The Emergence of Oligopoly
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The Emergence of Oligopoly: Sugar Refining as a Case Study.

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The decade following 1895—a period during which the consolidation of many other industries was just beginning—saw the American Sugar Refining Company forced to grapple with the problem of how to prevent the entry of new firms into that industry, a problem which was later to destroy more than one combination. In sugar refining, two major barriers were erected to discourage potential entrants: (1) a working arrangement with the wholesale grocers under which the latter refused to handle the sugars of any proscribed company; and (2) the receipt of rebates and other concessions from the railroads which provided the American with a substantial advantage in shipping costs. Despite these and other obstacles, however, a small number of firms nonetheless managed to invade the sugar refining industry, the most serious threat to the American’s hegemony coming from the entry of Arbuckle Brothers.

Arbuckle was not only the nation’s largest coffee grinder but also the holder of a patent on a machine capable of packaging sugar in two-pound paper containers. While previous interlopers had been willing to accept a minimum share of the market, tacitly agreeing to follow the American’s lead in pricing, Arbuckle’s entry was marked by animosity from the very beginning and quickly touched off price wars in both the coffee and sugar industries. After several years of unprofitable conflict, the two parties finally reached a modus vivendi, Henry O. Havemeyer in the meantime having promoted a merger among three other rival refineries to create the industry’s second-largest firm. Through the dynamism of these competitive forces, the sugar refining industry was transformed from a monopoly into an oligopoly—with the American Sugar Refining Company still in control.

With the E. C. Knight case settled entirely to Henry Havemeyer’s satisfaction, the only major problem still confronting the American was the threat of new firms entering the industry. Andrew Carnegie
had warned of the danger. "There is no possibility of maintaining a trust," he declared. "It is bound to go to pieces, sooner or later, and generally to involve in ruin those foolish enough to embark on it. If successful for a time and undue profits accrue, competition is courted which must be bought out, and this leads to fresh competition. And so on until the bubble bursts. And then the article which was proposed to enhance in price is made for years without profit and the consumer has his ample revenge."  

Underscoring Carnegie's caveat was the recent experience of the National Cordage Company. Like the American Sugar Refining Company, it had originally been a trust which was reorganized as a New Jersey holding company following the North River decision; and again like the American, it had succeeded in gaining control of approximately 90 per cent of its industry. No sooner was this control accomplished, however, than new cordage mills were erected to replace those which had been bought out. The officers of the National Cordage Company had tried, by various means, to block the entry of these new firms. They sought to corner the supply of raw hemp. They attempted to purchase exclusive rights to the machinery used in the manufacture of rope and twine. But for one reason or another, all these efforts failed, and on May 4, 1893, unable to continue supporting the price of its stock on the American exchange, National Cordage was forced into receivership, dragging to ruin with it three brokerage houses and many individual investors.  

For a while, following the American Sugar Refining Company's acquisition of the four Philadelphia refineries, it had seemed that the history of the National Cordage Company might be repeated in the sugar industry. As soon as the purchase of the four firms had become generally known, plans were laid to create new refining facilities not only in Philadelphia but in other cities as well. In Philadelphia itself, William J. McCahan decided to push ahead with a project that had been in the back of his mind for some time, a scheme to convert his molasses house into a sugar refinery. McCahan had been toying with the idea ever since the passage of the McKinley Tariff Act had made the manufacture of molasses unremunerative, but he had been de-  

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1 *New York Times*, October 9, 1888. From his own refusal to have anything to do with the consolidation of the steel industry, it seems clear that Carnegie was sincere in this view.  
2 Arthur S. Dewing, *A History of the National Cordage Company*, pp. 4–32. The company's complete financial collapse not only marked the onset of a severe depression throughout the economy but also threw into temporary disrepute, as far as Wall Street investors were concerned, all industrial securities issues.
terred by the severe price competition then raging among the various sugar refiners. However, now that the competition was a thing of the past, McCahan no longer saw any reason to hesitate. Reorganizing the firm which bore his name into a Pennsylvania corporation capitalized at $2 million, he began remodeling the molasses house so that it would eventually be capable of turning out 3,000 barrels of refined sugar daily.3

Motivated by much the same considerations, Frederick Mollenhauer and his two brothers, J. Adolph and Henry F. Mollenhauer, decided to convert their father's molasses house in Brooklyn into a refinery capable of producing 3,300 barrels of sugar daily.4 Meanwhile, George Bunker and several others connected with the former Delaware Sugar House agreed among themselves to organize the National Sugar Refining Company. Purchasing a site on the Hudson River in Yonkers, they began erecting a refinery which would eventually add another 2,300 barrels of refined sugar to the country's daily output.5 These three new refineries, when finally completed, threatened to reduce the American Sugar Refining Company's share of the eastern sugar market from 98 per cent to 80 per cent.6 And there were reports of plans to build still other refineries. A Boston group, for example, was said to be waiting only to see what attitude Congress would take toward sugar duties before beginning construction of a refinery in that city.7

Officials of the American Sugar Refining Company were well aware of the threat that the entry of new firms posed to their control of the industry. Realizing that the purchase of these firms would merely encourage the formation of others, they began looking around for some more effective means of limiting external competition. As a first step in this direction, they sought to enlist the support and cooperation of the wholesale grocers, the channel through which all sugar had to pass in order to reach the consumer.

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These wholesale grocers had been alarmed by the news that the

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5 Lexow committee investigation, 1897, pp. 322-26; United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 6169, 6178.
6 Willett & Gray's Weekly Statistical Sugar Trade Journal, December 28, 1893.
7 Ibid., October 5, 1893.
American had purchased the four Philadelphia refineries, for it meant that the grocers would henceforth have but one source of supply for refined sugar. This prospect had so frightened them that some of their number had seriously considered erecting their own refinery. One New York wholesale grocer, confirming reports that he had made available as the site of the proposed new refinery a tract of land which he owned on Staten Island, told a reporter for the *New York Times*, “I have consented to act as custodian of subscriptions for a company, the stockholders of which would comprise not less than 100 of the chief sugar distributors in the big cities of the country. . . .” Besides New York itself, these cities included Philadelphia, Boston, Baltimore, Chicago, Cincinnati, and St. Paul.8 Representatives of the American Sugar Refining Company, however, soon reminded the wholesale grocers that the real threat to their continued existence was not the American’s monopoly position but rather the severe competition which then prevailed among the wholesale grocers themselves.

The sale of refined sugar constituted approximately 40 per cent of the wholesale grocers’ business, but since sugar was an item of uniform quality, the wholesale grocers generally found themselves forced to handle it “without getting back the actual cost of distrib[ion],”9 It seemed that some jobber was always willing to cut his price in order to make a sale to a new customer, and since the wholesale grocers’ costs were almost entirely overhead in nature, the price at which they found themselves forced to sell refined sugar often was no higher than the price at which they had bought the sugar from the refiner. As G. Waldo Smith, president of the New York Wholesale Grocers’ Association, later explained: “Under the laws that govern competition the hundredth man—and he may be a very small dealer at that—can make the price at which his 99 competitors must sell all goods of [uniform quality]. . . . Under the laws of modern competition it is impossible to obtain a profit on such goods.”10 The wholesale grocers, like the sugar refiners before them, had found competition to be unbearable the more closely it approximated the conditions underlying the economists’ model.

It was for this reason that wholesale grocers from New York and New England had approached officials of the American Sugar Refining Company the year before, in June of 1891, asking for the adoption of a rebate system which would protect them from the severe com-

8 Erastus Wiman, quoted in the *New York Times*, April 7, 1892.
9 Lexow committee investigation, 1897, p. 413.
10 U.S. Industrial Commission, *Reports*, 1, pt. 2:59–60; see also Smith’s testimony before the Lexow committee during its 1897 investigation, pp. 830–31.
petition that they seemed unable to control themselves. "We found that ruin stared the jobbers and grocers in the face," Smith subsequently testified. "We went to the American Sugar Refining Company and asked them for relief. We went there six times and spent three hours each time before they would consent." 11

Specifically, what the representatives of the wholesale grocers wanted was for the American Sugar Refining Company to force all jobbers to adhere to a single price for sugar, a price that would enable the wholesale grocers to handle sugar at a profit. This was to be accomplished through a system of rebates paid only to those wholesale grocers who honored a pledge not to sell refined sugar for less than the prices posted by the American. That way, even though the wholesale grocers might still be forced to sell refined sugar at cost, they would be assured of a profit—a profit equal to the rebate they received from the American Sugar Refining Company. Those wholesale grocers who refused to become a party to the agreement or who, having signed the agreement, refused to live up to its terms were to be penalized by being denied the rebate and hence any chance to earn a profit on refined sugar. Under those circumstances, it was unlikely that any wholesale grocer would remain outside the system for long. 12 It was, in effect, a privately enforced wholesale price maintenance scheme similar to those agreements which today receive public protection under the so-called fair-trade laws.

In agreeing to the rebate system, officials of the American Sugar Refining Company were motivated, at least initially, by the desire to protect their distribution system. "... The thing had come to pass," John E. Searles later testified, "that the wholesalers were suffering in credit. We did not know who was safe. ... We, as a matter of self-protection in the matter of credits more than anything else, were interested in [the rebate system]." 13 Upon ascertaining what it would cost if the American itself were to try to distribute refined sugar to retail grocers throughout the country, officials of that company agreed to set up a rebate system, as the New York and New England wholesale grocers had requested, based on deferred payments of 1/8 of a cent a pound. 14 The Franklin refinery, then in active competition with the American, agreed to do the same. 15

11 Lexow committee investigation, 1897, p. 827.
12 Ibid., pp. 410-19.
13 Ibid., p. 414.
14 Ibid., p. 413; United States v. American Sugar Refining Co. et al.: Exhibits, 4:2174. The American, in fact, insisted that the wholesale grocers themselves decide how large the rebates should be, since they were in the best position to
The original purpose of the rebate system may well have been to protect the wholesale grocers, but it was not long before Searles and Henry O. Havemeyer realized that the system might serve to protect the American Sugar Refining Company as well. For if it was true, as the wholesale grocers claimed, that they could not survive without a rebate system, then it seemed only reasonable that in return for the American's co-operation the wholesale grocers should be willing to agree not to handle the sugars of any other refiner. Such a *quid pro quo* would make business extremely difficult for new firms entering the refining industry, for if the American with its vast resources and large market could not distribute sugar to retail grocers for less than $\frac{3}{8}$ of a cent a pound, as it felt it could not, new firms entering the industry would most likely find the cost of distribution even greater. "I do not think," Havemeyer later wrote, "competitors can market their sugar to their retail trade within $\frac{3}{8}$ of a cent. If they attempt it . . . they will certainly lose three times as much money as the American Co., and will soon be out of it."\(^{16}\)

It is not clear exactly when Searles and Havemeyer realized this ulterior advantage of the rebate system, but it was probably not long after the American succeeded in acquiring its four principal rivals in Philadelphia. For soon thereafter, in an effort to calm the fears of sugar distributors over the purchase of those refineries, the American began entering into rebate agreements with other wholesale grocers' associations similar to the one that it had reached with the wholesale grocers from New York and New England.\(^{17}\) Within a year of the Philadelphia refineries' purchase, it was the American, not the wholesale grocers, that was actively seeking to enlist sugar distributors in the rebate system—now renamed to avoid the unfavorable connotation of the word "rebate," an equality plan.\(^{18}\) By September, 1894, Havemeyer was able to write a prominent wholesale grocer in

\(^{15}\) Lexow committee investigation, 1897, p. 810.


\(^{17}\) New York Times, June 28, 1892; Willett & Gray's Weekly Statistical Sugar Trade Journal, September 15, 1892.

Chicago that the time of the American’s chief salesman, W. F. Osborn, “is now almost entirely devoted to winning followers to the plan.”

In this way, practically every wholesale grocer east of the Missouri River became, in effect, an exclusive selling agent for the American Sugar Refining Company. Those who refused to become a party to the rebate system found it difficult to survive in the business.

This change in the wholesale grocer’s status from independent buyer to franchised dealer was given explicit recognition in 1895 when the rebate system was scrapped and a factor plan substituted in its place. Under this new “equality” scheme, the wholesale grocers were no longer to receive rebates. Instead, they were made factors of the American Sugar Refining Company and were paid a commission for handling its sugars. But despite this change in form, again made to soothe the public sensitivity to rebates in any form, the underlying relationship remained the same—the wholesale grocers were to be protected against competition among themselves in return for the American’s being protected against competition from new refineries.

Nowhere in the many agreements between the American and the various wholesale grocers’ associations was it specifically stated that the latter could handle only the American’s sugar. But as Henry O. Havemeyer later wrote to a wholesale grocer in Rochester, “There is no plan . . . that the grocers can submit to me, which presumably involves a reciprocal advantage, which would permit them to buy competitive sugars and sell them under a plan between ourselves and the grocer.” He then added, “It is hardly to be presumed that the American Company would be a party to a plan to establish its rivals and make them successful.” In private letters to other prominent wholesale grocers, Havemeyer repeatedly stressed the same point.

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19 Henry Havemeyer to Henry B. Steele, September 17, 1894, reprinted in *ibid.*, p. 8849.
20 See the testimony of Edward J. Duggan, Francis H. Krenning, and the other wholesale grocers who appeared before the Lexow committee during its 1897 investigation, pp. 279–89, 1057–76; see also the story of M. P. Langley, a Lynn, Mass., grocer, in the *Boston Evening Record*, September 29, 1892.
21 Willett & Gray’s *Weekly Statistical Sugar Trade Journal*, October 10, 1895; Lexow committee investigation, 1897, pp. 415–16.
By forcing the wholesale grocers to handle only the American Sugar Refining Company's products, Havemeyer was merely copying a technique which James Duke's American Tobacco Company and several other industrial consolidations had developed to solve the problem of entry in their own industries. But effective as this control over wholesale distribution outlets might be in preventing the emergence of new competition, Havemeyer was determined to erect even more formidable barriers. The Standard Oil Company had been able to buttress its market position against interlopers through preferential railroad rates, and Havemeyer could see no reason why his own American Sugar Refining Company should not do the same.

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In its own way, sugar was as important to the railroads as petroleum. As an article which moved primarily from the sea inland, it helped offset the railroads' predominantly eastbound traffic. Refined sugar was, in fact, the only major source of through cargo to the trans-Ohioan regions, accounting for slightly more than a third of the tonnage carried in that direction by the major trunk-line railroads serving the port of New York. It was for this reason that the railroads had battled so fiercely for a share of the sugar traffic during the 1870's and 1880's. "Why, the railroads were always in a scrap among themselves," the traffic manager for Havemeyer & Elder later recalled.

The bitter competition among the railroads was in great part a carry-over from the bitter competition among the sugar refiners themselves, for any firm which found itself hard-pressed by a rival from another city—or a rival served by another railroad—would go to the

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24 Richard B. Tennant, The American Cigarette Industry, pp. 304-6. Explaining the rebate and later the factor plans adopted by the American Tobacco Company, Tennant declares: "... it was regarded by the Trust as an unfriendly act for a jobber to handle competing brands. In the early days, the rebate and commission arrangements, by allowing the Trust to cancel distributors' profits on past sales, gave it enormous leverage to affect jobbers' policy" (ibid., pp. 305-6). There is evidence that other industries might have used the same techniques to control entry. See the testimony of James Post, United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 6596-97; Lexow committee investigation, 1897, pp. 25-26; U.S. Industrial Commission, Reports, 1, pt. 2:21.


26 Testimony of Lowell M. Palmer, Hardwick committee investigation, 1911, p. 301.
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railroad with whom it dealt and demand some concession on freight rates, often claiming that the other railroads had already made a similar concession. "... It would have been impossible," Havemeyer & Elder's traffic manager explained, "for a refinery to live prior to the consolidation of these companies in 1887 without the obtaining of rebates. It was a very bitter fight between the sugar refining interests everywhere; Philadelphia against New York and New York against Boston." With the formation of the sugar trust in 1887, this competition—both that between the railroads and that between the refineries themselves—subsided. It flared up again with the opening of the Spreckels refinery in 1890, but then died down when the American finally succeeded in purchasing its four principal rivals in Philadelphia two years later.

Besides bringing to an end the competition within the sugar refining industry, this last move gave the American Sugar Refining Company a preponderance of bargaining strength vis-à-vis the railroads, for it was now in a position to decide which of the various trunk-line railroads would get the valuable sugar traffic. Henry Havemeyer decided to use this advantage to obtain a *quid pro quo* from the railroads similar to the one he had already obtained from the wholesale grocers. As common carriers the railroads could not refuse to carry other refining companies' sugars, but they could force those other refining companies to pay a higher freight rate.

Just as the wholesale grocers had been plagued by competition among themselves, so the railroads were similarly beset. Somewhat like the wholesale grocers, they found that their costs were almost entirely fixed, and one of the railroads, in order to increase its own tonnage, would inevitably try to grab a larger share of the sugar traffic by secretly cutting its rates. This occurred even though the American Sugar Refining Company was now the only customer. What the railroads desired was for some party to act as "evener," dividing the sugar traffic among the various trunk-line railroads according to previously agreed-to percentages. This was the way the problem of railroad competition was dealt with in the case of wheat, petroleum, and certain other commodities.

It was only logical in this situation that, in return for preferential rates, the American Sugar Refining Company should agree to take on the role of "evener," for it not only controlled 98 per cent of all

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27 Ibid., p. 299.
28 *New York Times*, April 4, 1890.
sugar shipments in the East but also had in Lowell M. Palmer someone ideally suited to manage such a task. Palmer had been associated with Henry O. Havemeyer since 1874, seeing to it that the various companies with which Havemeyer was associated obtained railroad rates at least as favorable as those received by any rival.\(^{29}\) It was largely through his efforts that Brooklyn shippers were finally able to gain direct access to all the railroads serving the port of New York. Before 1874, Brooklyn's manufacturers—including its sugar refiners—had been forced to use whichever railroad had the nearest siding, and this, besides the restriction it placed on the choice of carrier, involved considerable expense for overland cartage. But then Palmer built what later came to be known as the Brooklyn Eastern District Terminal, a docking facility for railroad lighters which enabled manufacturers to load their goods directly onto railroad cars and have them towed by tug to the terminal of whatever railroad they wished to ship on.\(^{30}\) Although Havemeyer himself supplied the land and capital for this enterprise, it was Palmer who conceived the idea and saw it through to completion. Largely as an outgrowth of this entrepreneurial endeavor, Palmer came to be placed in charge of all the transportation arrangements for Havemeyer & Elder and later, when the trust was formed, for that organization and its successor, the American Sugar Refining Company, as well.\(^{31}\) His assistant, and the one who actually handled the everyday details, was Thomas P. Riley, a former employee of the Erie Railroad.\(^{32}\)

In April, 1893, acting on Havemeyer's instructions, Palmer and Riley met with representatives of the New York Central and Erie railroads, the two trunk lines that handled most of the sugar leaving the port of New York. It was agreed that, in return for dividing the sugar traffic between the two roads according to the percentages they normally carried, the American Sugar Refining Company would receive a secret rebate of two cents a hundredweight on all its trunk-line traffic—that is, on all the sugar it shipped between Buffalo and

\(^{29}\) Hardwick committee investigation, 1911, p. 296.

\(^{30}\) Although the Havemeyer & Elder refinery was located on the water's edge, its docking facilities were completely taken up by ocean-going vessels bringing raw sugar to the plant. In fact, the refinery had been so constructed that the processed sugar came out on the landward side.

\(^{31}\) Hardwick committee investigation, 1911, p. 300; *United States v. American Sugar Refining Co.* *et al.*, pretrial testimony, 1912, pp. 10909-10.

MAP 1. THE AMERICAN SUGAR REFINING COMPANY AND THE RAILROADS, 1906

This map, which is redrawn from that which appeared in the New York American on March 8, 1906, shows the location of the American Sugar Refining Company's Havemeyer & Elder refinery, Palmer's Dock, and the various railroad terminals located around the New York harbor. It also indicates the percentage of sugar traffic carried by the railroads at that later date.
Salamanca, New York, on the one hand, and between Chicago and St. Louis on the other.\textsuperscript{33}

This initial rebate agreement was soon followed by similar arrangements with other railroads. For example, in return for being assured a certain percentage of the sugar traffic, most of the major railroads serving points beyond the Mississippi River agreed to give the American a further rebate of between 20 and 25 per cent on their prorated share of the joint rate with the trunk lines.\textsuperscript{34} Thus, of the forty-four cents a hundredweight which the railroads, according to their published tariffs, supposedly charged for shipping refined sugar from New York to cities along the Missouri River, seven cents was returned to the American Sugar Refining Company by means of secret rebates, two cents by the trunk line that carried the sugar to Chicago, and five cents by the railroad that carried it beyond.\textsuperscript{35} Equally favorable rebate agreements were entered into with the railroads serving Boston,\textsuperscript{36} as well as with those serving the southeastern states.\textsuperscript{37}

Since the money that the railroads were forced to refund under these various agreements represented considerable sums, from time to time the railroads would try to abrogate the agreements unilaterally. However, any such show of independence was usually short-lived, for the American Sugar Refining Company would simply divert its sugar shipments over some other line that was willing to pay a rebate. Under that type of economic pressure, no railroad could hold out against payment of the rebates for long.\textsuperscript{38}

As the man in charge of the American Sugar Refining Company’s traffic arrangements, Riley had the task of implementing these rebate agreements directly. Each month he would receive waybills from the

\textsuperscript{33} Points east of Buffalo (on the New York Central) and Salamanca, N.Y. (on the Erie), were considered to be in the two railroads’ home territories and hence were not subject to competition between them. Although no record of the original agreement survives, it was extended \textit{in toto} the following year (\textit{United States v. American Sugar Refining Co. et al.}, pretrial testimony, 1912, pp. 10018–21, 10025–26). As to the secret nature of the rebates, Riley later testified, “Yes, these rates and arrangements were all to be regarded as confidential between ourselves and the representatives of the transportation companies” (\textit{ibid.}, p. 10024).

\textsuperscript{34} \textit{Ibid.}, pp. 10005–6, 10014–17, 10157. The railroads were the Chicago, Milwaukee & St. Paul, the Chicago, Rock Island & Pacific, and the Chicago, Burlington & Quincy.

\textsuperscript{35} \textit{Ibid.}, pp. 10025–26.

\textsuperscript{36} \textit{Ibid.}, pp. 10031–32, 10650.

\textsuperscript{37} \textit{Ibid.}

\textsuperscript{38} \textit{Ibid.}, pp. 10120–32. Riley, for example, testified that “the Burlington road was always in and out; they would be in for a while, and then would drop out, and we would switch the tonnage to the other roads, and they would come back again...” (\textit{ibid.}, p. 10157).
railroads with which the American had rebate agreements. These waybills enabled Riley to keep track of how much sugar was being shipped over the various lines, and when he saw that a railroad was receiving more than its full quota, he would reroute traffic over a railroad which was running short of shipments. In this way Riley was able to maintain the percentages to which the railroads themselves had agreed. Periodically, he would submit claims to the railroad companies for the rebates which they owed, and when the sums were received, he would forward them to the American Sugar Refining Company, deducting only the expenses of his own office.\(^39\)

The trouble with this arrangement was that the railroads which were not parties to the arrangement became dissatisfied with their failure to obtain any significant share of the sugar traffic, and in an effort to remedy the situation would begin offering lower rates on sugar shipments.\(^40\) While the American Sugar Refining Company would have preferred to ignore these lower rates (being more than satisfied with its rebate arrangement with the other railroads), the wholesale grocers would not let it. As Riley later explained,

... certain grocers that were pretty hard fellows to get into line would say, for instance, “You are charging us a prepaid [freight rate] of 25 cents, and we can get a rate by the Kanawha Despatch [the fast freight line serving the Chesapeake & Ohio Railroad] of 22 cents, and we want to buy our sugar f.o.b. and ship it over the Kanawha Despatch.” Of course that would mean that every pound of sugar that went out f.o.b. over these differential lines [i.e., those lines that were not a party to the rebate arrangement] was interfering not only with our routing of the traffic, but it was disturbing the physical division of the business that I was supposed to look after, to see if the New York Central Railroad was allotted 31 per cent of the sugar traffic that they should get it, and the only way that I could see that they got it was by retaining control of the routing in our own hands.

“Again,” Riley added,

there was about that time the possibility of other sugar refining companies starting around here and we felt that they would undoubtedly take advantage of the differential rate lines if arrangements were not made to put these differential rate lines in a position where, when they were asked what their rate on sugar was, they would say: “The rate is the same as by

\(^39\) Ibid., pp. 9975-78.
\(^40\) Ibid., p. 10053.
any of the standard lines"; that was part of our policy, to look ahead on that matter and even if new refineries did enter the field the question of the division of the sugar traffic and the keeping of the routing in our hands, would still remain effective.41

However, the only way that the American could safeguard its rebate agreement was by gradually including more and more railroads in the scheme. Thus, by the middle of 1895, the sugar traffic out of New York was being divided not only between the New York Central and Erie railroads but also among the Lehigh Valley, Chesapeake & Ohio, and Central of Vermont railroads as well.42 But other carriers, such as the Pennsylvania, Baltimore & Ohio, and Delaware, Lackawanna & Western railroads, which were not as yet included, still remained dissatisfied. And being dissatisfied, they continued trying to undermine the rebate arrangement.

Of these outside railroads, the Pennsylvania was by far the most important sugar carrier. It already handled most of the sugar shipped from Philadelphia, but it wanted a share of the New York traffic as well. This Havemeyer refused to give it—unless it agreed to use Palmer’s Dock for the sugar it shipped from New York. The Pennsylvania, however, had its own terminal facilities in Brooklyn and refused to pay Palmer’s Dock 4.2 cents a hundredweight for lighterage, such as the other railroads were then paying, when it was capable of performing that service for itself. The fact was that the actual cost of lighterage was considerably less than 4.2 cents per hundredweight. The difference, approximately two cents a hundredweight, represented a payment to Havemeyer personally, made through Palmer’s Dock, which he owned, for arranging the division of the sugar traffic among the various railroads. Thus, to give the Pennsylvania a share of the New York traffic when it refused to use Palmer’s Dock would have taken money out of Havemeyer’s pocket.43

Havemeyer tried to get around this impasse by offering to buy the Pennsylvania Railroad’s terminal facilities in Brooklyn, but, as Riley later testified, “they [the Pennsylvania’s officers] said it was the policy of the Pennsylvania Railroad not to ever sell any piece of real estate

41 Ibid., p. 10147; see also ibid., pp. 10045–54.
42 Ibid., p. 10140. The latter two railroads received their share of the sugar shipments only after first having the sugar carried by ocean steamer to their respective eastern terminals, Norfolk, Va., and New London, Conn. The percentages for all the railroads were as follows: New York Central, including the West Shore line, 47.27; Erie, 30.26; Lehigh Valley, 14.78; Chesapeake & Ohio, 3.845; and the Central of Vermont, 3.845.
43 Ibid., pp. 10075, 10307–8.
they owned."44 It was not until 1898 that the deadlock was finally resolved, with the Pennsylvania Railroad agreeing to pay Palmer's Dock 4.2 cents for every hundred pounds of sugar it shipped from New York—and an additional two cents per hundredweight when the Pennsylvania performed its own lighterage.45 This agreement soon led to a more comprehensive rebate arrangement, one that included not only all the railroads omitted from the previous arrangement but also all the sugar shipped from Philadelphia.

According to this new arrangement, entered into by members of the Trunk Line Association and the American Sugar Refining Company in April, 1898, the sugar traffic out of New York and Philadelphia was to be divided among the various railroads according to the following percentages:

<table>
<thead>
<tr>
<th>Railroad</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>New York Central (including its West Shore line)</td>
<td>28.81%</td>
</tr>
<tr>
<td>Erie</td>
<td>19.01</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>29.59</td>
</tr>
<tr>
<td>Baltimore &amp; Ohio</td>
<td>8.00</td>
</tr>
<tr>
<td>Lehigh Valley</td>
<td>10.39</td>
</tr>
<tr>
<td>Delaware, Lackawanna &amp; Western</td>
<td>4.00</td>
</tr>
<tr>
<td>New York, Ontario &amp; Western</td>
<td>2.10</td>
</tr>
<tr>
<td>Central of New Jersey</td>
<td>2.80</td>
</tr>
<tr>
<td>Central of Vermont (via New London, Conn.)</td>
<td>2.40</td>
</tr>
<tr>
<td>Chesapeake &amp; Ohio (via Norfolk, Va.)</td>
<td>2.50</td>
</tr>
</tbody>
</table>

Palmer and Riley, acting for the American Sugar Refining Company, were once again to be responsible for seeing to it that each railroad received its quota of traffic. In return, the American was to receive, through Palmer and Riley, a rebate of two cents on each one hundred pounds of sugar shipped. Previously, the amount of rebate had fluctuated between two and five cents a hundredweight. To avoid an

44 Ibid., p. 10078.
45 Ibid., pp. 10078–79. Why the Pennsylvania should have agreed to pay more when it performed its own lighterage is not exactly clear, unless this charge was meant to discourage it from performing that service for itself. In any case, the amount of sugar carried by the Pennsylvania Railroad from New York was never very great; most of its sugar shipments originated from Philadelphia.
open violation of the Interstate Commerce Act, however, the rebate was to be disguised in the form of a payment for cartage.\footnote{Ibid., pp. 9985–86; see also, 14 ICC Reports 622 (1908). The Trunk Line Association was the equivalent of a steamship conference or a cartel, to which all the trunk-line railroads belonged.}

According to section 3 of the Interstate Commerce Act, it was unlawful for any common carrier to give undue or unreasonable advantage to any person, concern, locality, or class of traffic.\footnote{I. L. Sharfman, The Interstate Commerce Commission, 1: 19–37; see also pp. 274 and 277 below.} While this prohibition on rebates remained largely unenforced until passage of the Elkins Act in 1903,\footnote{25 U.S. Stat. 855 (1887).} by 1895 the railroads were becoming increasingly concerned that by charging less than the published freight rates they were leaving themselves open to criminal prosecution. It was for this reason that the rebates were, at various times, disguised as “extra lighterage” and as payments for dunnage.\footnote{United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 10065–66, 10145–49. Dunnage was normally the lumber used in the railroad cars to protect sugar barrels from damage. When the American Sugar Refining Company provided its own dunnage, it normally received an allowance on the freight rate.} Under the new arrangement with the railroads in 1898, however, Palmer and Riley suggested that the rebates on sugar be called an allowance for cartage, even though only 30 per cent of the sugar shipped by rail was ever carted. (The rest was simply put on boats at the refinery and towed across the harbor.)

To further conceal the nature of these payments, Palmer and Riley suggested that the rebates be paid to the account of the Brooklyn Transportation Company, a subsidiary of the American Sugar Refining Company which handled all its cartage arrangements.\footnote{Ibid., pp. 9978–82.} As Riley later testified, “We told them [the members of the Trunk Line Association] . . . we would undertake to divide the sugar between the roads as nearly as we possibly could based on those percentages, with the understanding that the [published] rates were to be maintained at all times on sugar through the Trunk Line territory, and that we were to be allowed two cents per hundred pounds for cartage or transfer on all the sugar.” He was then asked, “Was anything said on the question of whether or not the allowance of two cents was to be the compensation to you for maintaining the percentages?” “That was our view of the matter,” he replied; “we would agree to divide the sugar amongst the roads if they would agree to make us the regular allowance year in and year out of two cents a hundred pounds on the sugar.
for cartage, no matter whether it was carted or not.\textsuperscript{51} This agreement with the trunk-line railroads was, of course, supplemented by the rebate arrangements with the various connecting roads.

How much all these rebate arrangements were worth to the American Sugar Refining Company cannot be determined. Palmer and Riley deliberately kept their accounts in such a way that it was impossible to distinguish between legitimate refunds from the railroads (such as for damages, overcharges, etc.) and refunds that were, in fact, illegal rebates.\textsuperscript{52} But Riley later estimated that the special rates which the American received on its shipments to the Midwest alone represented a savings to the company of approximately $150,000 a year.\textsuperscript{53} While this might not appear to be a large sum of money, it should be remembered that the rebates served a strategic purpose which transcended their size alone. For the special rates that the American obtained from the railroads enabled it to quote prices in distant markets which, to a potential competitor, seemed to offer far less of a margin for profit than was in fact the case. The effect was to remove some of the incentive that new firms might otherwise have had to enter the industry. Thus, the true measure of how important the rebates were to the American was less the sums themselves than the extent to which they protected the company from the rise of rival refineries.

Rebates were not the only form of preferential treatment which the American Sugar Refining Company received from the railroads. Almost as important was the fact that the railroads provided free storage of sugar at key points throughout the country.\textsuperscript{54} According to Riley, the roads “gave [our company] storage here in New York Harbor, and at lake ports, and at other places, wherever we wanted it, and in such quantities as we wanted it. . . . They gave us the room, and we put the sugar in there and ordered it out as we wanted it to be shipped.” “Did you pay, or did they collect storage from you?” he was asked. “Storage, no, sir,” Riley replied. “The arrangement always definitely provided that free storage should be given.” And when the

\textsuperscript{51} Ibid., p. 12166.
\textsuperscript{52} Ibid., pp. 12276–80.
\textsuperscript{53} Midwestern shipments generally involved the areas surrounding Cleveland, Chicago, Milwaukee, and Peoria (ibid., p. 12177).
\textsuperscript{54} These key points included, among others, New York harbor, West Albany, Buffalo, Cleveland, Chicago, Detroit, Milwaukee, Duluth, West Superior, Peoria, Norfolk, Newport News, and Toledo (ibid., p. 12169).
railroads' own facilities were already occupied, the sugar was stored in public warehouses at the railroads' expense.\textsuperscript{55}

This provision for free storage enabled the American not only to meet the needs of wholesalers quickly and efficiently but also to take advantage of favorable seasonal rates. It could, for example, ship its sugar in the summer when the competition of the canal and lake lines forced down railroad rates, then store the sugar free of charge at the railroads' own warehouses until the winter when the rates were higher.\textsuperscript{56} Only the American was afforded this privilege—other companies would have had to pay six cents a barrel in monthly storage charges\textsuperscript{57}—and Riley estimated that it saved the company approximately $75,000 a year.\textsuperscript{58}

In other ways, too, the American received preferential treatment. Despite a Trunk Line Association resolution to the contrary, the American was permitted to ship less-than-carload lots at the cheaper, full-carload rate. As Riley testified, "We never paid . . . less-than-carload rates."\textsuperscript{59} Then, beginning in 1896, the American was permitted to pay only the through rate from New York to local points throughout the Midwest, even though in most cases the sugar was actually being transshipped from some large city nearby, such as Chicago, Cleveland, or Milwaukee. Since the through rate was invariably cheaper than the trunk-line rate plus the local haul, this enabled the American Sugar Refining Company to save additional sums of money.\textsuperscript{60}

In implementing these various arrangements with the railroads, Riley worked closely with Osborn, the American's chief salesman. It was important that Osborn know exactly what it cost the American to ship its sugars anywhere in the United States, for it was on the basis of the New York price plus transportation costs that Osborn would quote prices to wholesale grocers throughout the country. For this reason, Riley explained, he and Osborn met almost daily to "go over the reports from our own representatives and from the various brokers, to see what was being done in [the various] markets."\textsuperscript{61} When the American found that it was being undercut by some other supplier in a particular area, Osborn would ask Riley if he could possibly obtain a more favorable freight rate from the railroads in order to meet the competition. As Riley later testified, Osborn would come to him

\textsuperscript{55} Ibid., pp. 10001–2. \textsuperscript{56} Ibid., p. 12187. \textsuperscript{57} Ibid., p. 10181; see also ibid., p. 10229. \textsuperscript{58} Ibid., p. 12128. \textsuperscript{59} Ibid., pp. 10133–34. \textsuperscript{60} Ibid., pp. 10174–75. \textsuperscript{61} Ibid., pp. 10088–90.
“saying, ‘Conditions are such that I cannot sell sugar at the regular prepaid basis, and I want you to get me as low a special rate as you can.’ That sort of condition prevailed at all times, you might say. . . . We always had a condition of that kind existing in some particular part of the country, more or less.”62 Most of the time, Riley was able to obtain the special rate.

As a result of this close co-operation between Osborn and Riley, on the one hand, and between the American (represented by these two men) and the railroads on the other, new refineries would have found it extremely difficult to compete with the American in all except nearby markets. But it was not only in selling the final product that potential rivals were placed at a substantial disadvantage. The American was also able to obtain certain of its inputs at less than published prices.

Lowell M. Palmer, who had charge of the terminal facilities that bore his name, was also president of the Brooklyn Cooperage Company, a subsidiary of the American Sugar Refining Company which had been organized by Searles in 1891 to supply the parent company with barrels. Brooklyn Cooperage had inherited as its manufacturing facilities the three barrel factories included in the original consolidation—the factory in Boston previously owned by the Boston Cooperage Company, the one in Brooklyn owned by Havemeyer & Elder, and the one in Jersey City owned by Matthiessen & Wiechers. Palmer himself had been largely responsible for establishing the cooperage plants in Brooklyn and Boston, and in return for his help in bringing the principal Boston refinery into the combination, he had been placed in charge of all three barrel factories when the original trust was formed.63

As president of the Brooklyn Cooperage Company, Palmer was able to obtain from the railroads the same type of rate concessions on barrel staves that he was able to obtain on refined sugar. The barrel staves came from timberlands located in Missouri, Arkansas, Ohio, Indiana, and Michigan, among other places, and in return for dividing

62 Ibid., pp. 12172-73.
63 This was, of course, three and a half years before the Brooklyn Cooperage Company was organized. Palmer, although the active manager of the Havemeyer & Elder cooperage plant and its nominal owner, actually held no proprietary interest in the enterprise, just as he held no proprietary interest in Palmer’s Dock. He did, however, hold a one-third interest in the Boston Cooperage Company, in partnership with the Standard and Continental refineries, and as such received one-third of the $180,000 in cash which the Sugar Refineries Company (i.e., the sugar trust) paid for the Boston Cooperage Company at the time the trust was organized (ibid., pp. 7108-17; Hardwick committee investigation, 1911, pp. 296, 316-23; see also p. 74 above).
the traffic among the railroads according to certain percentages, Palmer's company received a special rebate. "We had general arrange-
ments with the various railroads," Riley testified, "continuing along
month after month and year after year for an allowance out of the
[published] tariff rate on shipments for cooperage, generally two
cents a hundred pounds." The rebate applied not only to shipments
made by the Brooklyn Cooperage Company but also to those made
by its competitors—for example, the rival cooperage firms that sup-
plied barrels to the Franklin and Spreckels refineries before they were
acquired by the American. This arrangement with the railroads
meant that no rival refinery could hope to obtain its barrels as cheaply
as did the American.

Palmer, as part of his manifold business activities, also dealt in
anthracite coal, another important item in sugar refining; here, too,
he handled all of the American's purchases. Although in this situ-
tion he was dealing with an equally powerful seller—the combination
of anthracite-coal carriers—he still was able to obtain a better bargain
for all of the American's refineries together than any potential rival
could hope to obtain for itself alone.

In addition to the barrier of special advantages enjoyed by the
American Sugar Refining Company, there were other, more conven-
tional barriers that any firm hoping to enter the sugar refining industry
had to overcome. There was, for example, the relatively high cost of a
plant of efficient size, or in more formal terminology, the scale-
economies barrier. By 1892 a refinery capable of producing 3,000
barrels of sugar daily (the minimum size for optimum efficiency)
could not be built for less than $1.5 million. This was a considerable
sum to risk in an industry where one firm already had the capacity to
supply 120 per cent of the demand.

Then there was the difficulty of obtaining qualified persons to over-

64 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 9939, 9959.
65 Ibid., pp. 9961-62, 12254-62.
66 Ibid., p. 7112.
67 This barrier to the entry of new firms, like all the others cited so far in this
chapter, was a reflection of the pecuniary economies of scale discussed in
Chapter 5 above (see pp. 102, 107-10). As for the evidence of the American
Sugar Refining Company's bargaining power, see the minutes of its executive
committee, Hardwick committee investigation, 1911, pp. 2997-3062, esp. p. 2998
(in regard to beer) and p. 3003 (in regard to coal).
68 This terminology is taken from Joe S. Bain, Industrial Organization, pp.
239ff.
70 Ibid., p. 107.
EMERGENCE OF Oligopoly

see the manufacturing and mercantile ends of the business. Both were specialized activities, and most of those with the necessary skill and experience were connected—either as officers, employees, or stockholders—with the American Sugar Refining Company. This placed the potential new entrant at an absolute cost disadvantage, for it either had to pay large salaries and bonuses to entice the men it needed from the American, or else incur the extra cost that went with inexperienced management. It is not surprising, therefore, that the only new refineries ever built were organized and promoted by persons active in the sugar industry before the trust was formed. But this meant that as time went by and these persons died off, the lack of skilled and experienced sugar men became an even greater barrier to entry.

Finally, there was the inevitable disadvantage that any new firm has in marketing its product against the competition of established brands. This product-differentiation barrier was a formidable one for the potential new entrant into sugar refining, for while sugar was essentially a homogeneous product, the manufacturer of an unknown brand generally found that until he was able to establish a reputation for purity and quality, the only way he could obtain a share of the market was by selling sugar for \( \frac{3}{8} - \frac{1}{2} \) of a cent a pound less than did his rivals.\(^{71}\)

In view of these barriers, particularly the American’s special advantages, it would seem that any firm would have found it extremely difficult to enter the sugar refining industry. And, in fact, the three firms that did enter the industry in the years immediately following 1892 were able to survive and prosper only because Henry Have-meyer extended to them the same preferential arrangements which the American enjoyed. All three of these firms—the McCahan refinery in Philadelphia, the Mollenhauer refinery in Brooklyn, and the National refinery in Yonkers—were in one way or another linked to the American in an over-all community of interests.

The Mollenhauers, for example, were related by marriage to the Dicks, one of whom, William Dick, was a director of the American Sugar Refining Company. Members of the Dick family were among the original investors in the Mollenhauer refinery, and William Dick himself held a small interest. This tie to American was made even stronger when, in the fall of 1892, just as their refinery was nearing

\(^{71}\) Willett & Gray’s *Weekly Statistical Sugar Trade Journal*, January 5, 1899.
completion, the Mollenhauers sold 3,000 shares in their company to Charles Senff, Henry and Theodore Havemeyer's cousin and another of the American's directors.72 Several months later Senff exchanged these shares for stock in the American, and in this way the American came to own an interest in the Mollenhauer refinery which amounted to 30 per cent of the company's outstanding shares.73 As Frederick Mollenhauer later testified when explaining why the stock was sold to Senff, he and his brother "felt some [larger] interest ought to be associated with us."74

It was through the Mollenhauer Sugar Refining Company that the National was tied to the American, for the Mollenhauer and National refineries relied on the same firm of commission merchants—B. H. Howell, Son & Company—to handle their purchases of raw sugar and their sales of refined. James H. Post, one of the senior partners in B. H. Howell, was, in fact, directly responsible for the establishment of both enterprises. It was at his urging that the principals in the two companies decided to undertake the construction of their respective sugar refineries; and in the first few years, when they might have had trouble obtaining credit through normal banking channels, Post saw to it that they were provided, out of B. H. Howell's own funds, with all the working capital they needed.75

Post's motives in this respect were not difficult to discern. B. H. Howell, Son & Company had been the commission merchant for a number of small refineries and molasses houses, including Oxnard Brothers, the old Mollenhauer molasses company, and the Delaware Sugar House, but one by one these had all disappeared, either going out of business entirely or being absorbed by the American Sugar Refining Company.76 If B. H. Howell was to avoid being forced out of business, it would have to find new refineries for which it could act as commission merchant. And so it promoted the formation of the Mollenhauer and National refineries, agreeing to handle all purchases of raw sugar and the sale of refined for a 1 per cent commission.77

Having accomplished its primary objective—to retain a foothold in the industry—the B. H. Howell firm had no desire to provoke a price war with the American. Post therefore conducted his mercan-

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72 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 6479-82.
73 Hardwick committee investigation, 1911, pp. 193-94.
74 United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 6481.
75 Ibid., pp. 6160-61, 6170-71.
76 Ibid., pp. 6151-54.
77 Ibid., pp. 6160-87.
tile activities in the same spirit of harmony that the Mollenhauers had displayed earlier in selling a 30 per cent interest in their company to Senff. Post was perfectly willing to take as the selling price for refined sugar the price that the American posted outside its offices at 10 A.M. each day, and he deviated from this price only occasionally, when it became imperative to dispose of an excessive accumulation of unsold sugar.\(^{78}\) To the extent that there was competition between the American and its two rivals in the New York area, it was predominantly non-price in nature—the pitting of one brand against another.\(^{79}\)

In Philadelphia a similar harmonious relationship existed between the McCahan refinery and the American Sugar Refining Company’s principal subsidiary in that city, the Franklin Sugar Refining Company. Soon after the McCahan refinery was built, George Frazier, the Franklin company’s chief salesman, met with the owners of the new plant to suggest that they limit their output each month according to the demand, as all the other refineries were then doing. “We told him,” William J. McCahan later testified, “we would take it under consideration.”\(^{80}\) Not long after that, McCahan agreed to limit his company’s output as requested. Each month Frazier would notify McCahan as to how many pounds of raw sugar he should melt that month; it was then up to McCahan to arrange his production accordingly. Often this presented considerable difficulty. “... Sometimes,” McCahan was to testify, “they would not tell us the melt for the month until possibly the 20th of the month and we had already melted more sugar than we were entitled to melt for that month, [but] we could not stop our house, because we had to supply our customers. . . .”\(^{81}\) Thus it was not uncommon for the McCahan refinery to exceed its allotted output.\(^{82}\) Despite these lapses, however, McCahan was careful to carry on his business in tune with the desires of the American Sugar Refining Company.

To make sure that all the refineries quoted identical prices for re-

\(^{79}\) Lexow committee investigation, 1897, p. 317.
\(^{81}\) \textit{Ibid.}, p. 7422.
\(^{82}\) In his testimony McCahan hinted that his producing more sugar than he was assigned was a relatively frequent occurrence. He said he followed Frazier’s suggestion as to output only “when it suited our convenience, ... I think very seldom it suited our convenience” (\textit{Ibid.}, p. 7440). But McCahan was testifying as a defendant in an antitrust suit and hence was undoubtedly eager to minimize the extent to which he might appear guilty of conspiring to monopolize trade.
fined sugar, especially in the trans-Ohioan regions, Riley agreed to furnish Post and McCahan with the same lists of prepaid freight rates that he made available to the American’s own salesmen. “... Once in a while,” Riley said, explaining why he had met for that purpose with Post, McCahan, Osborn, and Frazier in May, 1895, “some of them would get out and use different rates, so the idea was to get them together, and make an arrangement whereby they would all use the same basis, we to furnish the prepaid figures to all of them. In the case of the Philadelphia refineries, I was to furnish the figures to Mr. Frazier, and he in turn was to see that Mr. McCahan was advised.” In this way the American was protected against its smaller rivals’ inadvertent or deliberate undercutting of the price of refined sugar.

In return for this co-operative spirit, Henry Havemeyer saw to it that all three smaller refineries enjoyed the same special advantages with respect to the wholesale grocers and the railroads that his own American Sugar Refining Company enjoyed. They were each made parties to the various factor agreements; and grocers were no more penalized for handling their sugars than they would have been for handling the American’s own brands. In addition, the three refineries received—through Palmer’s office—the same rebates from the railroads that the American received.

Havemeyer chose to live at peace with these independent refineries—rather than try to destroy them through a price war—for several reasons. For one thing, at the time the three smaller refineries were getting started, the American still faced the prospect of prosecution under the Sherman Act, and a concerted campaign to eliminate its smaller rivals would not have helped its case in court. The existence of competition, however feeble, would provide an answer to those critics who charged that the American had a monopoly of the sugar refining business. For another thing, once the independent refineries had established themselves, it would have taken a long and costly battle to drive them from the industry. The American could easily have forced prices below a profitable level, but since it supplied approximately 80 per cent of the market, the resulting losses in revenue would have appeared most prominently on its own ledgers. The

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83 Ibid., pp. 10081–82.
84 Ibid., pp. 6850, 7001–2, 7007.
85 Ibid., pp. 12195–96. These special advantages were less important to the McCahan firm than to the other refineries. The McCahan was smaller and its product was marketed primarily in Philadelphia and the nearby surrounding areas.
independent companies could suspend production whenever they wished, and wait for prices to return to a more reasonable level, but the American Sugar Refining Company, as a permanent institution with long-run interests to defend, did not have that option. Under these circumstances, as James Post subsequently pointed out to the U.S. Industrial Commission, it might have required from fifteen to twenty years for American to force the independent firms out of business.\textsuperscript{86}

But perhaps the most important reason that Havemeyer chose to live at peace with the three smaller firms was that once they agreed to follow the American's prices, they no longer posed a threat to his company's control of the industry. On the one hand, he could be certain that whatever price the American posted for refined sugar would stand up in the market. On the other hand, he knew that the independent refineries, having eschewed price competition, were not likely to increase their share of the market. While the sugar that these independent companies refined was sugar which the American itself could have produced just as easily—the American was capable of supplying the entire eastern market and then some—this was not a matter which in any way threatened the American Sugar Refining Company's continued existence.

In sum, then, the close working relationship with the three smaller refineries represented a second-best solution with which Havemeyer felt he could live.

Having acquiesced to the entry of the Mollenhauer, National, and McCahan refineries, but having closed the door to all other comers, Havemeyer was for the next several years in firm control of the sugar refining industry. As a matter of policy he sought to maintain an average margin between raw and refined sugar of approximately \(\frac{7}{8}\) of a cent a pound. And for the years between 1893 and 1898 he was more than successful. The lowest average annual margin during that time was 0.88 of a cent a pound; this occurred in 1894. In 1896 the margin increased slightly to 0.908 of a cent a pound and in the following year the figure was 0.946.\textsuperscript{87} As Havemeyer later testified before the U.S. Industrial Commission, the intention was “to keep the prices so low as to defy competition.” “As I understand [your] testimony,” he was then asked, “. . . you try to hold your prices at a figure that will be profitable to you by reason of your economical methods of concentration, and at the same time at a figure that would not be very profitable


\textsuperscript{87} See Appendix D of this volume.
to others who are not so concentrated?" "Precisely," Havemeyer replied. It was partly because the margin had been 1.035 cents a pound in 1892 and 1.153 cents a pound in 1893 that the Mollenhauers and the parties connected with the National and McCahan firms had been encouraged to erect their refineries. Consequently, Havemeyer had become convinced that 1.0 cent a pound was too high a margin.

Since the American's direct refining costs were only sixty cents a pound, even a margin of 7/8 of a cent left considerable room for profit. From 1892 to 1897 this amounted to approximately $10 million annually, enough to pay a 7 per cent dividend on the American's preferred shares, a 12 per cent dividend on its common stock, and to add approximately $2 million each year to its reserves. By all indications, the consolidation that the American represented seemed to have solved the problem of entry which had once brought ruin to the National Cordage Company. The fact that Wall Street investors so agreed was shown by the price of the American's common stock: by late 1897 it was selling for between 126 and 143 per cent of par. This auspicious state of affairs might have continued indefinitely had not Havemeyer allowed the American to be drawn into a debilitating struggle with a powerful and resourceful customer.

Arbuckle & Company was one of Pittsburgh's largest wholesale grocers and an important purchaser of sugar from the American. Through a companion firm, Arbuckle Brothers, owned by the same partners and located in New York, it was also the leading roaster of coffee in the United States. It had reached this position of dominance in large part because of a patent which it held on a special packaging machine. This machine was capable of measuring out sixteen ounces of ground coffee, filling a container with the prescribed quantity, and then sealing the package. Because of the convenience it offered over the normal method of selling coffee in bulk form, this marketing innovation had found ready acceptance among consumers, and by 1892 Arbuckle Brothers accounted for a larger share of the coffee market than its two closest competitors combined. Encouraged by its success in selling coffee in that manner, the company had then adapted the

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88 U.S. Industrial Commission, Reports, 1, pt. 2:110, 120.
89 Hardwick committee investigation, 1911, pp. 1149–51.
90 Lexow committee investigation, 1897, p. 119.
91 Commercial and Financial Chronicle (Supplement), 65 (December, 1897): 17. These figures were the low and high for November.
same machine for use in packaging sugar, buying the refined product by the barrel from the American and repacking it in two-pound paper containers. This experiment had continued for four years with marked success. From packaging 100 barrels of sugar a week, the business had grown to 250 barrels a week.92

Still, the partners in Arbuckle Brothers had found the results, in terms of profit, disappointing. "We . . . found we could not make any money," James N. Jarvie, a member of the firm, later testified, ". . . buying sugar from the refineries and putting it up in that way and then selling again to the wholesale grocers . . ."93 The trouble was that the American Sugar Refining Company, and with it the National and Mollenhauer refineries, refused to allow Arbuckle Brothers any special discount. It had to buy its refined sugar at the same wholesale price that any ordinary jobber paid, and this made it difficult for the firm to earn a profit on its sales of packaged sugar. The partners in Arbuckle Brothers began to think seriously of building their own refinery.

If the latter were unhappy over their failure to earn a larger profit on the sale of individually packaged sugar, Havemeyer and the other officials of the American Sugar Refining Company were even more unhappy over the inroads that were being made in what they considered to be their own special bailiwick. Determined to put a stop to the business, they threatened not to sell Arbuckle Brothers any more sugar if it continued to package the refined product and resell it under the Arbuckle brand.94

Then, in September, 1896, F. O. Matthiessen, one of the American's directors and chairman of its manufacturing committee, paid a visit to John Arbuckle, the senior partner in Arbuckle Brothers. Matthiessen asked Arbuckle if his firm would be willing to sell the patent rights to its packaging machine. In that way, he explained, the source of friction between the two companies would be eliminated. Arbuckle said he would like to discuss the matter with his partners. When Matthiessen returned several days later, "we told him," Arbuckle subsequently recalled, "that we had decided not to sell the machine and that we were going to build a refinery ourselves. . . ." The interview ended with Matthiessen's threat that, if Arbuckle Brothers went into

93 U.S. Industrial Commission, Reports, 1, pt. 2: 141.
sugar refining, the American Sugar Refining Company might well de-
cide to go into coffee roasting.95

In the weeks that followed, Havemeyer tried in various ways to
persuade the members of Arbuckle Brothers to reconsider their de-
cision. At his suggestion Lowell M. Palmer dropped by to see Jarvie
and repeated to him the same warning which Mathiessen had given
Arbuckle earlier.96 In November, Havemeyer himself wrote to Ar-
buckle, this time in a conciliatory manner. Taking note of the con-
tinuing reports that Arbuckle’s firm intended to build a sugar refinery,
Havemeyer wrote: “Permit me to inquire whether you have any cause
of complaint about your business relations with the American Sugar
Refining Co. Our wish is, in the conduct of our business, to meet any
reasonable requirements on the part of our customers.”97 John Ar-
buckle replied that it was not unsatisfactory business relations which
had led his firm to decide to build a sugar refinery. “Commercial
reasons, and prospects of commercial profits have alone controlled
our decision,” he wrote. “Having large investments in machinery and
real estate particularly well adapted and located for the sugar busi-
ness, we have thought to turn them to profitable account by contract-
ing for the erection of a Refinery.”98

Those familiar with the market strength and financial power of the
two parties were certain they would eventually compromise their
differences.99 It seemed that both had too much to lose to allow a
long and bitter struggle to develop. But the truth was that each of
the parties felt it had a vital interest to protect. Arbuckle Brothers
was persuaded that, if it was ever going to make money on its sugar
packaging machine, it had to have a source of refined sugar which it
alone controlled. Havemeyer, on the other hand, was convinced that,
should Arbuckle Brothers be permitted to enter the sugar refining
industry unopposed, not only would his control of the industry be
jeopardized, but other firms might be encouraged to follow suit. No
matter what it cost, he was determined to prevent either eventuality.

Realizing that warnings alone would not suffice, Havemeyer de-

95 Lexow committee investigation, 1897, pp. 133-34, 136-37.
96 Ibid., p. 136.
97 United States v. American Sugar Refining Co. et al., pretrial testimony,
1912, p. 9833.
98 Ibid., p. 9834.
99 New York Times, December 19, 1896. The American Sugar Refining Com-
pany’s assets at the time were estimated to be $120 million, including $15
million in cash reserves. (Since Havemeyer refused to issue precise financial
statements, no one could be certain of the exact figures.) Arbuckle Brothers
was said to be worth $20 million (ibid., December 22, 1896).
cided to translate his threats into positive deeds quickly and decisively. On November 25, 1896, the Executive Committee of the American Sugar Refining Company voted to use one of the abandoned Brooklyn properties as the site for a coffee-roasting plant. At the same time, it voted to set up a special corporation to carry on a coffee business. But these steps were not quick enough for Havemeyer. On his own initiative and with his own funds he went out and purchased a controlling interest in the Woolson Spice Company of Toledo, Ohio, Arbuckle Brothers' leading competitor in the coffee-roasting business. Shortly thereafter, on December 17, the Woolson company announced a one-cent-a-pound reduction in the price of coffee, despite what appeared to be a rising market. In this way Arbuckle Brothers came to discover that its chief rival had been purchased by Havemeyer, and that the president of the American Sugar Refining Company was making good on his threats. When Arbuckle Brothers tried to match the price reduction, the Woolson company simply lowered its price further. As John Arbuckle later remarked, "No matter at what price we might put our coffee they would put a lower price; they intended to drive us out of the market."

But these tactics, instead of deterring Arbuckle Brothers, only made it more determined than ever to press on with its plans. As one member of the firm remarked, after the Woolson Spice Company an-

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100 Hardwick committee investigation, 1911, p. 3009. On February 4, 1897, the American Coffee Company was formally organized under the corporate statutes of New Jersey (New York Times, February 5, 1897).

101 Lexow committee investigation, 1897, pp. 80-81; United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 6999. Havemeyer was able to purchase 1,100 shares of the Woolson Company stock, representing 1 1/2 of its outstanding stock, at $1,150 a share. Initially, the holders of this stock had asked $1,500 a share, pointing to the book value of $1,200 a share as well as the company's strong market position. But Havemeyer warned that, if he went ahead and built his own coffee roasting plant, as he planned to do if the Woolson people refused to sell out to him, the resulting price war would greatly reduce the value of the stock. As a result, the majority stockholders agreed to a price of $1,150 a share (New York Times, December 21, 1896). Later, when the remaining stockholders in the Woolson Spice Company threatened to sue if they were not also bought out, Havemeyer saw to it that their stock also was purchased (Hardwick committee investigation, 1911, p. 3010). Havemeyer had already had one unpleasant experience with minority stockholders in the case of the Baltimore Sugar Refining Company; see pp. 285-86 below, as well as Hardwick committee investigation, 1911, pp. 3007-12, and New York Times, November 26, 1896. It was because of these and other legal difficulties that the Woolson stock was not immediately transferred from Havemeyer to the American Coffee Company, the corporation specifically set up by the American Sugar Refining Company to engage in the coffee business; see note 100 above.


103 Lexow committee investigation, 1897, pp. 147-48.
nounced a further price cut, "If they think this price cutting is going to change the decision of Arbuckle Brothers to go into the sugar refining business, they are mistaken."\textsuperscript{104} In John Arbuckle, Henry Havemeyer had encountered someone who was just as strong willed, independent of mind, and fiercely competitive as he—and who had the financial resources with which to stand up to him, blow for blow.\textsuperscript{105}

Initially, Henry Havemeyer had the advantage, for it took Arbuckle Brothers nearly two years to complete its refinery, even working at top speed.\textsuperscript{106} During that time Havemeyer was able to inflict heavy financial losses on his opponent, by using the Woolson Spice Company as a weapon. At first Arbuckle Brothers simply allowed the Woolson Spice Company to undercut it by half a cent a pound, preferring to hold its own price at the higher level. Since its market share was ten times greater and its roasting capacity twice that of the Woolson company, this seemed the more advantageous policy.\textsuperscript{107} But as the Woolson Spice Company gradually succeeded in capturing a larger and larger share of the packaged-coffee market, Arbuckle Brothers found that it really had no choice but to match its competitor’s price, no matter how low that price might be.\textsuperscript{108} Eventually roasted coffee sold for only 8.5 cents a pound, leaving virtually no price difference between green coffee and roasted coffee.\textsuperscript{109} As a result, Arbuckle Brothers found itself operating at an absolute loss, failing even to cover its average variable costs.\textsuperscript{110} Of course, the Woolson Spice Company also operated at a loss, especially since it was more often than not an aggressive price cutter while at the same time spending

\textsuperscript{104} New York Times, August 29, 1897.
\textsuperscript{105} See the sketch of Arbuckle in the Dictionary of American Biography, as well as the article in Cosmopolitan, 33 (September, 1902): 543.
\textsuperscript{106} Willett & Gray’s Weekly Statistical Sugar Trade Journal, August 25, 1898.
\textsuperscript{107} Lexow committee investigation, 1897, p. 155; New York Times, December 19, 1898.
\textsuperscript{108} New York Times, August 29, 1897. Although the facts are not entirely clear, it appears that while Arbuckle Brothers alone controlled a patent for a sugar packaging machine, both it and the Woolson Spice Company controlled patents on coffee packaging machines. Apparently the latter were sufficiently different to be covered by separate patents.
\textsuperscript{109} Ibid., February 17, 1898; Hardwick committee investigation, 1911, p. 1147.
\textsuperscript{110} United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 6946.
heavily on advertising and other forms of sales promotion. But Havemeyer was able to make up for the Woolson losses from his profits in the sugar refining industry, as yet untouched by the war with Arbuckle Brothers.

In the fall of 1898, however, when Arbuckle Brothers finally succeeded in getting its 3,000-barrels-a-day refinery into full-scale production, this state of affairs changed drastically. Arbuckle Brothers began cutting the price of refined sugar, and in the six weeks following the new refinery's opening, the margin between raw and refined sugar fell to 0.41 of a cent a pound, less than half of what it had been before.112 The war between Havemeyer and Arbuckle entered a new and deadlier phase, for now the two rivals were more evenly matched.

The ensuing competition was made all the more severe when, as Havemeyer had feared, the completion of the Arbuckle refinery was followed by the entry of yet another new firm into the sugar refining industry. Claus Doscher had formerly been one of the principal owners of the Brooklyn Sugar Refining Company. When that company was merged with the other New York refineries to form the sugar trust, Doscher had retired from the industry to become a banker, his oldest son, Henry, remaining in the employ of first the trust and later the American Sugar Refining Company.113 Early in 1897, however, soon after Arbuckle Brothers announced its intention of building a refinery, Claus Doscher decided to re-enter the sugar refining business.114 In part he may have been attracted by what he thought was an unusually large margin between raw and refined sugar. In part, too, he probably hoped to provide his several sons with a going business concern, a property which they might one day inherit and which, in the meantime, would provide them with practical experience as independent businessmen. Whatever the reasons, Havemeyer felt betrayed. Calling Henry Doscher, who by then was superintendent of the Havemeyer & Elder refinery, into his office,

111 Hardwick committee investigation, 1911, p. 1134; United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 6931-48. Later, an accountant for the Justice Department's Bureau of Investigation went over the books of the American Coffee Company and reported that its losses through the end of 1898 were $2,843.31, not counting the $1,200,000.00 which had been paid for the Woolson Spice Company's stock (ibid., p. 7398). There is reason to believe that the American Coffee Company's actual losses were much greater.


114 Willett & Gray's Weekly Statistical Sugar Trade Journal, February 18, 1897.
Havemeyer in a fit of anger ordered him off the premises and told him never to set foot on the refinery grounds again.\textsuperscript{115}

On March 31, 1897, the New York Sugar Refining Company of Long Island City was incorporated, with the Doscher family controlling two-thirds of the $600,000 in stock issued.\textsuperscript{116} Soon thereafter, construction of a refinery capable of producing 3,000 barrels of sugar daily was begun. This refinery was ready for operation in November, 1898, several months after the Arbuckle refinery was completed.\textsuperscript{117} While this new entrant served to further aggravate the severe price competition then so much in evidence in the sugar refining industry, the main conflict was still that between Henry O. Havemeyer and the firm of Arbuckle Brothers.

In this conflict, both sides fought with every means they could command. To protect his company's long-standing position within the sugar refining industry, Henry Havemeyer sought to bring to bear the special advantages he enjoyed with respect to the wholesale grocers and the railroads. He warned the wholesale grocers that if they handled either the Arbuckles' or the Doschers' sugar, the price maintenance agreement with his company would be jeopardized.\textsuperscript{118}

As a result of this pressure, Arbuckle Brothers had a difficult time finding wholesale grocers willing to handle its sugar. In order to break through this barrier, it was forced to resort to drastic measures. When wholesale grocers refused to carry its brand in Boston, Arbuckle Brothers went over their heads by selling directly to retailers.\textsuperscript{119} It then threatened to follow the same tactic if wholesale grocers in the South and Midwest did not open up their channels of distribution to its sugar products. Informed of this maneuver by his competitor, Havemeyer dismissed it as a "bluff," warning that "it is better to meet the competition representing 5 per cent of the output of refined sugars than it is that of 100 per cent."\textsuperscript{120}

\textsuperscript{115} United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 6621.

\textsuperscript{116} Willett & Gray's \textit{Weekly Statistical Sugar Trade Journal}, April 1, 1897.

\textsuperscript{117} U.S. Industrial Commission, \textit{Reports}, 1, pt. 2: 87-92. The refinery actually cost $1,800,000, not counting working capital.

\textsuperscript{118} See, for example, his letters to Francis H. Leggett, Smith & Sills, and William Havemeyer early in 1899, reprinted in \textit{United States v. American Sugar Refining Co. et al.}, pretrial testimony, 1912, pp. 7244-52; see also the letter to J. T. Witherspoon, manager of the New Orleans refinery, February 27, 1899, \textit{ibid.}, pp. 9405-6.

\textsuperscript{119} Hardwick committee investigation, 1911, p. 1127.

\textsuperscript{120} United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, pp. 7244-46.
anyway, Havemeyer countered by threatening to have his company open its own retail outlets and thus bypass the grocery trade in that region.\textsuperscript{121}

In addition to dealing with retailers directly, Arbuckle Brothers tried offering large discounts to those wholesale grocers who would handle its sugar. Several of the smaller jobbers, finding these discounts attractive, agreed to brave the American Sugar Refining Company’s blacklist. To meet this situation, Havemeyer gave permission to the other wholesale grocers to sell below the posted price, even though this tended to subvert the price maintenance agreement.\textsuperscript{122}

At the same time, he warned that his company would throw cheap sugar on the market to make up for any of its normal sales displaced by either Arbuckle Brothers or the New York Sugar Refining Company. When the wholesale grocers complained that they could not be responsible for what some of the smaller firms did, Havemeyer replied that it was up to them to control the members of their trade or suffer the consequences.\textsuperscript{123}

In the meantime, of course, the American Sugar Refining Company continued to receive rebates from the railroads, not only on the sugar that it shipped, but also on the sugar shipped by its new rivals, Arbuckle Brothers and the New York Sugar Refining Company.\textsuperscript{124}

In addition, to enable the Woolson coffee-roasting plant in Toledo to compete with the Arbuckle Brothers plant in Brooklyn, Havemeyer obtained special rebates on all his company’s coffee shipments. On February 10, 1897, the New York Central agreed to make a special allowance of 2.0 cents a hundred pounds on all the Woolson company’s green coffee carried west from New York to Toledo and another 2.5 cents on all the roasted coffee carried back east from Toledo to New York. Later, other railroads agreed to make similar allowances. The Woolson company shipped from fifteen to twenty carloads of coffee each day, and the rebates continued until early in 1899 when the American Coffee Company, the subsidiary of the American Sugar Refining Company which had been organized to conduct its coffee business, finally completed its own plant in Brooklyn.\textsuperscript{125}

\textsuperscript{121} Henry O. Havemeyer to Judson Lounsberry, the American’s chief salesman, February 24, 1899, \textit{ibid.}, p. 7249.

\textsuperscript{122} Henry O. Havemeyer to William Havemeyer, January 3, 1899, \textit{ibid.}, pp. 7242–43.

\textsuperscript{123} Henry O. Havemeyer to J. W. Cooper, October 2, 1900, \textit{ibid.}, p. 9983.

\textsuperscript{124} \textit{Ibid.}, pp. 12229–30.

\textsuperscript{125} \textit{Ibid.}, pp. 10213–15, 10266; Willett & Gray’s \textit{Weekly Statistical Sugar Trade Journal}, March 30, 1899.
In other ways, too, the railroads lent Havemeyer assistance in his battle with John Arbuckle. The western lines, for example, agreed to give a special rebate on shipments to F. Letts, the largest wholesale grocer in the Missouri River valley, an area of particularly intensive competition between the American and Arbuckle Brothers. The rebate enabled the American to sell Letts sugar at a lower figure than the prevailing market price and thereby to obtain his exclusive patronage without giving the appearance of having cut prices to do so. This tactic of tying the largest wholesale grocers to his company through secret rebates was one which Henry Havemeyer frequently followed in his efforts to deny competitors an outlet for their sugar.

But although Havemeyer enjoyed many advantages, he found it impossible to dislodge Arbuckle Brothers from the sugar refining business. For one thing, the Arbuckle refinery was not very large. Its capacity was only 3,000 barrels a day, and a significant portion of this output found a ready market through Arbuckle & Company's own wholesale grocery business in Pittsburgh and the surrounding Ohio valley. Then, too, only Arbuckle Brothers was able to offer sugar in paper containers, and this further assured it of a ready market for its output. In an effort to offset its disadvantage in this respect, the American Sugar Refining Company began selling refined sugar in small cotton bags, at first in five-pound sizes and later in two-pound sizes, but the cotton bags were not as popular as Arbuckle Brothers' paper containers. With Havemeyer unable to dislodge his chief adversary from the sugar refining industry, the war between the American and Arbuckle Brothers continued unabated. In 1899 the margin between raw and refined sugar fell to \( \frac{1}{2} \) of a cent a pound, the lowest it had ever been in the history of sugar refining in the United States. Although the American continued to pay a 7 per cent dividend on its preferred shares and a 12 per cent dividend on its common stock, for the first time since it had been organized it was forced to dip into its reserves to meet those payments. Meanwhile, Arbuckle Brothers privately

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127 See, for example, the testimony of John Arbuckle, Hardwick committee investigation, 1911, pp. 2319-21.
128 Willett & Gray's Weekly Statistical Sugar Trade Journal, October 6, 1898.
129 Ibid., April 6, 1899.
130 See Appendix D of this volume.
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put its losses in the sugar refining business at $1.25 million. But while both Havemeyer and Arbuckle may have found their war somewhat expensive, it was the older and smaller independent refineries which suffered most severely.

Stuck with plants that were somewhat more costly to operate, the Mollenhauer and National refineries found it increasingly difficult to meet the competition. Quite often, James Post later said, sugar was sold "at less than cost, and the loss in refining at times was quite large." In 1899 the National finally decided to shut down completely, while the Mollenhauer firm was forced to cut back its production to only a fraction of what it had been.

For James Post and the firm of B. H. Howell, Son & Company, this decline in the business of the two older independent firms was a matter of great concern, for it directly affected their own profits as well. At first, Post tried to obtain an agreement among the various refiners to limit production, especially during the winter months when the competition was the most severe, but these efforts failed. Then Post began to explore the possibility of a consolidation, one that would bring together all the independent refineries in one large company. The idea for such a consolidation had first been suggested by Joseph A. Auerbach, a Wall Street lawyer active in organizing mergers in several other industries, but it was Post who now carried the idea forward. "The first negotiations," Post later testified, "were with Mr. Mollenhauer and the owners of the National, and very probably with Mr. Doscher who lived next door to me . . . [for] we often met and talked about conditions [in the sugar refining industry]." Doscher's New York Sugar Refining Company, although it too was losing money, was not in the same desperate straits as the Mollenhauer and National refineries, "and it took him [Doscher] some time to get into a mood to discuss the plans of consolidation."

Post was convinced that a merger of the three companies—the Mollenhauer, the National, and the New York—would offer considerable advantages to all concerned. "I knew," he subsequently said, "that the consolidation of three important refineries into one company would greatly economize the conducting of the business in many

\[132\] Ibid., p. 1131.
\[133\] United States v. American Sugar Refining Co. et al., pretrial testimony, 1912, p. 6570.
\[134\] Ibid., p. 6547.
ways . . . that the buying and selling . . . by one group of men could not help but save the company a great deal of money . . . . 136 But Post also knew that the new company's chances of success would be much greater if the president of the American Sugar Refining Company could be persuaded to take an active role in its formation. With Henry Havemeyer personally involved, the new company would almost certainly start off on friendly terms with the American—and thus stand a better chance of earning a dividend. 137

For this reason Post approached Havemeyer early in 1900 and asked if he would be interested in helping to arrange a consolidation of the independent refineries. Havemeyer said no, he was not interested. Nevertheless, Post persisted in his efforts to bring about a merger of the Mollenhauer, National, and New York refineries, and finally succeeded in obtaining options to purchase the stock of all three companies. Then, late in April, when it appeared that the consolidation would take place even without his help, Havemeyer agreed to take a role in the negotiations. Soon the president of the American Sugar Refining Company was actually calling the shots, Post having readily given way to his leadership. 138

Under Havemeyer's direction, the details of the consolidation scheme were speedily concluded. A new corporation, the National Sugar Refining Company of New Jersey, was to be organized with $10 million in 6 per cent preferred stock. This preferred stock was then to be exchanged for the outstanding shares in the three refineries. (When the owners of the refineries were unable to agree on the division of the preferred shares among their respective interests, it was Havemeyer who intervened to settle the matter.) In addition to the preferred shares, a certain amount of common stock was to be issued. How much was not immediately decided, but whatever the amount, it was to go almost entirely to Havemeyer. In this way, his interests—and those of the company that he headed—were to be inextricably linked to the interests of the preferred shareholders, for ownership of the common stock would give Havemeyer absolute control over the new company's affairs, thereby enabling him to determine the conduct of its operations. But Havemeyer would be able to exercise this control only as long as the new company continued to pay its preferred shareholders the dividends guaranteed them. If the company failed to pay those dividends, control would revert to the original refinery owners. 139

Individual agreements embodying these provisions were drawn up by John E. Parsons and signed by all parties concerned—except Havemeyer himself—on May 28, 1900. 140 Five days later, on June 2, the National Sugar Refining Company of New Jersey was formally organized, and its preferred shares were exchanged for the stock in the three refineries. 141 By this time it had been decided that, in addition to the $10 million in preferred stock, $10 million in common stock would be issued. At the moment it seemed a point of minor consequence, since the common stock was intended merely to give Havemeyer control over the company. It was not expected that dividends would be paid on the stock, and, in fact, Havemeyer never even took the trouble to exercise his stock warrants. 142

Immediately after the National Sugar Refining Company’s formation, Post was able to bring another refinery into the consolidation—at least partially. Following the agreements of May 28, he had turned his attention to the McCahan refinery in Philadelphia, hoping to interest its owner in his merger scheme. McCahan proved unresponsive to the suggestion, however, and though Post continued to press him to change his mind, it appeared that the McCahan refinery would remain outside the new company. Then, on the day after the National was formally organized, McCahan let it be known that he was willing to sell a quarter interest in his refinery. While this would not give the National control of the McCahan refinery, it would at least establish a closer working arrangement between the two companies. Post informed Havemeyer of McCahan’s limited concession, and Havemeyer told him to proceed with the purchase. Thus the National Sugar Refining Company started out with a full interest in three previously independent refineries and a quarter interest in still another. 143

As the owner of 3,000 shares in the Mollenhauer refinery, the American Sugar Refining Company automatically became a preferred stockholder in the National Sugar Refining Company. In addition, Havemeyer had agreed to buy back, from those who wished to sell, a

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140 Ibid., p. 6199.
141 Ibid., p. 6244. As far as can be ascertained, the owners of the New York refinery received $3,125,000 in preferred stock, the owners of the National, $2,250,000 in preferred stock, and the owners of the Mollenhauer, $2,875,000 in preferred stock for their respective properties (ibid., pp. 6608, 6648).
142 Ibid., pp. 6235, 6282–86. Stock warrants are certificates which indicate that the persons named in them are entitled to a stated number of shares in a company.
143 Ibid., pp. 6537–40. The National paid $1,470,000 for 5,000 shares in the McCahan refinery, or $294 a share (ibid., pp. 6543–44). This increased the amount of preferred shares issued by the National to $9,720,000. The remaining $280,000 in preferred stock was then sold at par to the general public and the money most probably was used for working capital (ibid., pp. 6553–54).
limited amount of preferred shares in the new company. Several of
the stockholders in the original refineries decided to accept Have-
meyer's offer, and Havemeyer in turn arranged for his own company
to put up the money. In this way the American, as distinct from
Havemeyer personally, came to own 12 per cent of the preferred stock
in the National Sugar Refining Company soon after it was orga-
nized.144 Through subsequent purchases this share was increased to
slightly more than 50 per cent.145

At Havemeyer's insistence, three of the directors originally elected
by the National Sugar Refining Company's preferred stockholders
were replaced by directors of Havemeyer's choosing, namely, by three
of the American's directors.146 Moreover, Havemeyer had Post report
to him each month the amount of sugar melted by the National. From
time to time the two men would also meet to discuss market condi-
tions. Post later denied that Havemeyer ever gave specific instructions
for National to reduce its output, but the fact was that through these
meetings Havemeyer was able to regulate the supply of refined sugar
to the over-all demand.147

To the outside world, the National Sugar Refining Company was
simply following the price posted by its larger competitor each morn-
ing, just as its predecessors had done before 1898. Occasionally there
would be complaints from the American's salesmen that the National
was undercutting the price of refined sugar, but actual incidents of
that sort occurred infrequently, and when they did occur they were
quickly dealt with through a meeting between Havemeyer and
Post.148 In return, Havemeyer saw to it that the National earned the
required dividend on its preferred stock. All the special advantages
that the American enjoyed were made available to the National, and
those types of sugar which the National did not have the machinery
to produce were supplied to it by the American at from five to ten
points below the market price.149

144 Ibid., pp. 6211-13. In the case of the purchase of the Woolson Spice
Company's stock, as well as in other such incidents, it was difficult to distinguish
between those actions taken by Havemeyer as president of the American Sugar
Refining Company and those taken by him as an individual. Havemeyer him-
self was not always careful about the distinction, and in the case of the National
Sugar Refining Company stock, this carelessness was to lead to a troublesome
law suit (see pp. 310-11 below).
145 See p. 311 below.
146 United States v. American Sugar Refining Co. et al., pretrial testimony,
1911, pp. 6562-63. These three were Carl Meyer, Arthur Donner, and George
H. Frazier.
147 Ibid., pp. 6586, 6594.
148 Ibid., pp. 6586, 6591-92.
149 Ibid., pp. 6596-97, 6849-50, 6864-66.
It was the same community of interests which had existed before 1898, but it was now more tightly drawn together. As a matter of fact, the American Sugar Refining Company had come as close to absorbing its smaller competitors as it could without purchasing them outright. It had brought three (and part of a fourth) previously independent refineries under a single management, making them not only better able to survive in the face of outside competition but also more susceptible to the American's control. Yet, because the National Sugar Refining Company retained the façade of a separate enterprise, the American escaped the public criticism that surely would have come its way had it been known that, through its president, it actually controlled its largest competitor, one capable of supplying 10 per cent of the refined sugar in the United States.\footnote{Ibid., p. 6434.}

By helping to organize the National Sugar Refining Company, Henry Havemeyer succeeded in eliminating a troublesome competitor, who was personally objectionable to him. As George Bunker later explained, one of the purposes of the consolidation was to neutralize the effect of Claus Doscher on the industry. "He was the newest refiner," Bunker said; "he was cutting prices in order to get business, and consequently with him eliminated, competition with the whole trade was largely eliminated."\footnote{Ibid., pp. 6384–88; see also the corroborating statement of Frederick Mollenhauer, ibid., pp. 6503–4.} Once the National was organized, Doscher and his sons were forced to retire from the industry. The Mollenhauers were given management of the New York refinery, while their own plant in Brooklyn was shut down and used thereafter only as a reserve facility.\footnote{Ibid., p. 6820.}

Shortly after the National Sugar Refining Company was organized, the price war between the American Sugar Refining Company and Arbuckle Brothers ended. Perhaps Havemeyer now realized that he could not drive Arbuckle Brothers from the industry. Perhaps, too, he was eager for a respite in order to replenish the American's nearly depleted treasury. In any case, the severe competition between the two parties ceased.\footnote{Willett & Gray's \textit{Weekly Statistical Sugar Trade Journal}, June 7 and 14, 1900.} This easing of the rivalry in sugar refining coincided with a similar easing of the rivalry in the coffee business.\footnote{Ibid., June 14, 1900.}
The precise means by which the price wars were brought to a halt is not known. What probably happened, as Henry O. Havemeyer, Jr., has suggested, was that his father and John Arbuckle simply agreed to call an end to their destructive price war, but fearing prosecution under the Sherman Act, they must have decided merely to enter into an informal understanding, especially since a written agreement would not have been enforceable anyway. Such a loose arrangement, however, seems to have led to misunderstanding and conflict, with Havemeyer insisting that all refineries share equally in any reduction of output made necessary by seasonal fluctuations, and Arbuckle in turn insisting that his refinery be allowed to operate at full capacity. After a brief period during which Havemeyer and Arbuckle each tried to impose his will on the other through market pressure—in a manner reminiscent of classical Cournot and Edgeworth duopoly behavior—a compromise seems to have been worked out. The Arbuckle refinery began reducing its output during the winter slack months, but not to the same extent that the American did.

However uncertain the means by which the price war was brought to an end, the results were clear enough: control over sugar prices was once more established. Although Havemeyer had not been entirely successful in his efforts to prevent the entry of new competitors, he had at least demonstrated that any group invading the sugar refining industry would have to be prepared to face substantial losses. This in itself had a certain deterrent value and reinforced the barriers already in existence. Moreover, Havemeyer’s American Sugar Refining Company still retained its dominant position within the industry. Although it could no longer impose its policies at will, it could usually count on Arbuckle Brothers to follow the moves that it, as price leader, initiated. In effect, the American Sugar Refining Company and Arbuckle Brothers had learned to behave in the interdependent manner typical of oligopolistic firms, with the American, of course, primus inter pares. If this represented less than the full control Havemeyer had once exercised as the head of a monopolistic enterprise, it was at least a tolerable substitute.

Thus it was that after June, 1900, following Havemeyer’s design, the margin between raw and refined sugar returned to the level that had prevailed before the price war with Arbuckle Brothers, averaging 155 Henry O. Havemeyer, Jr., Biographical Record of the Havemeyer Family, 1606–1943, p. 69.
156 Hardwick committee investigation, 1911, p. 2311.
157 Willett & Gray’s Weekly Statistical Sugar Trade Journal, October 4, 1900, and January 2, 1902.
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approximately 9% of a cent a pound for the last six months of that year. In 1901 the margin rose even higher, averaging slightly more than one cent a pound for the first time in eight years.\textsuperscript{158} Havemeyer’s policy, however, proved a mistake, for the large margin encouraged the entry of still another new refinery, this one built by Claus Spreckels, Jr., under the name of the Federal Sugar Refining Company of Yonkers.\textsuperscript{159} While it was only a small refinery, capable of producing no more than 3,000 barrels daily, Havemeyer realized that he had miscalculated; thereafter he saw to it that the margin was held somewhat lower.

Before the new century was a year old, then, the sugar refining industry had evolved from monopoly into oligopoly—even though one firm, the American, was still clearly dominant. The change occurred because a firm with a strong position in another industry and a marketing innovation which it wished to exploit more fully was able to breach the barriers to entry which Havemeyer had so carefully erected. This, in turn, persuaded Havemeyer to sponsor the consolidation of the various firms that had managed to survive at the fringe of the industry, a sponsorship which made it easier for him to control them. Thus it was a unique set of circumstances which made possible the emergence of two powerful rivals to the American, not any general breakdown of the barriers to entry. The building of the Federal refinery merely demonstrated that the barriers were not absolute. On the other hand, while Havemeyer originally had been convinced that nothing less than virtual monopoly would suffice to give his company the necessary freedom from price competition, he gradually had come to learn—as the moving spirits behind other consolidations would also come to learn—that he could live with an oligopolistic situation in which his firm was the recognized price setter. This educational process was itself an important development, for it meant that monopoly no longer had to be the minimum goal.

Yet, despite the period of price stability which Havemeyer’s acceptance of oligopoly ushered in, the American Sugar Refining Company found its share of the national market continuing to shrink.\textsuperscript{160} Only in part was this due to the enlargement of the Arbuckle refinery and the entry of the Federal. Far more important was the sudden emergence of a new source of supply, the sugar beet. It was to this threat that Havemeyer turned his attention, late in 1901.

\textsuperscript{158} See Appendix D of this volume.
\textsuperscript{159} Willett & Gray’s \textit{Weekly Statistical Sugar Trade Journal}, June 5 and July 3 and 10, 1902.
\textsuperscript{160} See Appendix E of this volume.