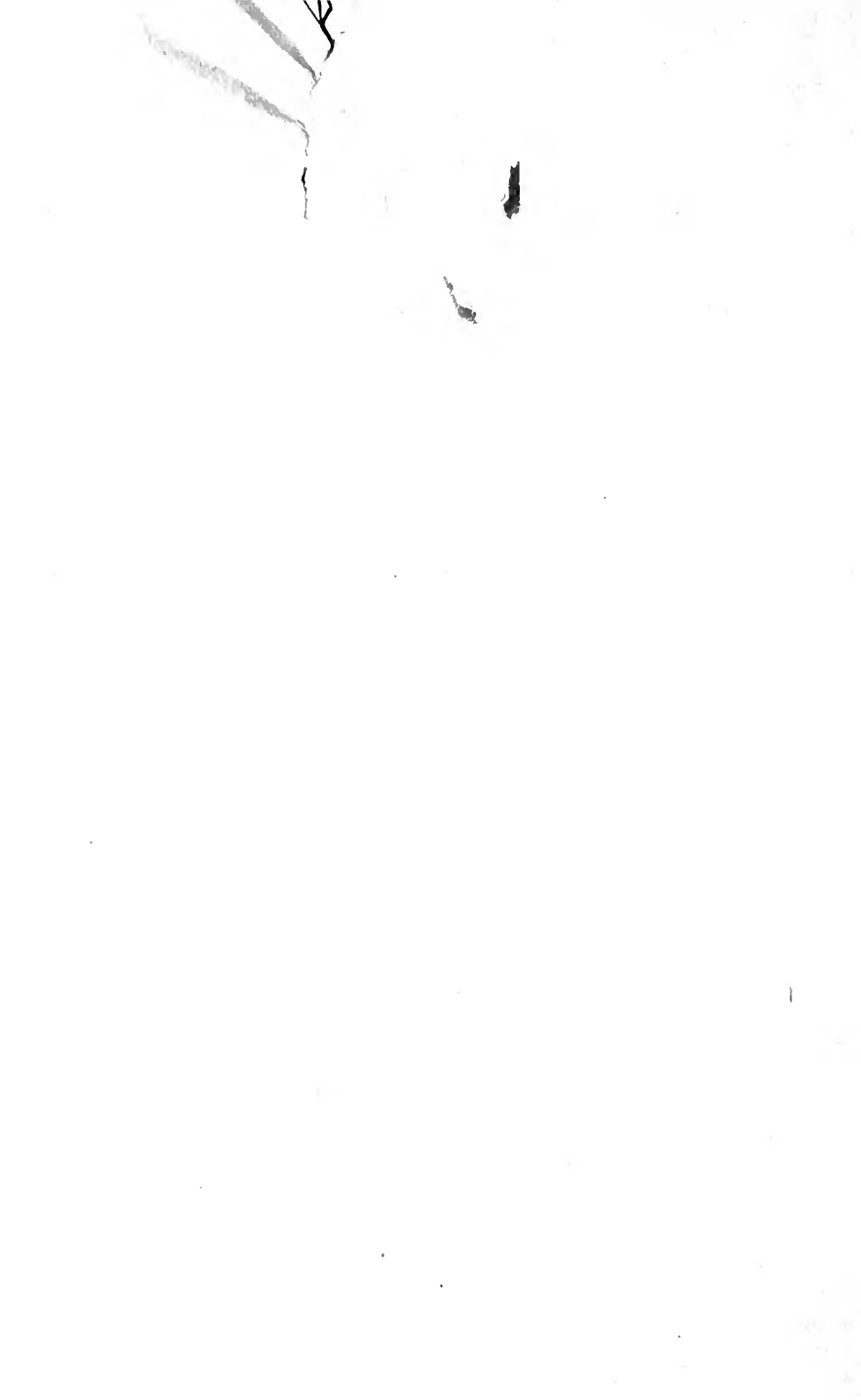
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