IN THE MATTER OF

HARRY KREITMAN INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FUR PRODUCTS LABELING ACTS

Docket C-811. Complaint, Feb. 7, 1963—Decision, Feb. 7, 1963

Consent order requiring New York City dealers in new and secondhand fur products to cease violating the Fur Products Labeling Act by failing to label fur products; failing to show on invoices the true animal name of furs, the country of origin of imported furs, and when the fur in fur products was used, artificially colored, or natural; naming an animal other than that which produced a fur, and failing to set forth the terms "Dyed Broadtail-processed Lamb" and "Persian Lamb" on invoices as required; and failing in other respects to comply with labeling and invoicing requirements.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Harry Kreitman Inc., a corporation, and its officers, Samuel Kreitman and Abraham Kreitman, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Harry Kreitman Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York.

Individual respondents Samuel Kreitman and Abraham Kreitman are officers of corporate respondent. They formulate, direct and control the acts, practices and policies of corporate respondent Harry Kreitman Inc., including those hereinafter set forth.

Respondents are dealers in fur products both secondhand and new and have their office and principal place of business at 123 West 29th Street, New York, N.Y.

PAR. 2. Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, respondents have been and are now engaged in the introduction into commerce, and in the sale, advertising, and offering for sale, in commerce, and in the transportation and distribution in commerce, of fur products; and have sold, advertised, offered

for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act.

PAR. 3. Certain of said fur products were misbranded in that they were not labeled as required under the provisions of Section 4(2) of the Fur Products Labeling Act and in the manner and form prescribed by the Rules and Regulations promulgated thereunder.

Among such misbranded fur products but not limited thereto were fur products without labels.

PAR. 4. Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the Rules and Regulations promulgated thereunder in that required item numbers were not set forth on labels, in violation of Rule 40 of said Rules and Regulations.

PAR. 5. Certain of said fur products were falsely and deceptively invoiced by the respondents in that they were not invoiced as required by Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated under such Act.

Among such falsely and deceptively invoiced fur products, but not limited thereto, were invoices pertaining to such fur products which failed:

1. To show the true animal name of the fur used in the fur product.
2. To show the country of origin of the imported furs used in the fur product.
3. To show that the fur product contains or was composed of used fur, when such was the fact.
4. To disclose that the fur contained in the fur products was bleached, dyed or otherwise artificially colored, when such was the fact.

PAR. 6. Certain of said fur products were falsely and deceptively invoiced in that respondents set forth on invoices pertaining to fur products the name of an animal other than the name of the animal that produced the fur, in violation of Section 5(b)(2) of the Fur Products Labeling Act.

PAR. 7. Certain of said fur products were falsely and deceptively invoiced in violation of the Fur Products Labeling Act in that they were not invoiced in accordance with the Rules and Regulations promulgated thereunder in the following respects:

(a) Information required under Section 5(b)(1) of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder was set forth in abbreviated form, in violation of Rule 4 of said Rules and Regulations.

(b) The term "Dyed Broadtail-processed Lamb" was not set forth in the manner required by law, in violation of Rule 10 of said Rules and Regulations.

(c) The term "natural" was not used to describe fur products that were not pointed, bleached, dyed, tip-dyed or otherwise artificially colored, in violation of Rule 19(g) of said Rules and Regulations.

(d) The term "Persian Lamb" was not set forth in the manner required, in violation of Rule 8 of said Rules and Regulations.

(e) The disclosure "secondhand", where required, was not set forth on invoices, in violation of Rule 23 of said Rules and Regulations.

(f) Required item numbers were not set forth on invoices, in violation of Rule 40 of said Rules and Regulations.

PAR. 8. The aforesaid acts and practices of respondents, as herein alleged, are in violation of the Fur Products Labeling Act and the Rules and Regulations promulgated thereunder and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce under the Federal Trade Commission Act.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondents named in the caption hereof with violation of the Federal Trade Commission Act and the Fur Products Labeling Act, and the respondents having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Harry Kreitman Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 123 West 29th Street, in the city of New York, State of New York.

Respondents Samuel Kreitman and Abraham Kreitman are officers of said corporation and their address is the same as that of said corporation.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents, Harry Kreitman Inc., a corporation, and its officers, and Samuel Kreitman and Abraham Kreitman, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce or the transportation or distribution in commerce of any fur product; or in connection with the sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Failing to affix labels to fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 4(2) of the Fur Products Labeling Act.

2. Failing to set forth on labels the item number or mark assigned to a fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of Section 5(b)(1) of the Fur Products Labeling Act.

2. Setting forth on invoices pertaining to fur products the name or names of any animal or animals other than the name of the animal or animals producing the fur contained in the fur products as specified in the Fur Products Name Guide and as prescribed under the Rules and Regulations.

3. Setting forth information required under Section 5(b)(1) of the Fur Products Labeling Act and Rules and Regulations promulgated thereunder in abbreviated form.

4. Failing to set forth the term "Persian Lamb" in the manner required where an election is made to use that term instead of the term "lamb".

5. Failing to disclose in the manner required that fur products contain or are composed of "secondhand used fur".

6. Failing to set forth on invoices the item number or mark assigned to a fur product.

7. Failing to set forth the term "Dyed Broadtail-processed Lamb" in the manner required where an election is made to use that term instead of the term "Dyed Lamb".

8. Failing to describe fur products as natural when such fur products are not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF

ZIFF-DAVIS PUBLISHING COMPANY

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(d) OF THE CLAYTON ACT

Docket C-312. Complaint, Feb. 7, 1963—Decision, Feb. 7, 1963

Consent order requiring a New York City publisher of magazines and books to cease violating Sec. 2(d) of the Clayton Act by making promotional payments to operators of chains of retail outlets in railroad and bus terminals, airports, hotels and office buildings without making them available on proportionally equal terms to all other competing customers; and, following discontinuance of said allowances, by using a "Retail Display Sales Plan" tailored to the operations of the customers who had previously received favored treatment and never available on proportionally equal terms to those formerly discriminated against—paying $24,148.61 in allowances since inception of the plan to its most favored customer though that customer had not performed substantially as required.

COMPLAINT

The Federal Trade Commission, having reason to believe that the party respondent named in the caption hereof and hereinafter more particularly designated and described, has violated and is now violating the provisions of subsection (d) of Section 2 of the Clayton Act (U.S.C. Title 15, Sec. 13), as amended by the Robinson-Patman Act, hereby issues its complaint stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Ziff-Davis Publishing Company is a corporation organized, existing and doing business under and by virtue

of the laws of the State of Delaware, with its principal office and place of business located at One Park Avenue, New York, N.Y. Said respondent, among other things, has been engaged and is presently engaged in the business of publishing and distributing various publications including magazines under copyrighted titles. Respondent publishes nine monthly magazines, including "Popular Photography" and "Car and Driver." Respondent publishes "Modern Bride" magazine bimonthly. Respondent publishes five annual magazines, including "Photography Annual" and "Electronic Experimenter's Handbook." Respondent has also engaged in the publication of hardback books and paperback books. Respondent's sales of publications during the calendar year 1960 exceeded $6,700,000.

PAR. 2. Publications published by said respondent are distributed by said respondent to customers through its national distributor, MacFadden Publications, Inc., hereinafter referred to as MacFadden.

MacFadden has acted and is now acting as national distributor for the publications of several independent publishers, including respondent publisher. MacFadden, as national distributor of publications published by said respondent and other independent publishers has performed and is now performing various services for these publishers. Among the services performed and still being performed by MacFadden for the benefit of these publishers are the taking of purchase orders and the distributing, billing and collecting for such publications from customers. MacFadden had also participated in the negotiation of various promotional arrangements with the retail customers of said publishers, including said respondent.

In its capacity as national distributor for respondent Ziff-Davis Publishing Company, in dealing with the customers of said respondent, MacFadden served and is now serving as a conduit or intermediary for the sale, distribution and promotion of publications published by said respondent.

PAR. 3. Respondent Ziff-Davis Publishing Company, through its conduit or intermediary, MacFadden, has sold and distributed and now sells and distributes its publications in substantial quantities in commerce, as "commerce" is defined in the Clayton Act, as amended, to competing customers located throughout various States of the United States and in the District of Columbia.

PAR. 4. In the course and conduct of its business in commerce, respondent Ziff-Davis Publishing Company has paid or contracted for the payment of something of value to or for the benefit of some of its customers as compensation or in consideration for services or facilities furnished, or contracted to be furnished, by or through such cus-

tomers in connection with the handling, sale, or offering for sale of publications sold to them by said respondent. Such payments or allowances were not made available on proportionally equal terms to all other customers of said respondent competing in the sale and distribution of such publications.

PAR. 5. As an example of the practices alleged herein, respondent, through its conduit or intermediary, MacFadden, had paid various promotional allowances to certain of respondent's favored retail customers. Said favored customers operated chains of retail outlets located in railroad and bus terminals and airports, as well as in hotels and office buildings. Such allowances were not offered or made available on proportionally equal terms to all of respondent's other customers competing with said favored customers in the sale and distribution of respondent's publications. Such allowances were individually negotiated and were discontinued on or about April 15, 1961.

At approximately the same time that the aforesaid allowances were discontinued, respondent adopted a "Retail Display Sales Plan." This plan purports to be expressly offered to all retailers and purports to be available to all retailer customers of respondent on proportionally equal terms. As a matter of fact, said plan, in its inception and in its operation and administration, was and is tailored to the operations of those customers who had previously received favored treatment from respondent, and said plan is not now and never was available on proportionally equal terms to those customers against whom respondent had discriminated previously. Said "Retail Display Sales Plan" discriminates against respondent's unfavored customers in the following ways:

1. The terms of said plan require each retailer who desires to participate to make application to respondent Ziff-Davis. Respondent did not employ the same means of communicating notice of said plan to its favored customers as was used to notify its nonfavored customers. Respondent communicated directly with its favored customers. Respondent purported to notify its nonfavored customers by one advertisement in a trade journal and by requesting its local distributors to notify each nonfavored customer individually. Many of respondent's nonfavored customers were never made aware of the existence of said display plan.

2. The minimum service required to be performed by respondent's retailer customers in return for the payment of an allowance is full cover display of seven of respondent's monthly magazines for the entire on-sale period, full cover display of respondent's bimonthly

magazine for the entire on-sale period, and full cover display of all of respondent's annual publications for the first 30 days of the on-sale period. Many of respondent's nonfavored customers do not possess the facilities to comply with said display requirement because the nature of their operations requires that at least partial display be afforded a large number of publications in limited space. However, many of respondent's customers who are unable to comply with the terms of said plan are able to afford full cover display to a lesser number of publications.

3. Respondent has discriminated in the administration of said display plan. Respondent informs its nonfavored customers who attempt to become eligible to receive payments pursuant to said plan that it will inspect all newsstands operated by retailers who have registered under said plan. In some instances respondent has made such inspection and has thereafter refused to make payment to the operators of the newsstands inspected on the ground that the requirements of said plan had not been met. At that same time, respondent has entered into secret or tacit agreements or understandings with its favored customers that the newsstands operated by said favored customers would not be inspected by respondent. Two of respondent's favored customers, Union News Company and ABC Vending Corporation, have received substantial sums of money from respondent under the terms of said plan but have not performed substantially as required by said plan.

Since the inception of said plan, respondent's most favored customer, Union News Company, has received approximately $24,148.61 in allowances from respondent.

PAR. 6. The acts and practices of respondent as alleged above are in violation of the provisions of subsection (d) of Section 2 of the Clayton Act, as amended.

DECISION AND ORDER

The Commission having heretofore determined to issue its complaint charging the respondent named in the caption hereof with violation of subsection (d) of Section 2 of the Clayton Act, as amended, and the respondent having been served with notice of said determination and with a copy of the complaint the Commission intended to issue, together with a proposed form of order; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the complaint to issue herein, a statement that the signing of said agreement is for

settlement purposes only and does not constitute an admission by respondent that the law has been violated as set forth in such complaint, and waivers and provisions as required by the Commission's rules; and

The Commission, having considered the agreement, hereby accepts same, issues its complaint in the form contemplated by said agreement, makes the following jurisdictional findings, and enters the following order:

1. Respondent, Ziff-Davis Publishing Company, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Park Avenue, in the city of New York, State of New York.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

ORDER

It is ordered, That respondent Ziff-Davis Publishing Company, a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the distribution, sale or offering for sale of publications including magazines in commerce, as "commerce" is defined in the amended Clayton Act, do forthwith cease and desist from:

Paying or contracting for the payment of an allowance or anything of value to, or for the benefit of, any customer as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale or distribution of publications including magazines published, sold or offered for sale by respondent, unless such payment or consideration is affirmatively offered and otherwise made available on proportionally equal terms to all of its other customers competing with such favored customer in the distribution of such publications including magazines.

The word "customer" as used above shall be deemed to mean anyone who purchases from respondent, Ziff-Davis Publishing Company, acting either as principal or agent, or from a distributor or wholesaler where such transaction with such purchaser is essentially a sale by such respondent, acting either as principal or agent.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Complaint

IN THE MATTER OF

NOVIK & CO., INC., ET AL.

ORDER, OPINION, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION AND THE FLAMMABLE FABRICS ACTS

Docket 8452. Complaint, Nov. 9, 1961—Decision, Feb. 8, 1963

Order requiring one of the four largest importers of bridal veil fabrics in the United States to cease violating the Flammable Fabrics Act by selling imported "silk illusion net" which was so highly flammable as to be dangerous when worn, and furnishing their customers a false guaranty that tests showed the fabrics not to be dangerously flammable.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Flammable Fabrics Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Novik & Co., Inc., a corporation, Sheffield Novik, Thomas Elliott and Benjamin Silberberg, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and the Rules and Regulations promulgated thereunder, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Novik & Co., Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sheffield Novik, Thomas Elliott and Benjamin Silberberg are president, vice president, and secretary-treasurer, respectively, of Novik & Co., Inc. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 41 West 38th Street, New York 18, N.Y.

PAR. 2. Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce; have imported into the United States; and have introduced, delivered for introduction, transported, and caused to be transported, in commerce; and have transported and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended, so highly flammable as to be dangerous when worn by individuals.

PAR. 3. Respondents, subsequent to July 1, 1954, have furnished their customers with a guaranty with respect to the fabrics, men-

tioned in Paragraph 2 hereof, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations promulgated thereunder, show that said fabrics are not, in the form delivered by respondents, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals. There was reason for respondents to believe that the fabrics covered by such guaranty might be introduced, sold, or transported in commerce.

Said guaranty was false in that (1) with respect to some of the said fabrics, respondents have not made such reasonable and representative tests, and (2) with respect to other of said fabrics, the tests which were made showed that the fabrics were so highly flammable as to be dangerous when worn by individuals.

PAR. 4. The aforesaid acts and practices of respondents were and are in violation of the Flammable Fabrics Act and the Rules and Regulations promulgated thereunder, and as such constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Thomas J. Anderson supporting the complaint.

Keating and Brodkin, by *Mr. John M. Keating*, of New York, N.Y., for respondents.

INITIAL DECISION BY MAURICE S. BUSH, HEARING EXAMINER

MAY 18, 1962

The principal issues in this matter are (1) whether respondents are in violation of the Flammable Fabrics Act[1] in connection with transactions involving the importation and sale of certain fabrics used in bridal veils and (2) whether they are also in violation of the Federal Trade Commission Act[2] in connection with false guarantees issued by respondents on the flammability of said fabrics. Respondents' amended answer also raises an "Affirmative Defense" which reads as follows: "The tests apparently required by the Act and Regulations

[1] *Section 3(b) of the Flammable Fabrics Act,* here applicable as one of the "PROHIBITED TRANSACTIONS" under the Act, reads as follows:

"The sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 4 of this Act is so highly flammable as to be dangerous when worn by individuals, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act."

[2] *Section 5(a)(1) of the Federal Trade Commission Act* reads: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful."

for the fabric involved are arbitrary and invalid for the reason that the bridal illusion involved is not customarily and normally worn by the consumer after dry cleaning, notwithstanding which the Act and the Regulations appear to require the fabric to be submitted to a flammability test after dry cleaning."

The complaint herein was issued on November 9, 1961. The case was heard on February 13, 1962, at New York, New York. Thereafter proposed findings of fact and conclusions of law, together with briefs in support of the proposed findings of fact and conclusions of law, were filed by the parties. These have been carefully reviewed and considered and such proposed findings and conclusions which are not herein adopted, either in the form proposed or in substance, are rejected as not supported by the record or as involving immaterial matters. The facts hereinafter set forth are based on the entire record.

FINDING OF FACT

Respondent Novik & Co., Inc., is a corporation duly organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents Sheffield Novik, Thomas Elliott and Benjamin Silberberg are president, vice president and secretary-treasurer, respectively, of Novik & Co., Inc. The individual respondents formulate, direct and control the policies, acts and practices of the said corporate respondent. The business address of all respondents is 41 West 38th Street, New York 18, N.Y.

Respondents, subsequent to July 1, 1954, the effective date of the Flammable Fabrics Act, have sold and offered for sale, in commerce, have imported into the United States, and have introduced, delivered for introduction, transported, and caused to be transported, in commerce, and have transported and caused to be transported, after sale in commerce; as "commerce" is defined in the Flammable Fabrics Act, fabric, as that term is defined therein, which fabric was, under Section 4 of the Flammable Fabrics Act, as amended,[3] so highly flammable as to be dangerous when worn by individuals.

[3] Sec. 4(a) Any fabric or article of wearing apparel shall be deemed so highly flammable within the meaning of Section 3 of this Act as to be dangerous when worn by individuals if such fabric or any uncovered or exposed part of such article of wearing apparel exhibits rapid and intense burning when tested under the conditions and in the manner prescribed in the Commercial Standard promulgated by the Secretary of Commerce effective January 30, 1953, and identified as "Flammability of Clothing Textiles, Commercial Standard 191–53," * * * for the purposes of this Act, such Commercial Standard 191–53 shall apply with respect to the hats, gloves, and footwear covered by Section 2(d) of this Act, notwithstanding any exception contained in such Commercial Standard with respect to hats, gloves, and footwear.

(b) * * *

(c) Notwithstanding the provisions of paragraph 3.1 Commercial Standard 191–53, textiles free from nap, pile, tufting, flock, or other type of raised fiber surface when tested as described in said standards shall be classified as class 1, normal flammability, when the

Respondents are engaged in the business of selling millinery veils and silk bridal veil fabrics. This proceeding involves only silk bridal veil fabrics. The commodity is imported from Europe. Although only about 5 percent of corporate respondent's sales are attributable to bridal veil fabrics, it is one of the four largest importers and sellers of this material in the United States. The total annual delivered dollar volume of imported bridal veil fabric in this country is about $650,000. The four importers referred to import about 90 percent of the total annual imports of such fabric. The fabric is used to make up bridal veils, and bridal veils, as the term suggests, are used by brides at marriage ceremonies. A bridal veil is made up of a length of bridal veil fabric attached to a plastic crown or headpiece. The plastic crown has two built-in combs, one on each side, for fastening the bridal veil to the hair of the bride. Additionally, bobby pins are also sometimes used to further secure the crown to the head. It is found that the method of fixing the veil to the hair of a bride would normally render its quick removal difficult if the veil caught on fire.

Approximately 1,500,000 weddings take place annually in the United States. There are three large nationally circulated magazines devoted to bridal clothes and other commodities of interest to brides. These are "The Bride's Magazine", "Modern Bride", and "Bride and Home".

The fabrics used in the veils are known in the trade as "silk illusion net" and will be referred to as such or simply as silk illusion hereinafter. The fabric consists of a netting of fine denier silk made from greige goods of pure silk.

Respondents sell silk illusion to manufacturers of bridal veils, jobbers, and retailers. They also manufacture a small quantity of the material into the completed bridal veil. Respondents' wholesale prices on silk illusion are from $1 to $1.50 per yard. The fabric retails at $2.59 to $2.99 per yard.

Bridal veils vary in lengths from a minimum of 12 inches to a maximum of about 6 yards. The average bridal veil uses about 2 yards of silk illusion and extends down about a yard from the headpiece. Each yard is 72 inches wide. The silk illusion used in bridal veils is of a single thickness but hangs in drape-like folds.

Respondents at the hearing moved to be relieved of its written stipulation of record herein that the silk illusion here involved "can be used as bridal veiling and when so used constitutes or forms a covering for the neck, face, or shoulders when worn by individuals" on the ground that said stipulation is "contrary to the facts". (The evidence shows that silk illusion not only "can be used as bridal veiling" but that

time of flame spread is three and one-half seconds or more, and as class 3, rapid and intense burning, when the time of flame spread is less than three and one-half seconds.

as an item of apparel, it is used exclusively as material for bridal veiling.) The motion, taken under advisement at the hearing, is pressed in respondents' brief. By reason of the facts hereinafter stated in this paragraph, the motion is denied as being frivolous. Numerous magazine illustrations of brides in bridal costumes, constituting part of the record in the case, show that bridal veils form a covering for the neck, face, or shoulders or that such veils actually touch or are in close proximity to the neck, face, or shoulders of the bride. At the trial of this matter, counsel for respondents questioned respondent Sheffield Novik, president of corporate respondent, as to whether he believed silk illusion was subject to the Act, the colloquy between the two being as follows:

Q. I read it to you this morning from the rules and regulations—the definition of what class a fabric is. Does bridal illusion come within that test?
A. Yes, sir. (Tr. 135)

Documentary evidence, consisting in part of correspondence and other business documents passing between respondents and their foreign suppliers of silk illusion net and in part of invoices issued by corporate respondents to customer-purchasers of the fabric, show that respondents have for years recognized that silk bridal illusion is subject to the provisions of the Flammable Fabrics Act. On June 15, 1960, corporate respondent filed a "Continuing Guaranty" with the Federal Trade Commission in which it acknowledged that it was engaged in the marketing or handling of fabrics subject to the said Act and Regulations thereunder, and guaranteed that reasonable and representative tests as provided in the Rules and Regulations would be made on fabrics prior to their marketing to show that the fabrics were "*not*, in the form delivered or to be delivered" by corporate respondent "so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals".

From all the evidence of record it is found that the silk illusion here involved is an "article of apparel" in that it "constitute[s] or form[s] part of a covering for the neck, face, or shoulders when worn by individuals" within the meaning of said terms or phrases as defined or set forth in the Flammable Fabrics Act.[4]

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[4] *Section 2(d) of the Flammable Fabrics Act* reads:
The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however,* That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals: * * *

Section 2(e) of the Flammable Fabrics Act reads:
The term "fabric" means any material (other than fiber, filament, or yarn) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this Act.

The countries of origin of the involved silk illusion are France and England. Corporate respondent's chief source of supply is France from which it imports about one-third of that country's total production of silk illusion. It also imports a small quantity of silk illusion from England, the great bulk of whose production goes to one of corporate respondent's competitors.

In 1961, corporate respondent purchased from its French manufacturing-supplier, Aime Baboin & Cie, of Lyon, France, with whom it has had dealings for many years, a quantity of silk illusion identified under a continuing style number as Style 654. In the same year it also purchased from an English manufacturing-supplier, Black Brothers & Boden, Ltd., of Nottingham, England, a quantity of silk illusion identified under a continuing style number as Style 3056.

In connection with the aforementioned purchases, neither the French supplier nor the English supplier furnished respondents with a signed written guarantee, in accordance with the provisions of Section 8(b) of the Flammable Fabrics Act,[5] that reasonable and representative tests made under the procedures provided in Section 4 of the Act, show that their respective silk illusion fabrics are *not* "so highly flammable as to be dangerous when worn by individuals", although both suppliers knew the requirements of the said Section 4 of the Act and were aware of respondents' concern that there be compliance with such requirements.

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[5] Although only subparagraph (b) of Section 8 of the Flammable Fabrics Act appears to be here directly involved, its full meaning requires reference to the language of par. (a) of Section 8. Accordingly the full text of Section 8(a) and (b) is set forth below:

Sec. 8(a) No person shall be subject to prosecution [for misdemeanor] under section 7 of this Act for a violation of section 3 of this Act if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made under the procedures provided in section 4 of this Act show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 4 of this Act, so highly flammable as to be dangerous when worn by individuals, and (2) has not, by further processing, affected the flammability of the fabric or wearing apparel covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the wearing apparel or fabric guaranteed, in which case it may be on the invoice or other paper relating to such wearing apparel or fabric; or (2) a continuing guaranty filed with the Commission applicable to any wearing apparel or fabric handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

(b) It shall be unlawful for any person to furnish, with respect to any wearing apparel or fabric, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received) with reason to believe the wearing apparel or fabric falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

Samples of said silk illusion Styles 654 and 3056 were obtained by Commission representatives and submitted to laboratories for testing in accordance with the requirements of Section 4 of the Act. Reports by the laboratories on record herein show that each of ten samples of each of the two style numbers submitted to the test failed to meet the flammability test requirements of Commercial Standard 191–53, as incorporated by the said Section 4 of the Act and made part thereof, in that the time of flame spread in the tested samples were substantially less than the 3.5 second time limitation as specified in the requirements of the said Commercial Standard 191–53.

It is found that the involved silk illusion handled by respondent under the continuing designations of Styles 654 and 3056 are so highly flammable as to be dangerous when worn by individuals.

Respondents have not at any time caused the aforementioned silk illusion, Styles 654 and 3056, to be tested for compliance with the Commercial Standard 191–53 as provided in Section 4 of the Flammable Fabrics Act.

Among the sales of silk illusion made in 1961 by respondents were several of Style 654 to customer-dealers in the States of New York, Massachusetts, and Pennsylvania, in the aggregate amount of $619.46. The invoices on each of these sales bears the following rubber stamped words: "The articles covered by this invoice are guaranteed to meet the tests required by the Flammable Fabrics Act." At the time of these sales, respondents had reason to believe that the silk illusion so guaranteed might be introduced, sold, or transported in commerce.

The aforementioned guarantees made by respondents to customer-dealers in New York, Massachusetts, and Pennsylvania that the fabric in silk illusion Style 654 "are guaranteed to meet the tests required by the Flammable Fabrics Act" are in fact false. This ultimate finding is based on evidentiary facts shown above, summarized as follows: (1) Respondents had never received any written guarantees in the terms described by the Act from its French manufacturer-supplier of the involved fabric that reasonable and representative tests had been made which showed that the fabric was not, under the provisions of Section 4 of the Act, so highly flammable as to be dangerous when worn by individuals. (2) Respondents themselves had never caused such tests to be made for compliance with Section 4 of the Act. (3) Laboratory tests of numerous samples of silk illusion Style 654 show that such samples and consequently all of the lot of Style 654 from which the samples came do not comply with the flammability provisions of Section 4 of the Act.

DISCUSSION AND CONCLUSIONS

It is concluded in the language of Section 3(b) of the Flammable Fabrics Act that respondents have been engaged in the unlawful "sale or the offering for sale, in commerce, or in the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce," of fabrics "which under the provisions of Section 4 of this Act is [are] so highly flammable as to be dangerous when worn by individuals", and that the said acts and practices of respondents also constitute unfair methods of competition and unfair and deceptive acts or practices in commerce under the Federal Trade Commission Act. (It should be noted that Section 3 of the Flammable Fabrics Act is captioned "PROHIBITED TRANSACTIONS" and that each of the three subparagraphs of Section 3 makes a violation of the Flammable Fabrics Act also a violation of the Federal Trade Commission Act.)

Respondents' principal argument is that silk illusion as used in a bridal veil is not an "article of wearing apparel" as defined by the Flammable Fabrics Act and accordingly is not subject to the provisions of the Act. As seen, the Act *includes* "hats" in the definition of "articles of wearing apparel" *if* such hats "constitute or form part of the covering for the neck, face, (or shoulders when worn by individuals", but *excludes* "hats" which do not constitute or form part of a covering for the neck, face, or shoulders.

Respondents' arguments revolve around dictionary definitions of "hats" and "coverings" in an attempt to show that bridal veils do not constitute or form part of a covering for the neck, face or shoulders and, therefore, fall into that statutory category of "hats" which are exempt from the provisions of the Act.

The obvious purpose of the Congress in placing hats which constitute or form part of a covering for the neck, face, or shoulders subject to the provisions of the Flammable Fabrics Act is to protect the wearers of such hats against the excessive hazards of fire to their persons from articles of apparel which are made of fabrics susceptible to flames beyond the statutory norm as established in Commercial Standard 191–53 whose provisions are incorporated by reference into the Act. With such legislative purpose in mind, we are not concerned in this case with dictionary definitions of the words "hats" and "coverings", although it may be noted in passing that the statutory definitions of "hats" subject to the Act and of "covering" are not without dictionary definition support.

The true issues in this matter are (a) whether the silk illusion used in bridal veils has such proximity to the neck, face, or shoulders of

the wearer as to constitute a covering for the neck, face, or shoulders and (b) whether such silk illusion is so highly flammable as to be dangerous to the wearer. The evidence shows, and common knowledge indicates, that bridal veils have such proximity to the upper part of the body as to constitute in the statutory language a "covering for the neck, face, or shoulders". In fact, respondents have stipulated that bridal veilings constitute such covering. With reference to the flammability of the involved fabric, undisputed laboratory tests show that the imported silk illusion used for bridal veilings is so highly flammable "as to be dangerous when worn by individuals".

Under Section 8(b) of the Flammable Fabrics Act, a person charged with the accusations involved in the instant complaint may defend on the ground that he relied on a "guaranty received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made under the procedures provided in Section 4 of this Act show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of Section 4 of this Act, so highly flammable as to be dangerous when worn by individuals". Respondents have failed to establish that they have received such a guarantee from their supplier-manufacturers and accordingly the defense of Section 8(b) is not available to them.

The respondents have issued guarantees to their customer-dealer that the involved fabric is "guaranteed to meet the tests required by the Flammable Fabrics Act". Inasmuch as the evidence shows that such guarantees are false, respondents are in violation of the Federal Trade Commission Act and an appropriate order will be issued thereunder.

Respondents' joint answer, as seen, contains an affirmative defense reading as follows: "The tests apparently required by the Act and Regulations for the fabric involved are arbitrary and invalid for the reason that the bridal illusion involved is not customarily and normally worn by the consumer after dry cleaning, notwithstanding which the Act and the Regulations appear to require the fabric to be submitted to a flammability test after dry cleaning." Since the respondents have not requested any findings of fact on the above affirmative defense and since they do not mention it in their brief, it is deemed abandoned, but in any event it is our conclusion that the defense is without merit.

ORDER

It is ordered, That the respondent Novik & Co., Inc., a corporation, and its officers, and respondents Sheffield Novik, Thomas Elliott and

Benjamin Silberberg, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from:

1. (a) Importing into the United States; or

(b) Selling, offering for sale, introducing, delivering for introduction, transporting, or causing to be transported, in commerce, as "commerce" is defined in the Flammable Fabrics Act; or

(c) Transporting or causing to be transported for the purpose of sale or delivery after sale in commerce;

any fabric, which, under the provisions of Section 4 of the said Flammable Fabrics Act, as amended, is so highly flammable as to be dangerous when worn by individuals;

2. Furnishing to any person a guaranty with respect to any fabric which respondents, or any of them, have reason to believe may be introduced, sold or transported in commerce, which guaranty represents, contrary to fact, that reasonable and representative tests made under the procedures provided in Section 4 of the Flammable Fabrics Act, as amended, and the Rules and Regulations thereunder, show and will show that the fabrics, covered by the guaranty, is not, in the form delivered or to be delivered by the guarantor, so highly flammable under the provisions of the Flammable Fabrics Act as to be dangerous when worn by individuals, provided, however, that this prohibition shall not be applicable to a guaranty furnished on the basis of, and in reliance upon, a guaranty to the same effect received by respondents in good faith signed by and containing the name and address of the person by whom the fabric was manufactured or from whom it was received.

Opinion of the Commission

By Dixon, *Commissioner:*

This matter is before the Commission for consideration of respondents' exceptions to the hearing examiner's initial decision in which he found that respondents have violated Section 3(b) of the Flammable Fabrics Act.[1] In substance the respondents are charged with importing and selling fabric intended or sold for use in wearing apparel, which fabric is so highly flammable as to be dangerous when worn by individuals. The complaint also alleges, and the hearing examiner found, that respondents have furnished a false guaranty to customers with respect to such fabrics.

[1] 67 Stat. 111 (1953) (effective July 1, 1954), as amended, 15 U.S.C. § 1191 *et seq.*

The particular fabrics imported and sold by respondents which the hearing examiner found have failed to meet the requirements of the Act are two styles of white silk netting manufactured abroad and known in the trade as "bridal illusion" or "silk illusion net." The respondents do not deny that the samples of these two styles of bridal illusion, tested according to the procedures set forth in the Act, burn in a manner and with such rapidity as to fail to meet the requirements for fabrics that are subject to the Act.[2]

The term "fabric" is defined in the Act as meaning ". . . any material . . . intended or sold for use in wearing apparel. . . ." The fabrics here under consideration are used in the garment industry exclusively for making bridal veils. It is respondents' contention that a bridal veil is not an "article of wearing apparel" as that term is defined and used in the Act.

Section 2 of the Flammable Fabrics Act states in part:

> As used in this Act. . . (d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals except hats, gloves, and footwear: *Provided, however*, That such hats do not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals. . . .

Respondents contend that bridal veils are "hats" within the exception in the above definition and that the proviso clause thereto is not applicable. We cannot agree. Although bridal veils are usually attached to a crown or headpiece which sits on the head, this headpiece is a very minor part of the bridal veil ensemble. Counsel have stipulated that the average bridal veil is one yard in length and representative illustrations in the record show that there is very little similarity between bridal veils and customary millinery veils which are used as hats or accessories thereto.[3] These illustrations show that bridal veils extend down behind the neck and shoulders and, in many

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[2] Respondents take issue with the hearing examiner's characterization that "numerous samples" were tested. Be that as it may, the record shows that numerous individual tests were performed on two pieces each taken from two swatches; one swatch being a sample of a particular style of bridal illusion imported from France, the other a sample imported from England. The average burning time for one swatch was 2.0 seconds (for a 2 x 6 inch strip) and the average burning time for the other swatch was 2.6 seconds. The minimum requirement under Section 4(c) of the Act is 3.5 seconds.

[3] The Commission has recognized that ornamental millinery veiling is not a "covering" within the meaning of Section 2(d) of the Act. On June 9, 1954, the following interpretation by the Commission was published in the Federal Register at p. 3373:

Ornamental millinery veils or veilings when used as part of, in conjunction with or as a hat, are not to be considered such a "covering for the neck, face, or shoulders" as would, under the first proviso of section 2(d) of the Flammable Fabrics Act, cause the hat to be included within the definition of the term "article of wearing apparel."

Respondents concede that this interpretation does not apply to bridal veils. That the Commission did not intend it to apply is clear from Rule 5(a) of the Rules and Regulations promulgated under this Act. Therein, in setting forth test procedures for certain classes of fabrics, bridal illusion is specifically named as an example of the type of fabric intended.

instances, extend part of the way down the back of the wearer. In our view, these facts alone are sufficient to warrant the conclusion that a bridal veil is not a hat but is a separate garment in itself. This conclusion is further supported by testimony that bridal veils sometimes reach the length of 6 yards.

The fact that a bridal veil is worn only for a special occasion cannot alter our conclusion that it is an article of wearing apparel subject to the prohibitions of the Act, since calamity is notoriously inconsiderate in its selection of the time and place it will strike.

Even assuming that bridal veils are "hats" as contended by respondents, they would come within the purview of the Act. Respondents' argument that they do not constitute or form part of a covering for the neck, face or shoulders is without substance.[4] The illustrations mentioned above, which depict the manner in which bridal veils are worn, clearly show that the veil often touches the shoulders and back of the bride's gown. Moreover, in those illustrations showing bridal gowns with low backs, the veil often is in close proximity or actually contacts the bare skin. The word "covering" must be interpreted in light of the purpose of the Act which is to protect members of the public from the danger of being burned by highly flammable material. Where, as here, the fabric extends over and is in close proximity to the neck and shoulders, we have no doubt that such danger exists and that the fabric constitutes a "covering" within the meaning of the proviso. The fact that it does not afford protection to or fully enclose the stated parts of the body is of no consequence.

Respondents, however, would narrow the definition of a "covering" to exclude therefrom articles which are not difficult to remove. They contend that the Act was not intended to include hats unless they constitute a covering for the neck, face or shoulders in the sense that a hood or helmet or baby bonnet is a covering and is a hazard in that it would be difficult to remove. In support of this argument, they rely on the legislative history. Congress has clearly stated in the proviso in Section 2(d) that a hat becomes an article of wearing apparel when it constitutes or forms a part of covering for the neck, face or shoulders of the wearer. This is the test prescribed. Had Congress intended to add the additional test of "difficulty of removal" it could have easily expressed this criteria. In effect, Congress has determined that once

[4] Respondents themselves, through counsel, stipulated during the hearing before the examiner, that bridal veiling "constitutes or forms a covering for the neck, face, or shoulders when worn by individuals." Respondents have requested that they be relieved from this stipulation on the ground that it was entered into inadvertently. Although we disagree with the hearing examiner's characterization of the respondents' motion as being "frivolous," it is unnecessary for us to rule on this request because we base our determination on other evidence in the record.

a hat is such a "covering," it is a hazard if flammable without regard to the question of ease of removal.

Notwithstanding the explicit wording of the statute, we have reviewed the excerpts from the legislative history cited by respondents and find nothing therein which discloses a different intent on the part of Congress. As pointed out by respondents, in the course of the hearings the Department of Commerce opposed a flat exemption for hats, gloves and footwear for the reason that such articles could be extremely dangerous to persons unable to remove them easily. However, this approach was rejected and the present proviso relating to "covering" was inserted. From the fact that no provision is made in the statute with respect to the difficulty of removal, we think it obvious that additional factors influenced Congress in its decision to use a "covering" as the test for exemption. One such obvious factor is that an article which constitutes or forms a part of the covering for the neck, face or shoulders, unlike the conventional hat, is easily within reach of open flames and cigarettes. Of interest in this connection is an illustration in the record of a bride wearing her veil which is pictured against the background of a lighted candle.

Respondents, in furtherance of their argument, except to the hearing examiner's finding that "the method of fixing the veil to the hair of a bride would normally render its quick removal difficult if the veil caught on fire." Although under our interpretation of the statute this finding is not controlling to decision, we find no error therein. The record shows that bridal veils are often secured to the hair with combs and bobby pins. Although the word "difficult" may be subject to different interpretations, we are convinced from the rapid burning time of this fabric that it is not probable that a bridal veil, so attached, could be removed quickly enough to avoid serious consequences.

Respondents assert that they acted in good faith in that they believed that the fabrics in question had been tested by their European suppliers and found to be safe, and that as soon as they were notified by representatives of the Commission that the two bridal illusion styles failed to meet the standards of the Act they stopped selling the fabrics. The circumstances do not excuse them from having sold fabrics which Congress has deemed a public hazard. While respondents' action in ceasing the sale of this fabric is commendable, this action did not take place until the investigation began and does not support a conclusion that the public interest would be adequately protected in the absence of an order to cease and desist.

Respondents also object to the scope of the order as contained in the initial decision, which would direct them to cease and desist from importing and selling any fabric in violation of Section 4 of the Act

and giving false guaranties with such fabric. The respondents contend that an order, if issued, should be limited to bridal illusion as only this type of fabric sold by them has been shown to be so highly flammable as to be dangerous when worn by individuals. We are of the opinion, however, that the broader order is in the public interest. The complaint charges respondents with importing and selling "fabric" in violation of the Act and that charge has been proven. Protection of the public from dangerously flammable fabrics and apparel requires us to order the respondents to cease and desist from this type of practice altogether, once it has been shown to exist as to any part of their business. *Baar & Beards, Inc.*, Docket 6400 [57 F.T.C. 937] (1960). We are "not limited to prohibiting the illegal practice in the precise form in which it is found to have existed in the past." *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 473 [5 S. & D. 388, 391] (1952); *Federal Trade Commission* v. *Mandel Brothers, Inc.*, 359 U.S. 385 [6 S. & D. 564] (1959).

The hearing examiner found that respondents furnished false guaranties with respect to this fabric and respondents have not excepted to this finding. However, in interpreting the Act on this issue, the hearing examiner stated that a person charged with the accusations involved in the instant complaint may defend on the ground that he relied on a guaranty received in good faith as specified in Section 8(b). Although the respondents did not receive such a guaranty, this is an erroneous interpretation of the Act that should be corrected. The defense included in Section 8(b) pertains only to a charge of furnishing a false guaranty under that subsection. (A similar defense under Section 8(a) pertains only to a misdemeanor charge under Section 7 of the Act.) This defense is of no avail to a person charged with importing or selling flammable fabrics in violation of Section 3(b) of the Act.

There is some suggestion in the initial decision that the giving of a false guaranty with respect to the standards of the Act is a violation of only the Federal Trade Commission Act, whereas the selling of a highly flammable fabric which is intended for use in wearing apparel is a violation of only the Flammable Fabrics Act. Actually, both practices are illegal under the Flammable Fabrics Act and it is expressly provided in Sections 3(b) and 8(b) that such practices are also in violation of the Federal Trade Commission Act.

In view of the foregoing, the respondents' exceptions to the initial decision are denied. The initial decision is modified to conform to the views expressed in this opinion and as modified will be adopted as the decision of the Commission.

FINAL ORDER

This matter having been heard by the Commission upon exceptions of respondents to the initial decision and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission having ruled on said exceptions and having determined that the initial decision should be modified to conform to the views expressed in the accompanying opinion:

It is ordered, That the initial decision be modified by striking therefrom that section beginning on page 237 with the words "Under Section 8(b) of the Flammable Fabrics Act," and ending with the words "and an appropriate order will be issued thereunder" and substituting the following:

> Respondents have furnished false guaranties with respect to the fabric in question within the meaning of Section 8(b) of the Flammable Fabrics Act. As respondents have failed to establish that they received a guaranty from their suppliers, the defense included within Section 8(b) is not available to them.

It is further ordered, That the respondents' exceptions to the initial decision be, and they hereby are, denied.

It is further ordered, That the hearing examiner's initial decision, as modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That respondents Novik & Co., Inc., Sheffield Novik, Thomas Elliott, and Benjamin Silberberg, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in the initial decision.

IN THE MATTER OF

LURIA BROTHERS AND COMPANY, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE CLAYTON ACT

Docket 6156. Amended and Supplemental Complaint, July 13, 1954—Decision, Feb. 13, 1963*

Order requiring the nation's largest broker of iron and steel scrap, of Philadelphia, Pa., to cease acting as exclusive broker or supplier of purchased scrap for any buyer, domestic or foreign; requiring respondent mills,

*See 51 F.T.C. 15 for order granting motion to amend.

for a 5-year period, not to purchase in excess of 50 percent of their annual requirements from Luria except to the extent that comparable scrap is not available from other suppliers; requiring Luria, for 5 years, not to acquire any interest in any other dealer in scrap without a finding by the Commission that an acquisition will not unduly restrain competition; and requiring Luria to divest itself of Southwest Steel Corp., a competing broker-dealer it acquired in 1950.

AMENDED AND SUPPLEMENTAL COMPLAINT

The Federal Trade Commission having reason to believe that the parties named in the caption hereof and hereby made respondents herein, and more particularly hereinafter described and referred to as respondents, have been and are using unfair methods of competition and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act, as amended and approved March 21, 1938 (52 Stat. 111; U.S.C., Title 15, Sec. 45), and that respondent Luria Brothers and Company, Inc., has violated Section 7 of the Clayton Act as approved October 15, 1914 (38 Stat. 731), and Section 7 of the Clayton Act as amended and approved December 29, 1950 (64 Stat. 1125; U.S.C., Title 15, Sec. 18), and it appearing to the Commission that a proceeding by it in respect thereof would be to the interest of the public, the Commission hereby issues its amended and supplemental complaint, charging as follows:

COUNT I

Charging violation of Section 5 of the Federal Trade Commission Act, as amended and approved March 21, 1938 (52 Stat. 111; U.S.C., Title 15, Sec. 45), the Commission alleges:

PARAGRAPH 1.* The respondents named in this Paragraph 1 will sometimes hereinafter be referred to collectively as "respondent brokers."

(a) Respondent, Luria Brothers & Company, Inc., is a corporation, organized under the laws of the Commonwealth of Pennsylvania in June 1918, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. On or about October 11, 1955, the name of this corporation was changed to L.B.C. Company. This respondent will sometimes hereinafter be referred to as "old Luria".

(b) Respondent, Luria Brothers & Company, Inc., is a corporation organized under the laws of the State of Delaware in September 1955, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. Said respond-

* Paragraph 1 as amended, April 16, 1956.

ent was incorporated as Bayou Metals, Inc., but on or about October 11, 1955, its name was changed to Luria Brothers & Company, Inc. This respondent will sometimes hereinafter be referred to as "new Luria". Said respondent is a subsidiary of Ogden Corporation, a corporation organized under the laws of the State of Delaware in August, 1939, with its office and principal place of business located at 33 Pine Street. New York, New York.

On or about October 11, 1955, old Luria sold substantially all of its assets, tangible and intangible, real and personal, including its business as a going concern, its name and its good will, to new Luria, which has since continued the business of old Luria without substantial change.

For the purposes of this proceeding, therefore, new Luria is answerable and liable for such of the acts and practices of old Luria as may be relevant and material to this proceeding. Any allegation or other reference in this complaint with respect to respondent or to Luria Brothers and Company, Inc., is, accordingly, made with respect to both old Luria and new Luria.

(c) Respondent, Southwest Steel Corporation, is a corporation, organized under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Grant Building, Pittsburgh, Pennsylvania.

PAR. 2. The respondents named in this Paragraph 2 will sometimes hereinafter be referred to collectively as "respondent mills"; and "mills," as the term is used in this complaint, is intended to include generally foundries as well as steel mills. It is specifically alleged that each subsidiary respondent mill named in subparagraphs (a), (c), (d), and (e) of this Paragraph 2 has acted for and on behalf of the respondent mill which owns and operates it as well as for and on its own behalf in doing and performing the things hereinafter alleged in Paragraph 9.

(a) Respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Delaware in July 1919, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania. Said respondent owns and operates the corporations, Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation, which are also named as respondents herein.

Respondent, Bethlehem Steel Company, a subsidiary of respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Pennsylvania in April 1899, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania.

Respondent, Bethlehem Pacific Coast Steel Corporation, a subsidiary of respondent, Bethlehem Steel Corporation, is a corporation, organized under the laws of the State of Delaware in October 1945,

with its office and principal place of business located at 20th and Illinois Streets, San Francisco, California.

(b) Respondent, United States Steel Corporation, is a corporation, organized under the laws of the State of New Jersey in February 1901, with its office and principal place of business located at 71 Broadway, New York, New York. Said respondent owns and operates numerous plants, divisions, and subsidiary corporations, but it is especially because of its activities at the Geneva, Utah, plants of its Columbia-Geneva Division that it is named as a respondent herein. Said plants were once owned by the Geneva Steel Company, formerly a subsidiary of respondent, United States Steel Corporation, but on or about December 31, 1951, the Geneva Steel Company merged with the United States Steel Company, also a former subsidiary of respondent, United States Steel Corporation, and became part of the Columbia-Geneva Steel Division of said company. On or about December 31, 1952, the United States Steel Company merged with the United States Steel Corporation.

(c) Respondent, National Steel Corporation, is a corporation, organized under the laws of the State of Delaware in November 1929, with its office located at Grant Building, Pittsburgh, Pennsylvania. Said respondent owns and operates the corporation, Weirton Steel Company, which is also named as a respondent herein.

Respondent, Weirton Steel Company, a subsidiary of respondent National Steel Corporation, is a corporation, organized under the laws of the State of West Virginia in May 1939, with its office and principal place of business located at Weirton, West Virginia.

(d) Respondent, Colorado Fuel and Iron Corporation, is a corporation, organized under the laws of the State of Colorado in April 1936, with its office and principal place of business located at the Continental Oil Building, Denver, Colorado. Said respondent owns and operates the corporation, John A. Roebling's Sons Corporation, which is also named as a respondent herein. On or about June 30, 1952, The Claymont Steel Corporation, then a subsidiary corporation of respondent, Colorado Fuel and Iron Corporation, organized under the laws of the State of Delaware, with its office and principal place of business located at Claymont, Delaware, transferred its assets to the Wickwire-Spencer Division of respondent, Colorado Fuel and Iron Corporation. Said Claymont Steel Corporation was then formally dissolved.

Respondent John A. Roebling's Sons Corporation, a subsidiary of respondent, Colorado Fuel and Iron Corporation, is a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at Trenton, New Jersey. On or

about December 31, 1952, said corporation (until December 22, 1952, named Colorado Steel Corporation) acquired all of the manufacturing business, plants, and inventories of John A. Roebling's Sons Company, a New Jersey corporation.

(e) Respondent, Central Iron and Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in May 1946, with its office and principal place of business located at Harrisburg, Pennsylvania. Said respondent is a subsidiary of the Barium Steel Corporation, a corporation organized under the laws of the State of Delaware, with its general office located at New York, New York. Said respondent, Central Iron and Steel Company, owns and operates the corporation, Phoenix Iron and Steel Company, which is also named as a respondent herein.

Respondent, Phoenix Iron and Steel Company, a subsidiary of Central Iron and Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in September 1949, with its office and principal place of business located at Phoenixville, Pennsylvania.

(f) Respondent, Granite City Steel Company, is a corporation, organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at Granite City, Illinois.

(g) Respondent, Lukens Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in January 1917, with its office and principal place of business located at Coatesville, Pennsylvania.

(h) Respondent, Detroit Steel Corporation, is a corporation, organized under the laws of the State of Michigan in March 1923, with its office and principal place of business located at Detroit, Michigan. Said respondent owns and operates a Portsmouth Division at Portsmouth, Ohio, and it is especially because of its activities at said division that it is named as a respondent herein.

(i) Respondent, McLouth Steel Corporation, is a corporation, organized under the laws of the State of Michigan in April 1934, with its office and principal place of business located at 300 South Livernois Street, Detroit, Michigan.

(j) Respondent, Baldwin-Lima-Hamilton Corporation, in a corporation organized under the laws of the Commonwealth of Pennsylvania in June 1911, with its office and principal place of business located at Eddystone, Pennsylvania. Said respondent owns and operates a Standard Steel Works Division at Burnham, Pennsylvania, and it is especially because of its activities at said division that it is named as a respondent herein.

(k) Respondent, Edgewater Steel Company, is a corporation, organized under the laws of the Commonwealth of Pennsylvania in August 1916, with its office and principal place of business located at Oakmont, Pennsylvania.

(l) Respondent, Bucyrus-Erie Company, is a corporation, organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at South Milwaukee, Wisconsin. Said respondent is named as a respondent herein especially because of its activities at its plants located at Erie, Pennsylvania, and its activities with and through its former subsidiary, National Erie Corporation, a corporation, organized under the laws of the Commonwealth of Pennsylvania in May 1931, with its office and principal place of business located at Erie, Pennsylvania, which, on or about February 1, 1954, transferred all of its operating assets to said respondent, having previously adopted a resolution of dissolution.

(m) Respondent, Columbia Malleable Castings Corporation, is a corporation, organized under the laws of the State of New York in March 1917, with its office and principal place of business located at Providence, Rhode Island. Said respondent is a subsidiary of the Grinnell Corporation, a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at Providence, Rhode Island.

PAR. 3. Respondent, Hugo Neu Corporation, hereinafter referred to as respondent Neu, is a corporation, organized under the laws of the State of New York in January 1947, with its office and principal place of business located at 31 Nassau Street, New York, New York.

PAR. 4. Respondent brokers are now engaged and for many years prior hereto have been engaged in the business of buying and selling in their own names and for their own accounts iron and steel scrap and finished and semi-finished iron and steel products. "Iron and steel scrap," as the term is used in this complaint, is intended to include generally all ferrous materials, either alloyed or unalloyed, of which iron or steel is a principal component, which are the waste of industrial fabrication, or objects that have been discarded on account of obsolescence, failure or any other reason.

Respondent brokers buy from and sell to various mills, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the State in which said respondents maintain offices and yards, and in connection therewith said respondents cause such iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines to said respondents or to parties designated by them.

Respondent, Luria Brothers and Company, Inc., owns the control-

ling interest in and directs the operations of Livingston & Southard, Inc., a corporation organized under the laws of the State of Delaware in June 1953, which is described as a division of respondent, Luria Brothers and Company, Inc. Said respondent, operating in its own name and through its subsidiary and affiliated companies, including Livingston & Southard, Inc., also buys iron and steel scrap for export purposes from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

PAR. 5. Respondent, Luria Brothers and Company, Inc., maintains offices located in 16 cities in 12 different States, and yards which serve as centers for the collection or preparation of iron and steel scrap in 6 cities in 2 different States. Said respondent also owns and controls other corporations, wholly or partially, directly or indirectly, which engage in the business of buying and selling iron and steel scrap, or collecting, accumulating, sorting, preparing, and then selling such scrap. Among said owned and controlled corporations are Pueblo Compressed Steel Corporation, A. M. Wood and Company, Inc., Lipsett, Inc., Lipsett Steel Products, Inc., Apex Steel and Supply Company, Inc., and the respondent, also described in this Paragraph 5, Southwest Steel Corporation. Said corporations are further described hereinafter in Paragraph 11.

Respondent, Southwest Steel Corporation, maintains offices located in Pittsburgh, Pennsylvania, and Portsmouth, Ohio, and yards which serve as centers for the collection and preparation of iron and steel scrap in Glassport, Pennsylvania, and Memphis, Tennessee. Said respondent, prior to August 31, 1953, also owned 405 of the 810 outstanding shares of voting common stock and 2,250 shares of preferred stock of Continental Iron and Steel Corporation, a New York corporation similarly engaged in the business of buying and selling iron and steel scrap. On or about August 31, 1953, said respondent purchased all the remaining outstanding stock of said Continental Iron and Steel Corporation, and in November 1953, voted the dissolution of said corporation, and all of its assets were transferred to said respondent.

In the course and conduct of their business, said respondent brokers have been and are now in competition with other corporations, and with individuals, firms, and partnerships engaged in the purchase and sale of iron and steel scrap and finished and semi-finished iron and steel products in interstate commerce. Prior to the acquisition of control of respondent, Southwest Steel Corporation, by respondent, Luria Brothers and Company, Inc., on or about February 1, 1950, said respondent brokers were also in competition with each other, and subse-

quent thereto have continued to hold themselves out to the trade and the public as being in competition with each other.

Respondent, Luria Brothers and Company, Inc., is and for several years prior hereto has been the largest purchaser and seller of iron and steel scrap in the United States, and respondent, Southwest Steel Corporation, is and for several years prior hereto has been a large purchaser and seller of iron and steel scrap in the Pittsburgh, Pennsylvania, area. Respondent, Southwest Steel Corporation, occupies a leading and dominant position in its own marketing area and respondent, Luria Brothers and Company, Inc., occupies the leading and dominant position in the industry throughout the United States.

PAR. 6. In buying and selling iron and steel scrap, many members of the industry act solely as dealers, others act solely as brokers, and still others act in the dual capacity of dealers and brokers, as the terms "dealers" and "brokers" are used in the trade. Respondent brokers buy and sell iron and steel scrap in the dual capacity of dealers and brokers, as more particularly set out below, their principal activity being in the capacity of brokers.

When acting as dealers, respondent brokers customarily take possession of the iron and steel scrap purchased by them and store, sort, and prepare said scrap, and subsequently sell it directly to consuming mills or foundries or to brokers or others.

When acting as brokers, as that term is used in the trade, respondent brokers customarily agree to sell a specified tonnage of iron and steel scrap at a specified price to a consumer who is usually a purchaser of such scrap for use in the production of iron and steel products. Respondent brokers customarily procure the specified tonnage by shopping the market and purchasing at the lowest prices they are able to obtain, realizing a profit or suffering a loss, as the case may be, on the basis of the difference between the prices at which they have agreed to sell and those at which they are able to buy. Suppliers of respondent brokers are usually authorized to ship directly to the customers of respondent brokers.

While respondent brokers are designated as "brokers," they are not brokers in fact. Respondent brokers purchase iron and steel scrap for their own account, taking title to such scrap and assuming all the risks incident to ownership. They sell such scrap to their customers in their own names and for their own accounts, and at prices and on terms determined by their customers and themselves. Said respondent brokers assume full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon as the case may be. Respondent brokers are responsible to their customers for the quantity and quality of the scrap, and it rests with the respondent brokers

themselves, to recoup any losses occasioned thereby by seeking recourse against their suppliers.

PAR. 7. Respondent mills are engaged in the production of iron and steel products by melting, rerolling, or forging, and the subsequent sale thereof to fabricators in numerous important industries, large ultimate consumers, jobbers, and other buyers. Some of the respondent mills are engaged in, or are affiliated with corporations engaged in the production of pig iron and other raw materials used in the making of steel products; the sale of pig iron; the sale of ingots and a broad variety of semi-finished iron and steel products; the fabrication and sale of certain finished steel products, among which are structural steel, plates, bars, sheets, wire, and other wire products; and the sale of the scrap incident to the fabrication of iron and steel products.

In the course and conduct of their business, respondent mills purchase iron and steel scrap and other raw materials from respondent brokers and other sources of supply, and sell finished and semi-finished iron and steel products and the scrap incident to the fabrication thereof to respondent brokers and other buyers located in the several States of the United States and cause said scrap so purchased and said products and scrap so sold to be shipped and transported across State lines.

PAR. 8. Respondent Neu maintains offices in New York, New York. It is now engaged, and for many years prior hereto, has been engaged in the business of buying and selling iron and steel scrap, among other things, in its own name and in other names, including the name, Asiatic Metals Company, Ltd. Respondent Neu is engaged extensively in the business of importing commodities into this country and of exporting commodities from this country. In the course and conduct of its export business, respondent Neu buys iron and steel scrap, among other things, from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

Except to the extent limited by the methods, acts and practices hereinafter alleged in Paragraph 12, respondent Neu has been and is now in competition with other corporations and with individuals, firms and partnerships, engaged in the purchase and sale of iron and steel scrap, among other things, in interstate and foreign commerce. Respondent Neu occupies a leading and dominant position in the exportation of iron and steel scrap from the continental United States to Japan.

PAR. 9. Respondent brokers and respondent mills and other mills have entered into express and implied understandings, agreements, combinations, and conspiracies for the purpose and with the effect of lessening, hindering, restraining and suppressing competition, and tending to create a monopoly in respondent brokers in the interstate purchase and sale of iron and steel scrap. Pursuant to said understandings, agreements, combinations, and conspiracies, and in furtherance thereof, respondent brokers and respondent mills and other mills have acted and continue to act in concert and in cooperation in doing and performing the following methods, acts, and practices:

(a) Respondent brokers entered into understandings, agreements, and conspiracies with respondent mills and other mills to act as exclusive or substantially exclusive scrap brokers for said mills.

(b) Respondent mills and other mills agreed to and did make all or substantially all of their iron and steel scrap purchases from respondent brokers.

(c) Respondent mills and other mills agreed to and did notify former suppliers and others that respondent brokers were their exclusive iron and steel scrap brokers.

(d) Pursuant to and in compliance with said understandings, agreements, and conspiracies, respondent mills informed respondent brokers of offers of scrap received directly from former suppliers and others, and required former suppliers and others to solicit the business of respondent mills from or through respondent brokers.

(e) Respondent brokers either denied permission to said suppliers to sell iron and steel scrap to said mills or permitted them to do so only on terms and conditions dictated by respondent brokers.

(f) In furtherance of said understandings, agreements and conspiracies, respondent mills and other mills sold finished and semi-finished iron and steel products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products, or other iron and steel scrap produced or offered for sale by said fabricators or others, would be sold to respondent brokers.

(g) In furtherance of said understandings, agreements, and conspiracies, respondent mills and other mills sold finished and semi-finished iron and steel products to respondent brokers, and respondent brokers sold such products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products, or other iron and steel scrap produced or offered for sale by said fabricators or others, would be sold to respondent brokers.

(h) Respondent mills and other mills requested railroads and other sources of supply to sell to a respondent broker iron and steel scrap

offered for sale by such sources of supply. Because of the substantial volume of business which respondent mills and other mills were in a position to divert to or from various railroads and other sources of supply, their requests to sell iron and steel scrap to a respondent broker had a strong and frequently coercive influence. In many instances, railroads and other sources of supply, in response to and because of such requests, did sell iron and steel scrap to a respondent broker, thereby diverting business in iron and steel scrap to respondent brokers from their competitors.

(i) The regulations of the Office of Price Stabilization, effective on or about February 7, 1951, provided that where iron and steel scrap is allocated by the National Production Authority, other than from a government agency, the seller may designate a broker. (Sec. 19(a), C.P.R. 5, Iron and Steel Scrap, 16 F.R. 1066). Contrary to the spirit and purpose of that regulation, and pursuant to requests of respondent brokers, which were for the purpose of more fully implementing the exclusive arrangements hereinabove referred to, respondent mills and other mills requested railroads and other sources of supply to designate a respondent broker as the broker in connection with the sale of iron and steel scrap allocated to said mills. Because of the substantial volume of business which respondent mills and other mills were in a position to divert to or from various railroads and other sources of supply, their requests to designate a respondent broker as the broker in connection with the sale of iron and steel scrap allocated to said mills had a strong and frequently coercive influence. In many instances, railroads and other sources of supply, in response to and because of such requests, did designate a respondent broker as the broker in connection with the sale of allocated iron and steel scrap, thereby diverting business in allocated iron and steel scrap to respondent brokers from their competitors.

(j) The regulations of the Office of Price Stabilization, effective on or about February 7, 1951, provided that a consumer may designate a dealer or dealers to prepare steel scrap of dealer or industrial origin on a preparation fee basis under certain circumstances. (Sec. 15(a), C.P.R. 5, Iron and Steel Scrap, 16 F.R. 1066.) Pursuant to and consistent with the intent and purpose of the aforesaid understandings, agreements, and conspiracies, respondent mills and other mills customarily designated a dealer or dealers to prepare steel scrap in conformity with the requests of respondent brokers, this increasing the influence, domination, and control of respondent brokers over iron and steel scrap dealers.

PAR. 10. Respondent, Luria Brothers and Company, Inc., for the purpose and with the effect of lessening, hindering, restraining, and

suppressing competition in the interstate purchase and sale of iron and steel scrap, and tending to create a monopoly in the interstate purchase and sale of iron and steel scrap, has engaged in and continues to engage in the following methods, acts, and practices, among others:

(a) Threatened to and did divert iron and steel scrap tonnage, or other tonnage, shipped via railroad, when it could do so without incurring undue additional expense, inconvenience or delay, from those railroads which failed or refused to sell substantial quantities of iron and steel scrap to said respondent.

(b) Threatened to and did divert iron and steel scrap tonnage, or other tonnage, shipped via railroad, when it could do so without incurring undue additional expense, inconvenience or delay, from those railroads which failed or refused to designate said respondent as broker for substantial quantities of allocated iron and steel scrap.

(c) Offered to sell and sold finished and semi-finished iron and steel products to fabricators and others under and subject to the condition, agreement or understanding that scrap resulting from further fabrication of such products or other iron and steel scrap produced or offered for sale by said fabricators or others would be sold to said respondent.

(d) Purchased certain grades of iron and steel scrap under and subject to the condition, agreement, or understanding that the dealer or other source of supply would sell to said respondent other grades of iron and steel scrap.

(e) In seeking to secure control of marketing areas in certain sections of the country, bid and paid for iron and steel scrap at prices so high that neither said respondent nor its competitors could resell such scrap at existing price ceilings or at generally prevailing market prices except at financial loss.

(f) Threatened to and did open competing yards or install additional equipment in existing yards for the collection or preparation of iron and steel scrap in areas where additional yards or equipment were economically undesirable, for the purpose and with the effect of harrassing iron and steel scrap dealers in such areas who failed or refused to sell all or a substantial part of their scrap to said respondent.

(g) Held out and continues to hold out as being independent of and from said respondent certain corporations which are being operated under the direction and control of said respondent by means of outright ownership, substantial stock ownership, financial and contractual affiliations and otherwise. Said respondent has authorized, permitted, or required and continues to authorize, permit, or require purchases to be made by said corporations and products of said corporations to be offered for sale and sold without any disclosure of said respondent's interest in or its ownership or control of said corporations, thereby

diverting to such corporations and from their competitors substantial trade and business which could not have been so diverted had said respondent's interest in or its ownership or control of said corporations been known to the trade and the public.

PAR. 11. Respondent, Luria Brothers and Company, Inc., has also acquired, directly or indirectly, and continues to exercise substantial domination and control over the buying and selling of iron and steel scrap by certain dealers and brokers which were formerly substantial competitors of said respondent and of others in the business of buying and selling or buying, collecting, accumulating, sorting, preparing, and selling iron and steel scrap. Said domination and control was acquired for the purpose and with the effect of thereby lessening or eliminating, suppressing, and preventing competition with said respondent by such dealers and brokers in the buying and selling of iron and steel scrap, of lessening and suppressing competition generally in the buying and selling of iron and steel scrap, and of creating and maintaining a monopoly in said respondent. Said domination and control over the buying and selling of iron and steel scrap by certain dealers and brokers has been acquired by respondent, Luria Brothers and Company, Inc., by and through the use of the methods, acts, and practices set out in the following subparagraphs (a) and (b):

(a) Said respondent, Luria Brothers and Company, Inc., has made and is continuing to make substantial advances or loans to iron and steel scrap dealers to enable said dealers to purchase iron and steel scrap, additional machinery, equipment, or real estate, to make other capital improvements, or for other purposes. Many of said advances or loans are made subject to the express condition, understanding, and agreement, that, during the periods of the advances or loans, said dealers will sell to said respondent all of the iron and steel scrap acquired, processed, and produced by said dealers, and that during such periods said dealers will not sell any iron and steel scrap to parties other than said respondent except with the prior express approval of said respondent. Other advances or loans, not made subject to the above-mentioned express condition, understanding, and agreement, have the capacity and tendency to result and have actually resulted in tacit understandings, implied agreements, or other obligations on the part of dealers accepting such advances or loans to sell to said respondent all of the iron and steel scrap acquired, processed, and produced by said dealers.

(b) Respondent, Luria Brothers and Company, Inc., has acquired, directly or indirectly, all or a substantial part of the capital stock of certain corporations described more particularly in the following subsections (1) through (6). These corporations were formerly inde-

pendent, but as a result of said stock acquisitions, they are now operating under and subject to the control of said respondent. They are now and for several years prior hereto have been large or the largest brokers or dealers in iron and steel scrap in their respective market areas, and they now occupy and have occupied an important position or the leading and dominant position in such areas. In connection with their purchases and sales, said corporations cause iron and steel scrap to be shipped and transported across State lines to said corporations or to parties designated by them.

(1) In or about July 1946, said respondent acquired 80 shares of the 150 shares of the issued and outstanding capital stock of Pueblo Compressed Steel Corporation, a corporation organized under the laws of the State of Colorado, with its office and principal place of business located at Pueblo, Colorado.

(2) In October 1947, said respondent acquired all of the issued and outstanding capital stock of A. M. Wood and Company, Inc., a corporation organized under the laws of the State of Delaware, with its office and principal place of business located at 117 South 17th Street, Philadelphia, Pennsylvania.

(3) On or about May 4, 1948, said respondent acquired all of the issued and outstanding capital stock of Lipsett, Inc., a corporation organized under the laws of the State of New York, with its office and principal place of business located at 100 Park Avenue, New York, New York.

(4) On or about May 4, 1948, said respondent acquired all of the issued and outstanding capital stock of Lipsett Steel Products, Inc., a corporation, organized under the laws of the State of New York, with its office and principal place of business located at 222 Morgan Avenue, Brooklyn, New York.

(5) On or about February 1, 1950, said respondent acquired all of the voting stock of respondent, Southwest Steel Corporation, more particularly described herein in Paragraphs 1 and 5.

(6) On or about April 27, 1951, said respondent acquired one-half of the issued and outstanding capital stock of the Apex Steel and Supply Company, and one-half of the issued and outstanding capital stock of the Cermack-Laflin Corporation, as security for a loan of $272,500 to Charles A. Mogilner. Pursuant to the terms of the loan agreement, said respondent may at any time take title to the said stock, or Charles A. Mogilner may at any time tender title to said stock to said respondent in satisfaction of the indebtedness. In addition to the loan to Charles A. Mogilner which is secured by the stock as aforesaid, said respondent holds a 3% interest bearing note from Apex Steel and Supply Company, in the amount of $272,500, dated May 1, 1951, payable at the rate of $25,000 per year or 50% of the net profits

after taxes of Apex Steel and Supply Company, whichever is larger. Apex Steel and Supply Company is a corporation organized under the laws of the State of Illinois with its office and principal place of business located at 2204 South Laflin Street, Chicago, Illinois. It occupies certain real estate owned by Cermack-Laflin Corporation, a corporation organized under the laws of the State of Illinois. Stockholders of the Apex Steel and Supply Company are the same as the stockholders of Cermack-Laflin Corporation and hold approximately the same proportions of stock in each company. Through and by virtue of the stock and note of the corporation, acquired as aforesaid, respondent, Luria Brothers and Company, Inc., has obtained and continues to exercise substantial working control of Apex Steel and Supply Company.

PAR. 12. Respondent, Luria Brothers and Company, Inc., and respondent Neu, and others, have entered into express and implied understandings, agreements, combinations and conspiracies for the purpose and with the effect of lessening, hindering, restraining and suppressing competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce, and tending to create a monopoly in said respondents in the sale of iron and steel scrap from the continental United States to customers located in other countries. Pursuant to said understandings, agreements, combinations and conspiracies and in furtherance thereof, respondent Luria Brothers and Company, Inc., and respondent Neu, and others, have acted and continue to act in concert and cooperation in doing and performing the following methods, acts and practices:

(a) On or about July 3, 1953, respondent Neu entered into understandings, agreements, combinations and conspiracies with five steel producing companies located in Japan, which will sometimes hereinafter be referred to as the Japanese combination, to act as the exclusive or substantially exclusive supplier for those companies of iron and steel scrap obtained in the continental United States. The five steel producing members of this Japanese combination are among the six most important and largest steel producing companies in Japan, and represent and control the purchasing of iron and steel scrap from the continental United States by substantially all of the Japanese steel producing companies. Said understandings, agreements, combinations and conspiracies provided initially for the purchase and sale of a fixed amount of iron and steel scrap within a limited period of time, but also made provision for extensions and renewals on a continuing and exclusive basis.

(b) Respondent Luria Brothers and Company, Inc., and respondent Neu entered into understandings, agreements, combinations and con-

spiracies to participate and have participated jointly in supplying iron and steel scrap to the Japanese combination under the exclusive arrangement referred to in subparagraph (a) of this Paragraph 12.

PAR. 13. The purpose and effect of the understandings, agreements, combinations, and conspiracies, and of the methods, acts, and practices alleged in Paragraphs 9, 10, 11, and 12 herein, and things done pursuant to them, all of which allegations are sometimes hereinafter referred to as the acts and practices of the respondents, were and are, or may be, substantially to lessen, hinder, restrain and suppress competition with respect to prices and otherwise in the purchase and sale of iron and steel scrap in interstate and foreign commerce; unduly to burden the channels of free and open competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce; to enable the respondents to dominate and manipulate various markets in which iron and steel scrap is purchased and sold; and to tend to create in respondent brokers a monopoly in the purchase and sale of iron and steel scrap in interstate and foreign commerce. Each of the acts and practices of the respondents has facilitated and contributed to the effectiveness of the other acts and practices of the respondents, and the capacity, tendency and effect of all or any of them are, therefore, herein alleged with respect to each of them.

It is further specifically alleged that the capacity, tendency and effect of the acts and practices of the respondents have been and are, among other things, to divert trade to respondent brokers from their competitors; to lessen competition between and among the respondent mills in the purchase of iron and steel scrap; to cause respondent mills and other mills to refrain from purchasing iron and steel scrap from competitors of respondent brokers; to prevent competitors of respondent brokers from selling to the principal consumers of iron and steel scrap in certain areas; unduly to hinder and prevent iron and steel scrap dealers and brokers from competing with respondent brokers and respondent Neu in purchasing and selling such scrap in interstate and foreign commerce; to coerce and cause suppliers and prospective suppliers of iron and steel scrap to sell to respondent brokers and to refrain from selling to competitors of respondent brokers without regard to the comparative services and facilities offered by respondent brokers and those offered by competitors of respondent brokers; to prejudice and injure brokers, dealers, and producers of iron and steel scrap who do not conform to the program of respondents, or who do not desire, but are compelled to conform to that program; and to prejudice and injure the public and consumers.

PAR. 14. The acts and practices of the respondents as herein alleged are all to the prejudice of competitors of respondent brokers and respondent Neu and to the prejudice of the public; have a dangerous

tendency to hinder and prevent, and have actually hindered and prevented, competition in the purchase and sale of iron and steel scrap in commerce within the intent and meaning of the Federal Trade Commission Act; have unreasonably restrained such commerce in iron and steel scrap and have a dangerous tendency to create in respondent brokers a monopoly in the purchase and sale of iron and steel scrap; and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

COUNT II

Charging violation of Section 7 of the Clayton Act, as approved October 15, 1914 (38 Stat. 731), and Section 7 of the Clayton Act, as amended and approved December 29, 1950 (64 Stat. 1125; U.S.C., Title 15, Sec. 18), the Commission alleges:

PARAGRAPH 1.* For its allegations under this Paragraph 1 of Count II said Commission relies upon the allegations set out in subparagraphs (a) and (b) of Paragraph 1 of Count I of this complaint, as amended, to such an extent as though those allegations were set out in full herein, and said subparagraphs (a) and (b) of Paragraph 1 of Count I of this complaint, as amended, are therefore incorporated by reference and constitute the allegations of this Paragraph 1 of Count II.

PAR. 2. Respondent is now engaged and for many years prior hereto has been engaged in the business of buying and selling in its own name and for its own account iron and steel scrap and finished and semi-finished iron and steel products. Respondent buys from and sells to various mills, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the State in which said respondent maintains offices and yards, and in connection therewith causes such iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines to respondent or to parties designated by it.

Respondent maintains offices located in 16 cities in 12 different States, and yards which serve as centers for the collection or preparation of iron and steel scrap in 6 cities in 2 different States. Respondent has acquired and now owns and controls other corporations, wholly or partially, directly or indirectly, which engage in the business of buying and selling iron and steel scrap, or collecting, accumulating, sorting, preparing, and then selling such scrap.

In the course and conduct of its business, respondent has been and is now in competition with other corporations and with individuals,

*Paragraph 1 as amended April 16, 1956.

firms, and partnerships engaged in the purchase and sale of iron and steel scrap and finished and semi-finished iron and steel products in interstate commerce. It is, and for several years prior hereto has been, the largest purchaser and seller of iron and steel scrap in the United States, and it occupies the leading and dominant position in that industry.

PAR. 3. In buying and selling iron and steel scrap, many members of the industry act solely as dealers, others act solely as brokers, and still others act in the dual capacity of dealers and brokers, as the terms "dealers" and "brokers" are used in the trade. Respondent buys and sells iron and steel scrap in the dual capacity of dealer and broker, as more particularly set out below, its principal activity being in the capacity of broker.

When acting as a dealer, respondent customarily takes possession of the iron and steel scrap purchased by it and stores, sorts, and prepares such scrap, and subsequently sells it directly to consuming mills or foundries or to brokers or others.

When acting as a broker, as that term is used in the trade, respondent customarily agrees to sell a specified tonnage of iron and steel scrap at a specified price to a consumer who is usually a purchaser of such scrap for use in the production of iron and steel products. Respondent customarily procures the specified tonnage by shopping the market and purchasing at the lowest price it is able to obtain, realizing a profit or suffering a loss, as the case may be, on the basis of the difference between the prices at which it has agreed to sell and those at which it is able to buy. Suppliers of respondent are usually authorized to ship directly to respondent's customers.

While respondent is designated as a "broker," it is not a broker in fact. Respondent purchases iron and steel scrap for its own account, taking title to such scrap and assuming all the risks incident to ownership. It sells such scrap to its customers in its own name and for its own account, and at prices and on terms determined by its customers and itself. Respondent assumes full and complete credit risks on such transactions, reaping a profit or sustaining a loss thereon as the case may be. Respondent is responsible to its customers for the quantity and quality of the scrap, and it rests with the respondent itself to recoup any losses occasioned thereby by seeking recourse against its suppliers.

PAR. 4. For its charges under this Paragraph 4 of Count II, said Commission relies upon the matters and things set out in subparagraph (b), including subsections (1) through (6) thereof, of Paragraph 11 of Count I of this complaint, with the limitation that the words "respondent broker" be disregarded in all references herein to Southwest Steel Corporation, to such an extent and as though those allega-

tions in said subparagraph of Count I, as described above, were set out in full herein, and said subparagraph (b), including subsections (1) through (6), thereof, of Paragraph 11 of Count I, so limited, is therefore incorporated by reference and made a part of the allegations of this count.

PAR. 5. The effect of the aforesaid acquisitions by respondent of all or a substantial part of the capital stock of Pueblo Compressed Steel Corporation, A. M. Wood and Company, Inc., Lipsett, Inc., Lipsett Steel Products, Inc., Southwest Steel Corporation, Apex Steel and Supply Company, and Cermack-Laflin Corporation, or of all or a substantial part of the capital stock of each or any of said corporations has been, is, or may be to lessen, eliminate, or suppress competition between respondent and said corporations; to lessen, eliminate, or suppress competition between said corporations; to lessen, eliminate, suppress, and prevent competition with respect to prices and otherwise in the purchaes and sale of iron and steel scrap in various sections of the United States; unduly to hinder and prevent iron and steel scrap dealers and brokers from competing with respondent in purchasing and selling such scrap in interstate commerce; unduly to impede, hinder, and prevent sellers of iron and steel scrap in interstate commerce from choosing a customer other than respondent or a company controlled by respondent, and buyers of iron and steel scrap in interstate commerce from choosing a supplier other than respondent or a company controlled by respondent; to tend to create in respondent a monopoly in the purchase and sale of iron and steel scrap in various sections of the United States; to prejudice and injure brokers, dealers, and producers of iron and steel scrap who do not conform to respondent's program of securing monopoly control over the iron and steel scrap market, or who do not desire, but are compelled to conform to said program; and to prejudice and injure the public and consumers.

Said acquisitions, and each of them, also constituted a part of the acts and practices of the respondents, and particularly of respondent, Luria Brothers and Company, Inc., which are alleged in Paragraphs 9, 10, 11 and 12 of Count I of this complaint, and facilitated and contributed to the effectiveness of those acts and practices. It is alleged, therefore, that said acquisitions, and each of them, have also had and continue to have, or may have, the capacity, tendency, and effect alleged in Paragraph 13 of Count I of this complaint with respect to the acts and practices of the respondents.

PAR. 6. The acts and practices of the respondent as herein alleged constitute violations of Section 7 of the Clayton Act as approved October 15, 1914 (38 Stat. 731), and of Section 7 of the Clayton Act, as amended and approved December 29, 1950 (64 Stat. 1125; 15 U.S.C., Sec. 18).

Mr. Wilmer L. Tinley, Mr. John F. McCarty and Mr. Mark E. Richardson supporting the complaint.

Wolf, Block, Schorr and Solis-Cohen, by *Mr. Morris Wolf, Mr. Nathan Silberstein and Mr. Burton Caine*, of Philadelphia, Pa., for respondents Luria and Southwest Steel;

Cravath, Swaine & Moore, by *Mr. Albert R. Connelly and Mr. Jack E. Brown*, of New York, N.Y., for Bethlehem respondents;

Mr. L. L. Lewis, Mr. Merrill Russell and Mr. William H. Buchanan, of Pittsburgh, Pa., for respondent United States Steel;

Thorp, Reed & Armstrong, by *Mr. Earl F. Reed and Mr. James A. Bell*, of Pittsburgh, Pa., for respondents National, Weirton and Edgewater;

Holtzmann, Wise & Shepard, by *Mr. Howard M. Holtzmann, Mr. Daniel J. Ahearn and Mr. Mark J. Maged*, of New York, N.Y., for respondents Colorado Fuel & Iron and Roebling;

Donohue & Kaufmann and *Arnold F. Shaw*, of Washington, D.C., for respondents Central and Phoenix;

Bryan, Cave, McPheeters & McRoberts, by *Mr. R. H. McRoberts*, of St. Louis, Mo., for respondent Granite City;

Mr. Daniel E. Igo, of Coatesville, Pa., for respondent Lukens;

Cook, Beake, Miller, Wrock & Cross, by *Mr. Joseph A. Vieson*, of Detroit, Mich., for respondent Detroit;

Dickinson, Wright, Davis, McKean & Cudlip, by *Mr. William B. Cudlip and Mr. T. Donald Wade*, of Detroit, Mich., for respondent McLouth;

Morgan, Lewis & Bockius, by *Mr. Robert C. McAdoo*, of Philadelphia, Pa., for respondent Baldwin-Lima-Hamilton;

Quarles, Herriott & Clemons, by *Mr. Lester S. Clemons*, of Milwaukee, Wis., for respondent Bucyrus-Erie;

Barley, Snyder, Cooper & Mueller, by *Mr. Ralph M. Barley*, of Lancaster, Pa., for respondent Columbia Malleable; and

Root, Barrett, Cohen, Knapp & Smith, by *Mr. Whitman Knapp, Mr. David Simon and Mr. Martin F. Richman*, for respondent Hugo Neu.

Initial Decision by John Lewis, Hearing Examiner

MARCH 29, 1961

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FINDINGS OF FACT—Continued

FINDINGS OF FACT—Continued

II. The Alleged Unlawful Practices—Continued

B. The Alleged Exclusive Agreements—Continued

STATEMENT OF PROCEEDINGS

The Federal Trade Commission issued its original complaint in this proceeding on January 19, 1954. Said complaint was thereafter superseded by an amendment and supplemental complaint issued by the Commission on July 13, 1954. Said amended and supplemental complaint, in Count I thereof, charges respondents with having entered into certain understandings, agreements, combinations and conspiracies, and with engaging in certain unfair methods of competition and unfair and deceptive acts and practices in commerce, in violation of Section 5 of the Federal Trade Commission Act. Said complaint, in Count II thereof, charges respondent Luria Brothers and Company, Inc., with having made certain stock acquisitions in other corporations, in violation of Section 7 of the Clayton Act. Following service of copies of the amended and supplemental complaint upon them, respondents filed their separate answers denying, in substance, the violations charged. Hearings on the complaint were held in abeyance pending negotiations among counsel concerning certain interlocutory and procedural matters. Thereafter, a prehearing conference was held before the undersigned hearing examiner, on December 7, 1954, with counsel for various of the parties to discuss the possibilities of a settlement or simplification of the issues, and procedures with respect to the conduct of hearings.

Hearings on the amended and supplemental complaint were begun on January 12, 1955, in Philadelphia, Pennsylvania, and continued periodically thereafter, until May 14, 1958. Said hearings were held in Philadelphia, Pennsylvania; New York, New York; Boston, Massachusetts; Chicago, Illinois; St. Louis, Missouri; New Orleans, Louisiana; Pittsburgh, Pennsylvania; Cleveland and Toledo, Ohio; Detroit, Michigan; Denver, Colorado; Salt Lake City, Utah; Butte, Montana; Seattle, Washington; Portland, Oregon; San Francisco and Los Angeles, California; and Washington, D.C. The record includes approximately 14,000 pages of testimony, depositions of 130 pages and over 1,300 documentary exhibits, the latter aggregating many thousands of pages. There were 113 days of hearings and more than 250 witnesses testified in the proceeding. All parties were represented by counsel, participated in hearings, and were afforded full opportunity to be heard and to examine and cross-examine witnesses.

Prior to the close of the case-in-chief, the complaint was further amended, on motion of counsel supporting the complaint, by order of the undersigned dated April 16, 1956, so as to add a new Luria respondent as successor in interest and responsibility to the original Luria respondent. At the close of the case-in-chief, on November 1, 1957, the undersigned hearing examiner granted in part motions by

various respondents to dismiss the complaint, insofar as it alleged an over-all agreement, understanding or conspiracy between and among the respondent steel mills with respondent Luria. By agreement of counsel for said respondents the examiner withheld ruling on the balance of the motions to dismiss until the close of all the evidence, without prejudice to the position of respondents, certain of whom thereafter proceeded to offer defense evidence.

Pursuant to leave granted, counsel supporting the complaint filed proposed findings of fact, conclusions of law and order to cease and desist on November 10, 1958. The various respondents filed their separate proposed counter-findings of fact, conclusions of law and order, together with supporting briefs on various dates from January 5, 1959, to January 13, 1959. Counsel supporting the complaint were granted leave to file a reply to the proposed findings and briefs of respondents on February 16, 1959, and counsel for respondents National Steel, Weirton Steel and Edgewater Steel filed a reply memorandum to the reply of counsel supporting the complaint on March 20, 1959. Proposed findings not herein adopted, either in the form proposed or in subtsance, are rejected as not supported by the evidence or as involving immaterial matters.

After having carefully reviewed the entire record in this proceeding, and the proposed findings and conclusions, and the supporting briefs and memoranda filed by the parties, and based on the entire record and his observation of the witnesses, the hearing examiner makes the following:

FINDINGS OF FACT

I. The Business of Respondents, and Interstate Commerce

A. *Identity of the Parties*

1. Respondent Luria Brothers and Company, Inc., sometimes referred to herein as Luria, is a corporation organized under the laws of the Commonwealth of Pennsylvania in June 1918, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. On or about October 11, 1955, the name of this corporation was changed to L.B.C. Company. This respondent will sometimes hereinafter also be referred to as "old Luria".

Respondent Luria Brothers & Company, Inc., added as a party on April 16, 1956, is a corporation organized under the laws of the State of Delaware in September 1955, with its office and principal place of business located at Philadelphia National Bank Building, Philadelphia, Pennsylvania. Said respondent was incorporated as

Bayou Metals, Inc., but on or about October 11, 1955, its name was changed to Luria Brothers & Company, Inc. This respondent will sometimes hereinafter be referred to as "new Luria". Said respondent is a subsidiary of Ogden Corporation, a corporation organized under the laws of the State of Delaware in August 1939, with its office and principal place of business located at 33 Pine Street, New York, New York.

On or about October 11, 1955, old Luria sold substantially all of its assets (tangible and intangible, real and personal), including its business as a going concern, its name and its good will to new Luria, which has since continued the business of old Luria without substantial change. New Luria concedes that for purposes of this proceeding, it is answerable and liable for such of the acts and practices of old Luria as may be relevant and material in this proceeding, and that any allegation or other reference in the complaint to respondent Luria or to Luria Brothers & Company, Inc., may be considered as being made with respect to both old Luria and new Luria.

2. Respondent Southwest Steel Corporation, sometimes referred to herein as Southwest, is a corporation organized under the laws of the Commonwealth of Pennsylvania, with its office and principal place of business located at Grant Building, Pittsburgh, Pennsylvania. All of the voting stock of said respondent was acquired by respondent Luria on or about February 1, 1950.

3. Respondent Bethlehem Steel Corporation is a corporation organized under the laws of the State of Delaware in July 1919, with its office and principal place of business located at 25 Broadway, New York, New York. Said respondent owns all of the stock of Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation, separate corporate entities hereinafter described.

4. Respondent Bethlehem Steel Company, sometimes referred to herein as Bethlehem, is a corporation organized under the laws of the State of Pennsylvania in April 1899, with its office and principal place of business located at 701 East Third Street, Bethlehem, Pennsylvania. Said respondent is a wholly owned subsidiary of respondent Bethlehem Steel Corporation.

5. Respondent Bethlehem Pacific Coast Steel Corporation, sometimes referred to herein as Bethlehem Pacific, is a corporation organized under the laws of the State of Delaware in October 1945, with its office and principal place of business located at 20th and Illinois Streets, San Francisco, California. Said respondent is a wholly owned subsidiary of respondent Bethlehem Steel Corporation.

6. Respondent United States Steel Corporation, sometimes referred to herein as U.S. Steel, is a corporation organized under the laws of the State of New Jersey in February 1901, with its office and principal

place of business located at 71 Broadway, New York, New York. Said corporation owns and operates numerous plants, divisions and subsidiary corporations, including plants at Geneva, Utah, the latter being part of its Columbia-Geneva Division. Insofar as said respondent is charged in the complaint with any violations of law, it is because of its activities at the Geneva, Utah plants. Said plants were acquired from the United States Government in 1946 and were operated by Geneva Steel Company, a wholly owned subsidiary of respondent U.S. Steel, until December 31, 1951, when it was merged into United States Steel Company, another wholly owned subsidiary of said respondent. The businesses which had been conducted and the facilities which had been operated by Geneva Steel Company and by Columbia Steel Company (another wholly owned subsidiary of United States Steel Corporation, which had also merged into United States Steel Company) were thereafter carried on and operated by the Columbia-Geneva Steel Division of said United States Steel Company. On December 31, 1952, United States Steel Company was merged with respondent United States Steel Corporation, and the Geneva, Utah plant, along with two plants in California, have since been operated by the Columbia-Geneva Steel Division of said respondent.

7. Respondent National Steel Corporation, sometimes referred to herein as National, is a corporation organized under the laws of the State of Delaware in November 1929, with offices located at Grant Building, Pittsburgh, Pennsylvania. Said respondent wholly owns the respondent Weirton Steel Company, which is a subsidiary of said respondent. Other subsidiaries of respondent National are Great Lakes Steel Corporation, operating a plant in Detroit, Michigan, and Hanna Furnace Corporation, operating a plant in Buffalo, New York, neither of which subsidiaries has been named as a respondent in this proceeding.

8. Respondent Weirton Steel Company, sometimes herein referred to as Weirton, is a corporation organized under the laws of the State of West Virginia, in May 1939, with its office and principal place of business located at Weirton, West Virginia. Said respondent is a wholly owned subsidiary of respondent National, which controls its operations.

9. Respondent The Colorado Fuel & Iron Corporation, sometimes referred to herein as CF&I, is a corporation organized under the laws of the State of Colorado in April 1936, with its office and principal place of business located at Continental Oil Building, Denver, Colorado. Said respondent owns all of the stock of respondent John A. Roebling's Sons Corporation. On March 5, 1951, CF&I purchased all the stock of Worth Steel Company, which operated a

plant at Claymont, Delaware. The name of the purchased company was then changed to Claymont Steel Corporation, which was operated as a wholly owned subsidiary of CF&I until June 30, 1952, when its assets were transferred to CF&I, and Claymont Steel Corporation was then dissolved. Since June 30, 1952, the Claymont plant has been operated as a part of the Wickwire-Spencer Steel Division of CF&I.

10. Respondent John A. Roebling's Sons Corporation, sometimes referred to herein as Roebling, is a corporation organized under the laws of the State of Delaware with its office and principal place of business located at Trenton, New Jersey. Said respondent, which is a wholly owned subsidiary of respondent CF&I, was named Colorado Steel Corporation until December 22, 1952, at which time it changed its name to John A. Roebling's Sons Corporation. On December 31, 1952, said respondent acquired all of the manufacturing business, plants and inventories of John A. Roebling's Sons Company, a New Jersey corporation.

11. Respondent Central Iron & Steel Company, sometimes referred to herein as Central, is a corporation organized under the laws of the Commonwealth of Pennsylvania in May 1946, and its office and principal place of business was formerly located at Harrisburg, Pennsylvania. On or about October 28, 1955, the name of said respondent was changed to Phoenix Iron & Steel Company, sometimes referred to herein as "new Phoenix", and its office and principal place of business was changed from Harrisburg to Phoenixville, Pennsylvania. Said respondent is a subsidiary of Barium Steel Corporation, a corporation organized under the laws of the State of Delaware, with its general office located at New York, New York.

12. Respondent Phoenix Iron & Steel Company, sometimes referred to herein as "old Phoenix" was a corporation organized under the laws of the Commonwealth of Pennsylvania in September 1949, with its office and principal place of business located at Phoenixville, Pennsylvania. Old Phoenix was a wholly owned subsidiary of respondent Central. On or about October 28, 1955, old Phoenix and two other companies were merged with Central. Thereupon the name of Central was changed to Phoenix Iron & Steel Company, and its office and principal place of business was changed from Harrisburg to Phoenixville, Pennsylvania.

13. Granite City Steel Company, sometimes referred to herein as Granite City, is a corporation organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at Granite City, Illinois.

14. Lukens Steel Company, sometimes referred to herein as Lukens, is a corporation organized under the laws of the Common-

wealth of Pennsylvania in January 1917, with its office and principal place of business located at Coatesville, Pennsylvania.

15. Respondent Detroit Steel Corporation, sometimes referred to herein as Detroit, is a corporation organized under the laws of the State of Michigan in March 1923, with its principal office located at Detroit, Michigan. Said respondent operates a Portsmouth Division at Portsmouth, Ohio, and it is because of its activities at said division that it is named as a respondent herein.

16. Respondent McClouth Steel Corporation, sometimes referred to herein as McClouth, is a corporation organized under the laws of the State of Michigan in April 1934, with its office and principal place of business located at 300 South Livernois Street, Detroit, Michigan.

17. Respondent Baldwin-Lima-Hamilton Corporation, sometimes referred to herein as Baldwin, is a corporation organized under the laws of the Commonwealth of Pennsylvania, in June 1911, with its office and principal place of business located at Eddystone, Pennsylvania. Said respondent owns and operates a Standard Steel Works Division at Burnham, Pennsylvania, and it is especially because of its activities at said division that it is named as a respondent heren. Said respondent also operates plants at Eddystone, Pennsylvania, and Hamilton, Ohio.

18. Respondent Edgewater Steel Company, sometimes referred to herein as Edgewater, is a corporation organized under the laws of the Commonwealth of Pennsylvania in August 1916, with its office and principal place of business located at Oakmont, Pennsylvania.

19. Respondent Bucyrus-Erie Company, sometimes referred to herein as Bucyrus-Erie, is a corporation organized under the laws of the State of Delaware in November 1927, with its office and principal place of business located at South Milwaukee, Wisconsin. In addition to its plant at South Milwaukee, Wisconsin, said respondent operates plants at Erie, Pennsylvania, and it is especially because of its activities at Erie, Pennsylvania, that it is named as a respondent in this proceeding. One of the plants at Erie was formerly owned by National Erie Corporation (sometimes referred to herein as National Erie), a corporation organized under the laws of the Commonwealth of Pennsylvania in May 1931, with its office and principal place of business located at Erie, Pennsylvania. Bucyrus-Erie acquired substantially all of the capital stock of National Erie in September 1951. It operated National Erie as a subsidiary until on or about February 1, 1954, when all of the assets of National Erie were transferred to Bucyrus-Erie, National Erie having previously adopted a resolution of dissolution. Since February 1954,

the former National Erie plant has been operated as the Raspberry Street Plant of Bucyrus-Erie.

20. Respondent Columbia Malleable Castings Corporation, sometimes referred to herein as Columbia, was a corporation organized under the laws of the State of New York in March 1917, with its office and principal place of business located at Providence, Rhode Island. Said respondent was a subsidiary of Grinnell Corporation (sometimes referred to herein as Grinnell), a corporation organized under the laws of the State of Delaware in May 1923 under the name General Fire Extinguisher Company, its name having been changed to Grinnell Corporation on April 1, 1944. The office and principal place of business of Grinnell is located at Providence, Rhode Island. On December 31, 1955, Columbia was merged into Grinnell under the laws of the States of New York and Delaware, and Grinnell became successor by merger to Columbia.

21. Respondent Hugo Neu Corporation, sometimes referred to herein as Neu, is a corporation organized under the laws of the State of New York in January 1947, with its office and principal place of business located at 31 Nassau Street, New York, New York.

B. *The Business of Respondents*

Respondent Brokers

1. Respondents Luria and Southwest, which are sometimes referred to herein as "respondent brokers", are engaged primarily in the business of buying and selling iron and steel scrap. Such scrap is generated as a waste or by-product of the industrial fabrication of iron and steel products, or as a result of the discarding of iron and steel products due to obsolescence, failure or other reasons.

Respondent Mills

2. The remaining respondents (other than respondent Neu), which are sometimes referred to herein as "respondent mills", are producers of iron and steel products. Most of them operate steel mills which produce ingots and steel for castings. Some of said mills are fully integrated, *i.e.*, they operate blast furnaces which produce pig iron (used in making steel) and also operate facilities for the production of semi-finished and finished steel from ingots, including structural steel, plates, bars, sheets, wire and other wire products. Some of the mills are semi-integrated, *i.e.*, they do not operate blast furnaces for the production of pig iron but do produce ingots and have finishing facilities. Several of the respondent mills operate foundries which produce iron and steel castings.

Uses and Sources of Scrap

3. At least 98% of the iron and steel scrap consumed in the United States is purchased by producers of iron and steel, including steel mills, foundries and blast furnaces. Such scrap, together with pig iron, constitute the principal metallics used in the making of iron and steel. Pig iron and scrap each represent about 50% of the charge in the furnace, although the percentage may vary in individual plants. For example, integrated mills with their own pig iron resources tend to use a greater percentage of pig iron than do semi-integrated mills.

4. Part of the scrap used in the production of iron and steel is generated as a waste product of the mills' own steel-making activities. This is particularly true of the companies which produce finished and semi-finished steel products. Such scrap, generated as the result of the mills' own production operations, is known as "home scrap". On an average, home scrap constitutes roughly one-half of the scrap consumed by domestic iron and steel producers. The remaining half of the scrap which the mills consume is purchased from various outside sources, and this part of their requirements is referred to as "purchased scrap".

5. During the period from 1948 through 1954 (the period mainly involved in the evidence), the domestic consumption of purchased scrap ranged from a low of approximately 22,500,000 gross tons in 1949 to a high of approximately 33,800,000 gross tons in 1951. Prior to 1953 substantially all of the scrap produced in the United States was consumed within the country. However, in October 1953 export controls over the shipment abroad of iron and steel scrap, which had been in effect during World War II and through the Korean War, were relaxed. During 1954 there were exported from the United States approximately 1,500,000 gross tons of scrap, and in 1955 scrap exports amounted to more than 4,500,000 gross tons.

6. In 1954 there were 85 steel mills producing basic steel, i.e., steel ingots and in some instances steel for castings. Of these, 23 were fully integrated and produced pig iron in their own blast furnaces. The basic steel producers used approximately three-fourths of the purchased scrap which was consumed domestically. The remainder of the purchased scrap consumed in this country was used by some 3,000 iron and steel foundries and nonintegrated blast furnaces.

7. Iron and steel fabricators and manufacturers of durable goods made largely of iron and steel generate large quantities of scrap as a by-product of their primary operations. This scrap is generated on a fairly constant basis, varying with the rate of the primary operations of the manufacturer, and it is generally referred to as "prompt industrial scrap." Largely because of limitations of space it cannot

be allowed to accumulate in the fabricating or manufacturing plants, but must be moved out soon after it is generated. Where the scrap requires no further preparation, it may be sold directly to a consumer. Where further preparation is involved, it may be sold to a dealer or to a consumer having its own preparation facilities. Because it is new material and relatively free of contamination, prompt industrial scrap is generally considered to be desirable scrap and frequently commands a premium price.

8. The other main category of scrap consists of obsolescent or abandoned material, which is generated by a wide variety of sources including railroads, automobile wreckers, ship breakers, demolition concerns, Government installations, farmers and householders. Of these, railroads constitute one of the most important single sources. The operation of railroads produces large quantities of worn out and obsolete equipment, such as locomotives, cars, wheels, rails and many other items. Railroad scrap is sold, usually at monthly or other periodic intervals, on the basis of bids or by privately negotiated contracts. Like industrial scrap, railroad scrap is of a premium grade and is greatly desired by consumers, particularly for certain types of production. Such scrap, when it is sorted and prepared by the generating companies, may be purchased by the consumers directly or it may be purchased from both brokers and dealers when further preparation is required.

9. The other important sources of obsolescent or abandoned materials consist of wrecked or obsolete automobiles, and discarded farm and household implements and appliances. Scrap from the latter sources is collected by a vast army of peddlers and junk dealers who make regular rounds within their localities for the purpose of collecting the scrap. Such scrap is usually sold to regular dealers in ferrous scrap for further preparation and sale to consumers or to brokers.

The Channels of Distribution

10. While, as above indicated, some scrap is sold directly to consumers by the generators thereof, such as railroads and industrial fabricators, the vast preponderance of scrap purchased by steel mills and other consumers of scrap is purchased from brokers and dealers. Approximately 90% of the scrap purchased by consumers in this country is obtained from brokers and dealers, rather than directly from the generators of the scrap.

Scrap Dealers

11. Scrap dealers operate yards where they take physical possession of the scrap which they purchase. They sort the scrap into appropriate grades, cut it into useable sizes and, where they have the equip-

ment, press or bale the lighter materials into bundles which will fit into a furnace. Many small yards purchase a variety of waste materials, and ferrous scrap may constitute only a part of their business. Such yards frequently do not have the facilities for fully preparing the limited quantities of scrap which they accumulate, and they usually sell their ferrous scrap to larger yards which specialize in iron and steel scrap. The larger yards accumulate, sort and prepare the scrap in appropriate grades and resell it in carload lots directly to consuming mills or foundries, or to brokers or others.

There is considerable variation in the size and equipment of yard dealers. Some have little more than a small piece of ground, with a scale for weighing the scrap and rudimentary equipment for cutting and sorting it. Others operate larger yards containing costly equipment and facilities, including railroad sidings, torches, shears, cranes, magnets, baling presses and other equipment. The cost of this equipment may vary from a few thousand dollars to as much as several hundred thousands dollars in the case of the larger baling presses. Due to high transportation costs and the need to compress the lighter materials into a size which will fit into a furnace, a baling press is an important part of a dealer's equipment. The smaller dealers who do not have a press generally sell baleable materials to larger dealers. In 1954, there were 3,719 scrap dealers in the United States, considering as a dealer any person wholly or mainly in the scrap iron business and having some kind of a yard. Of these, 2,202 had processing or preparation equipment in their yards.

Scrap Brokers

12. Scrap brokers, as that term is used in the scrap industry, are not brokers in the conventional sense of the term. They purchase and sell scrap for their own account, taking title to it and assuming all the risks incident to ownership. They are in effect wholesale dealers who buy and sell scrap for their own account, but who do not physically handle the material.

13. While brokers and dealers are both recognized as separate categories of entrepreneurs in the scrap industry, there are no hard and fast lines in the classification of various firms as belonging in one category or the other. Many dealers operate to some extent as brokers, in that they purchase scrap from other dealers which they do not themselves prepare or handle, in order to fill orders from consumers. On the other hand, some brokers also operate scrap yards in which they process and prepare scrap material in partial fulfillment of orders which they have from consumers. To the extent that a firm largely handles scrap material which does not come into its possession and which it does not prepare, it is generally considered to be a broker.

Luria, for example, in 1953 had total net sales of $270,522,000, of which its yard sales accounted for $7,396,000, or 2¾%. It was and is clearly recognized as being primarily a scrap broker.

Due to the fact that there are no reliable statistics concerning the sources of the scrap sold by brokers and dealers to consumers, the record contains no precise breakdown as to the number of operators falling, respectively, within the dealer and within the broker category. However, a list of its broker competitors prepared by Luria as of July 1, 1953, indicates that there were 50 brokers competing with it. While the list does not purport to be complete, it covers most of the brokers of any size in the United States.

14. Brokers purchase scrap from many different sources, including government agencies, demolition companies, railroads, industrial producers, ship breakers, and others, but yard dealers constitute their principal source of scrap. Their purchases are generally made in carload quantities for direct shipment from the originating point to the mill. Each carload usually contains a single grade of sorted and prepared scrap.

15. Brokers tend to operate in the general area in which their offices are located, although their range of operations in purchasing scrap is considerably wider geographically than that of yard dealers. Some brokers have offices located in various sections of the country, which considerably extends their area of operations both in buying and selling.

16. Brokers receive their profits from the difference between the prices they receive from the consumers and the prices they pay to their sources of scrap, plus transportation and other incidental costs. The normal margin of profit contemplated in brokerage transactions, which is sometimes referred to as a commission, is $1.00 a gross ton, and the scrap is purchased and sold by brokers with this prospective margin in mind. Because of market fluctuations and varying competitive conditions in various markets, the buying and selling of scrap by brokers is largely a speculative operation.

17. When a broker purchases scrap from a dealer he gives instructions for the shipment of the scrap to a particular mill or destination. When the scrap is shipped by the dealer, the latter sends a bill of lading or invoice to the broker. Normally the broker will pay to the dealer, upon receipt of such invoice or bill of lading, 75 to 90% of the invoice value of the scrap. The balance is retained by the broker until the scrap has been received and accepted by the mill. After any adjustments in weights, grades or prices are made, the mill makes payment on that basis to the broker, and the broker then makes final settlement with the dealer. The brokers usually receive payment from the mills 30 to 60 days after the scrap has been accepted.

18. The broker represents both the dealers and the mills and performs important and valuable services for each. He represents the mills in locating and obtaining adequate quantities of scrap, and it is his responsibility if the scrap does not meet the specifications of the mills. He serves the dealers and other suppliers in providing constant outlets for their scrap through adequate markets, in making prompt payments to the dealers so that they will have adequate financing for further purchasing, and in representing the dealers in connection with any adjustments in weights or grades which are made or proposed by the mills. Through wide knowledge of market conditions and mill requirements, the brokers also provide important services to the dealers in advising and guiding them in proper sorting and preparation to meet the specifications of particular mills.

19. Brokers endeavor to maintain their operations on a basis which will afford a constant supply of scrap to the mills when and where it is needed. They frequently purchase substantial quantities of scrap from dealers and other sources before they have received contracts from consumers of the scrap. When the quantity of scrap which they have purchased exceeds the quantity which they have sold, they are in a "long position." They frequently find, on the other hand, that they have accepted orders from consumers for grades and quantities of scrap which they have not purchased. When their sales exceed their purchases they are in a "short position."

20. Competition between brokers exists both in the sale of scrap to consumers and in purchasing scrap from dealers and other sources of supply. Successful operations require that brokers have a market for all grades of scrap. To the extent that they do not have a market for particular grades, brokers will frequently find it difficult to purchase other grades from dealers, since the latter normally expect to sell their less desirable grades along with their premium grades.

Scrap Grades

21. Scrap is sold in accordance with various grade classifications. While there are approximately 75 recognized grades of scrap, from the point of view of tonnage sold the principal classifications are No. 1 heavy melting steel, No. 2 heavy melting steel, No. 1 bundles, No. 2 bundles and cast iron scrap. No. 1 heavy melting steel is the highest and most expensive of the above grades. Different kinds of furnaces use different grades of scrap. In general, electric and cupola furnaces, acid open hearth furnaces and steel foundries use the higher grades. Open hearth furnaces are large users of No. 2 heavy melting steel and No. 2 bundles. They also consume large quantities of No. 1 heavy melting steel and No. 1 bundles. Cast iron scrap is used both by steel mills and foundries. The specifications for the various grades, while

generally understood by the mills and scrap suppliers, are somewhat flexible in accordance with demand. When scrap is badly needed, the specifications become less rigid and vice versa when scrap is in abundant supply.

Scrap Prices

22. The price of scrap is largely influenced by the rate of production of the mills making iron and steel products. As a result of variations in the demand for scrap to make steel and changes in the rate of production of steel, there are considerable price variations in the price of scrap. For example, in 1947 No. 1 heavy melting steel sold at a low of $39.81 and a high of $41.21; in 1949 the low was $19.33 and the high $41.36; in 1951 the low was $42.00 and the high $45.15; and in 1954 the low was $23.83 and the high $33.40. In December 1956 the price rose to $64.58 a ton. The changes in price are reflected in various trade publications, including "Iron Age", "American Metal Market" and "Daily Metal Reporter". The trade paper price quotations are usually based on information received from brokers and dealers of scrap, and the prices paid by the consuming mills. Prices are quoted on the basis of different regional markets, e.g., Pittsburgh, Philadelphia, Chicago, etc.

Government Regulations

23. During a substantial part of the period covered by the evidence the price of scrap was subject to government regulations. From February 7, 1951 to February 13, 1953, the Office of Price Stabilization (OPS) established ceiling prices for scrap. The regulations also provided for commissions to brokers, not exceeding $1.00 a ton. The broker was permitted to divide the commission with a sub-broker up to $0.50 a ton. Ceiling prices were established for 41 basing points, which were in fact the major steel production centers. For shipping points outside of the basing points, the ceiling prices were established on a basis which resulted in freight costs being absorbed by consumers when they purchased scrap outside normal areas of supply.

In addition to the regulation of prices, the supply of scrap was regulated under the allocations program established by the National Production Authority (NPA). Consumers were expected to ask for allocations only when they could not obtain their needs in the open or "free" market. Scrap allocated to a consumer could be sold directly or through a broker. If the sale was made through a broker, the regulations gave the seller the right to select the broker, except in connection with sales by governmental agencies.

Organization of Market

24. The scrap market is organized essentially on a regional basis. There is a considerable concentration of dealers and brokers around

the centers of steel production. There is also a considerable concentration around the centers of scrap production. Certain regional markets are known as minus areas in that they consume more scrap than is produced in the area. (The Pittsburgh-Youngstown area is an example of a minus area.) It is necessary in such instances for the dealers and brokers operating in the area to reach out into other areas in order to obtain the additional quantities of scrap required to keep the mills within their own geographic area in production. The extent to which they reach out into these other areas is determined by the rate of production and the needs of the consuming mills, and by the prices being paid for scrap. Since transportation costs are a relatively large factor in the cost of scrap, consumers endeavor to obtain scrap from nearby areas first before reaching out to successively more remote areas.

Certain areas are known as plus areas, in that there is a relatively large production of scrap in relation to consumption, by reason of a high concentration of industrial fabricators and other generators of scrap and a somewhat smaller concentration of consumers of scrap. (The Detroit area is an example of a plus area.) A substantial portion of the scrap tends to move from such areas to the minus areas, depending upon the rate of production and the price of scrap.

Respondent Luria

25. Respondent Luria is the largest single factor in the dealer-broker segment of the ferrous scrap business. It has buying offices and yards in many sections of the country and buys scrap in almost every section of the country. It sells to consuming mills in most sections of the country and is the principal broker for a number of such mills, as will hereinafter appear. It is the only concern engaged in the scrap brokerage business on a nation-wide basis. It employs approximately 4,000 people and deals with 1,200 to 1,800 scrap dealers.

The business of old Luria was established in Reading, Pennsylvania, by Hirsch Luria about 1889 as a horse and wagon scrap dealer. In 1890 scrap yards were opened in Reading and Lebanon, Pennsylvania. After the beginning of the present century, the company began to perform a brokerage function (one of the earliest to engage in this type of operation), and in 1910 it opened brokerage offices in New York and Pittsburgh. In 1920 a brokerage office was opened in Boston, Massachusetts, and in 1924 one was opened in Philadelphia, Pennsylvania, which became the principal office of the company in 1934. Additional yards were opened in Pittsburgh and Modena, Pennsylvania, during the 1920's. In 1930 a brokerage office and scrap yard were opened in Detroit, Michigan. Between 1933 and 1942 additional brokerage offices were opened in Chicago, Cleveland and Houston.

During the postwar era, from 1945 to 1948, additional brokerage offices were opened in St. Louis, Missouri; Pueblo, Colorado; Birmingham, Alabama; Buffalo, New York; and San Francisco, California. Between 1951 and 1956 brokerage offices were opened in Seattle, Washington; Kokomo, Indiana; and Montreal, Canada. During the postwar period additional scrap yards were opened in Erie, Pennsylvania; Los Angeles, California; and Chicago, Illinois. At the time of the hearings in 1957 negotiations were under way to open yards in St. Louis, Missouri; and Seattle, Washington.

26. Beginning in 1946, respondent Luria acquired an interest in a number of other companies operating as scrap brokers or dealers. In 1947 Luria acquired a controlling stock interest in Pueblo Compressed Steel Corporation, operating a stock yard located at Pueblo, Colorado. In 1947 Luria acquired all of the outstanding stock of A. M. Wood & Company, Inc., a brokerage firm with offices in Philadelphia. In 1948 Luria acquired all of the outstanding stock of Lipsett, Inc., a demolition and construction company located in New York, and Lipsett Steel Products, Inc., which opened scrap yards in Brooklyn, New York, and Los Angeles, California, after acquisition by Luria. In 1950 Luria acquired the controlling stock interest in Southwest Steel Corporation, which at that time operated a brokerage office at Pittsburgh, Pennsylvania, and scrap yards at Glassport and McKeesport, Pennsylvania, and Memphis, Tennessee, and had a subsidiary, Continental Iron & Steel Corporation, which operated a brokerage office in New York, New York. In 1953 Luria acquired the good will and employed the principal owner of Livingston & Southard, Inc., an import-export company, which it utilized in connection with its export activities.

27. The business of Luria was operated first as an individual proprietorship and then as a partnership until June 1918, when it was incorporated. Control of this corporation was held by members of the Luria family until October 1955. Up to 1944 control of the corporation was in the hands of members of the families of Alex Luria and Max Luria, sons of the original founder. In 1944 the estate of Max Luria, then deceased, sold out its interest in the corporation to the other branch of the family and received, in return, control of another Luria company, Luria Steel & Trading Company, which had been engaged in the import-export business. In October 1955 the members of the family of Alex Luria sold substantially all of the assets of old Luria to Ogden Corporation, which thereafter formed a new Luria corporation, as previously mentioned. While members of the Luria family owned no stock in the new company, there were very few changes in the officers and directors of the company and its personnel continued substantially intact. One of the few changes which oc-

curred involved Ralph Ablon (a son-in-law of Alex Luria and a vice president of old Luria) becoming President of new Luria.

Other Respondents

28. As heretofore indicated. the remaining respondents, other than respondent Neu, are engaged in the production of basic iron or steel products. Most of them operate steel mills on an integrated or semi-integrated basis, and a few operate iron or steel foundries. Discussion of the nature and extent of each such respondent's operations and its relative position in the industry will be reserved for that part of this decision where consideration is given to the charge that such respondents have entered into certain agreements or understandings relative to the purchasing of scrap from respondent Luria on an exclusive basis.

29. Respondent Neu is engaged in the import-export business, principally of metals. Among the products in which it deals is ferrous scrap. In the handling of such scrap it operates essentially as a broker. The principal difference in its operations from that of most brokers in the United States is the fact that it specializes in the import-export field. Most of the mills to which it supplies scrap are foreign mills. Some of the scrap which it supplies to such mills is obtained from the continental United States. It has also, during its operations, supplied scrap to American mills which it has obtained from areas outside the United States.

C. *Engagement in Commerce*

1. Respondent brokers are now and for many years have been engaged primarily in the business of buying and selling iron and steel scrap in the capacity of brokers and dealers. They also, particularly during times of steel shortage, buy and sell finished and semi-finished steel. In connection with carrying on their business as aforesaid, respondent brokers buy from and sell to various steel mills, foundries, fabricators of steel products, dealers, railroads, and other sellers and buyers who are located in States other than the States in which said respondents maintain offices and yards, and cause iron and steel scrap and finished and semi-finished iron and steel products to be shipped and transported across State lines. Respondent Luria, operating in its own name and through its subsidiary and affiliated companies, also buys iron and steel scrap for export purposes from various sources located in the several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

2. Respondent Neu buys iron and steel scrap, among other things, from various sources located in several States of the United States, and causes such scrap to be shipped and transported across State lines to various ports, and causes iron and steel scrap purchased in the United States to be shipped to foreign countries.

3. Respondent mills purchase iron and steel scrap and other raw materials from respondent brokers and others, and certain of them (as will hereafter appear) sell finished and semi-finished iron and steel products to respondent brokers and other brokers located in the several States of the United States, and cause such scrap so purchased and said steel products so sold to be shipped and transported across State lines.

4. It is concluded and found that respondent brokers, respondent mills and respondent Neu are engaged in commerce, as defined in the Federal Trade Commission Act, and that respondent brokers are engaged in commerce as defined in the Clayton Act.

II. The Alleged Unlawful Practices

A. *The Charges and Issues*

1. The complaint, as previously noted, contains two separate counts. Count I charges all of the respondents with engaging in various acts and practices in violation of Section 5 of the Federal Trade Commission Act, and Count II charges respondent Luria with making certain acquisitions of stock in other companies, in violation of Section 7 of the Clayton Act.

2. The first count is in reality a combination of four separate charges. The first of these involves respondent brokers (Luria and its wholly owned subsidiary Southwest) and respondent mills, and charges them with having entered into various agreements, understandings, combinations and conspiracies for the purpose and with the effect of lessening competition and tending to create a monopoly in respondent brokers in the purchase and sale of iron and steel scrap. The second charge in Count I is directed against respondent Luria alone and charges it with engaging in various acts and practices for the purpose and with the effect of restraining competition and tending to create a monopoly in the purchase and sale of iron and steel scrap. A third charge in Count I likewise involves respondent Luria alone, and charges it with the acquisition of control over other brokers and dealers through the making of monetary advances or loans and the acquisition of stock, for the purpose and with the effect of eliminating competition. The fourth charge in Count I involves respondents Luria and Neu and other unnamed parties, and charges them with

having entered into various agreements, understandings, combinations and conspiracies for the purpose and with the effect of lessening competition in the purchase and sale of iron and steel scrap in interstate and foreign commerce, and tending to create a monopoly in such respondents in the sale of iron and steel scrap from the continental United States to customers located in other countries.

3. Count II of the complaint involves respondent Luria alone, and charges that the acquisitions of stock in other companies which are challenged in the third charge of Count I referred to above, also constitute a violation of Section 7 of the Clayton Act.

4. The basic charge in Count I, as already noted, involves certain agreements, understandings, combinations and conspiracies between or among the Luria respondents and the mill respondents. These respondents are charged with engaging in ten specific acts and practices in pursuance of the basic agreements, understandings and conspiracies to monopolize the scrap industry. These are briefly as follows:

(a) The Luria respondents (Luria or its subsidiary Southwest) agreed to act as exclusive or substantially exclusive scrap brokers for the mills.

(b) The mills agreed to and did make all or substantially all of their scrap purchases from the Luria respondents.

(c) The mills agreed to and did notify former suppliers and others that the Luria respondents were their exclusive brokers.

(d) The mills informed the Luria respondents of offers of scrap received from former suppliers, and required such suppliers to solicit the business of the mills through Luria.

(e) The Luria respondents denied permission to other suppliers to sell iron and steel scrap directly to the mills or permitted them to do so only on terms dictated by Luria.

(f) The mills sold finished and semi-finished steel products to fabricators on the condition that the scrap resulting from further fabrication would be sold to the Luria respondents.

(g) The mills sold finished and semi-finished iron and steel products to the Luria respondents and the latter sold such products to fabricators on the condition that the scrap resulting from further fabrication would be sold to Luria.

(h) The mills brought pressure on railroads and other sources of supply to sell to the Luria respondents iron and steel scrap offered for sale by such sources of supply.

(i) During the period that the OPS regulations were in effect, which permitted a seller to designate a broker, the mills brought pressure on railroads and other sources of supply to designate Luria

as a broker in connection with the sale of iron and steel scrap allocated to the mills under the NPA allocations program.

(j) At the time that the OPS regulations were in effect, which provided that a consumer of scrap could designate a dealer to prepare the scrap, the mills customarily designated a dealer requested by the Luria respondents to prepare scrap destined for them.

The charge of a combination between or among Luria and the respondent mills, as outlined above, is the basic charge in Count I of the complaint. It is the position of counsel supporting the complaint that the combination between the mills and Luria conferred the economic power on Luria which made it possible for the latter to engage in the other acts and practices charged. Insofar as the complaint alleges a combination between Luria and the respondent mills, it is subject to a dual interpretation. On the one hand, it may be interpreted as charging an inter-mill combination or conspiracy with Luria, and on the other hand it may be interpreted as challenging certain alleged agreements, understandings or conspiracies between each mill and Luria, without regard to and not necessarily a part of any actual inter-mill combination with Luria. At the close of the case-in-chief, the examiner ruled that the record was lacking in reliable, probative and substantial evidence to establish any over-all combination or conspiracy among the mills with Luria to engage in the acts and practices charged, and indicated that he was prepared to dismiss that portion of the complaint to the extent that it so charged and to consider the remaining charge as challenging only a series of separate alleged agreements or combinations between each mill and the Luria respondents.[1]

The gravamen of this charge, insofar as it remains for consideration in this initial decision, is that each of the respondent mills entered into separate agreements or understandings with the Luria respondents for the alleged purpose and with the effect of lessening competition in the purchase and sale of iron and steel scrap. The heart of these separate agreements or combinations is an alleged agreement or understanding to make Luria the exclusive broker for each of the mills and to purchase all or substantially all of their scrap from such broker. The other acts and practices charged as having been engaged in pursuant to these agreements involve primarily specific acts which reflect the exclusive brokerage arrangement with Luria.

Most of the mill respondents deny the existence of any exclusive

[1] Counsel supporting the complaint waived the right to take an interlocutory appeal from this ruling. While still asserting in their proposed findings that the mills acted in concert with each other in entering into the alleged agreements with Luria, this contention appears to be pro forma only and no evidence is cited as supporting it.

agreements or understandings to deal with Luria as their exclusive or substantially exclusive scrap broker, except that respondent Colorado Fuel & Iron admits having had an exclusive agreement with Luria to supply its Pueblo, Colorado plant, and respondent Granite City Steel Company and U.S. Steel (with respect to its Geneva, Utah plant) admit having dealt with Luria as exclusive broker on an informal basis. A number of mill respondents, while denying any exclusive brokerage agreement with Luria, admit making substantially all of their scrap purchases from it.

5. The second charge in Count I, which involves respondent Luria alone, charges it with having engaged in various acts and practices in restraint of trade, including the following:

(a) Threatening to and diverting scrap tonnage from railroads which refused to sell substantial quantities of scrap to it.

(b) Threatening to and diverting scrap tonnage from railroads which failed or refused to designate Luria as broker for substantial quantities of allocated iron and steel scrap.

(c) Offering to sell and selling finished and semi-finished steel to fabricators and others on the condition that the scrap resulting from further fabrication would be sold to Luria.

(d) Purchasing certain grades of iron and steel scrap on the condition that the dealer or other supplier would sell other grades of scrap to Luria.

(e) Bidding for and paying for scrap at prices so high that neither Luria nor its competitors could resell such scrap at existing price ceilings or generally prevailing market prices except at a loss.

(f) Threatening to and opening competing yards, or installing additional equipment in existing yards, in areas where it was economically undesirable to do so, for the purpose and with effect of harassing dealers who failed or refused to sell all or substantially all of their scrap to Luria.

(g) Holding out as being independent of Luria certain corporations which were being operated under the control of Luria by means of outright ownership or financial and contractual affiliations and otherwise.

Respondent Luria has, in general, denied these allegations, except that it has admitted favoring railroads in the shipment of iron and steel scrap where such railroads gave it business.

6. The third charge in Count I alleges that Luria acquired control and domination over competing dealers and brokers by (a) making substantial advances or loans to such dealers on the condition, in many instances, that they would sell to Luria all of the iron and steel scrap

produced by them, and (b) acquiring all or a substantial part of the capital stock of certain specifically named brokers and dealers.

Respondent Luria admits having made loans and advances to dealers, but denies that they were made on the condition that the dealers in question would sell it all of the scrap produced by them. It does admit, however, that in some transactions the dealer agreed that he would first offer his scrap to Luria, before offering it to other brokers or dealers. With respect to the allegation of stock acquisitions in other companies, respondent Luria has admitted the stock acquisitions alleged in the complaint, except in two instances.

7. The fourth charge in Count I involves alleged agreements and combinations pertaining to the export of scrap from the continental United States to customers located in other countries. A specific instance of such a combination alleged in the complaint is that between respondents Luria and Neu to act as the exclusive or substantially exclusive supplier for five steel producing companies located in Japan. Respondent Luria denies having entered into any combination such as that alleged in the complaint, but does admit having supplied a portion of the steel scrap which respondent Neu, in a separate agreement with certain Japanese steel producing companies, agreed to supply to such companies.

In addition to the alleged combination involving the Japanese mills, counsel supporting the complaint offered evidence with respect to a combination between respondent Luria and two other scrap brokers to act as the exclusive suppliers of iron and steel scrap to certain European mills comprising the European Coal and Steel Community, known as the OCCF. Respondent Luria admits that it supplied the OCCF with iron and steel scrap, in combination with two other brokers, but denies that this involved any exclusive agreement with the OCCF or prevented other suppliers from selling to the OCCF.

8. The Section 7 Clayton Act count, which is alleged as Count II of the complaint, involves the acquisition of six other brokers and dealers, and of a company owning the real estate occupied by one of the dealers. As previously noted, respondent Luria admits making the stock acquisitions charged, except in two instances, but denies that the effect thereof may be to substantially lessen competition or to create a monopoly in it in the purchase and sale of iron and steel scrap.

9. The essential issues for decision in this proceeding are:

(a) Did Luria and each of the mills enter into an exclusive brokerage agreement or understanding of the nature alleged in the complaint, and did the mills and Luria engage in each of the other specific practices alleged to have been engaged in by them in carrying out and implementing such basic agreement or understanding?

(b) Did respondent Luria separately engage in each of seven different acts and practices charged in the complaint?

(c) Did respondent Luria acquire control over other brokers and dealers in scrap by (1) making advances or loans on condition that such brokers and dealers would sell their scrap exclusively to Luria and (2) acquire control over other brokers and dealers through stock acquisitions?

(d) Did respondents Luria and Neu enter into agreements to act as exclusive or substantially exclusive suppliers for Japanese steel companies, and did respondent Luria and others enter into agreements to act as exclusive suppliers for the OCCF countries?

(e) Assuming that the respondents or any of them engaged in any or all of the practices charged, are such practices, separately or in combination, calculated to substantially lessen, hinder, restrain or suppress competition, and create in respondent brokers a monopoly, in the purchase and sale of iron and steel scrap in interstate or foreign commerce?

(f) Are the stock acquisitions made by respondent Luria calculated to substantially lessen competition in the purchase and sale of iron and steel scrap between Luria and the companies whose stock it acquired, or to restrain commerce in any section or community of the United States, or to create a monopoly in any line of commerce?

B. The Alleged Exclusive Agreements

(1) Bethlehem Respondents

1. As already noted, Bethlehem Steel Corporation is the parent company, owning all of the Stock of Bethlehem Steel Company and Bethlehem Pacific Coast Steel Corporation. Bethlehem Steel Corporation is not itself directly engaged in the manufacture or sale of iron and steel products, and does not itself purchase any steel scrap used in the making of such products.

2. Bethlehem Steel Company (referred to for convenience as Bethlehem) operates five steel producing plants in the eastern part of the United States, and Bethlehem Pacific Coast Steel Corporation (referred to for convenience as Bethlehem Pacific) operates three steel producing plants on the West Coast. The two steel producing subsidiaries of Bethlehem Steel Corporation, together, constitute the second largest steel producer in the United States. Their ingot capacity, as of January 1, 1954, represented approximately 15% of the industry capacity in this country. The producer with the largest capacity as of that date was United States Steel with approximately 31%, and the producer with the third largest capacity was Republic Steel Corporation with approximately 8%.

3. While United States Steel has a substantially larger ingot capacity than the Bethlehem companies, the latter in some years purchase greater amounts of scrap than the former due to the fact that U. S. Steel generates larger quantities of home scrap as a result of its steel producing operations. Thus in 1953 the scrap purchases of the Bethlehem companies amounted to approximately 3,700,000 gross tons; U. S. Steel's amounted to 3,125,000 gross tons; and Republic Steel's amounted to 2,100,000 gross tons. In 1954 Bethlehem's scrap purchases were approximately 2,100,000 gross tons; U. S. Steel's were 1,350,000 gross tons; and Republic's were 1,900,000 gross tons.

Bethlehem Steel Company

4. Respondent Bethlehem Steel Company is the largest producer of iron and steel products in the eastern part of the United States and is the largest consumer of scrap in that area. Its scrap purchases increased from 1,977,000 gross tons in 1945 to 3,135,000 gross tons in 1953, and then declined to 1,659,000 gross tons in 1954 (following the end of the Korean conflict). Its scrap consuming plants are located at Lackawanna (Buffalo), New York; Bethlehem, Steelton, and Johnstown, Pennsylvania; and Sparrows Point (Baltimore), Maryland. During most of the period from 1945 to 1954 the Lackawanna plant was the largest scrap consumer of the company and the plants at Bethlehem and Sparrows Point were the second and third largest consumers of scrap, respectively. The Steelton plant was the smallest of the company's scrap consumers.

5. Much of the purchased scrap for the Lackawanna plant is obtained from the immediate Buffalo, New York area. As it requires additional amounts, it obtains scrap from northern New York State west of Rochester, then moves east of Rochester and into New England. It also obtains scrap in the metropolitan New York area for shipment over the Erie Canal. During the Lake shipping season it obtains scrap originating in the Midwest for shipment from Duluth and Detroit. The plant at Bethlehem, Pennsylvania, obtains its scrap in progressive order from local sources, then from northern New Jersey, metropolitan New York, lower Connecticut points and finally the rest of New England. The plant at Sparrows Point relies primarily upon the Baltimore and Washington, D.C. areas for its scrap. It also obtains substantial quantities of scrap from points further south, including Norfolk, Virginia. It also obtains some scrap from New England. The plant at Steelton obtains much of its scrap from the Harrisburg, Pennsylvania area and other points in central and eastern Pennsylvania. The plant at Johnstown is located on the fringe of the Pittsburgh district and obtains most of its scrap from the western part of Pennsylvania.

6. Bethlehem's scrap purchases are made centrally by its scrap department, which is located on premises near the plant at Bethlehem, Pennsylvania. Its requirements for purchased scrap are determined at approximately monthly intervals on the basis of information received from the individual plants of the company. Since May 1951, the head of the scrap department has been Allen R. Thurn, who is known as Assistant Purchasing Agent in Charge of Scrap. He is assisted by two scrap buyers and several clerks and stenographers. The scrap department is under the over-all jurisdiction of the Vice President in Charge of Purchases who, since 1949, has been Paul S. Killian. Purchase orders are issued by the scrap purchasing department in Bethlehem at approximately monthly intervals to various sellers of scrap and provide for the delivery of specified grades at stipulated prices to particular plants of the company. The orders usually specify the point of origin of the scrap and the period of delivery.

7. The principal sources from which Bethlehem purchases scrap are (a) industrial fabricators and other direct producers of scrap and (b) scrap dealers and brokers. The great bulk of the scrap which it purchases is obtained from dealers and brokers, rather than from direct producers. During the period from 1947 to 1954, for which figures are available in the record, the percentage of scrap purchased from dealers and brokers has varied as follows:

	Percent		*Percent*
1947	92.6	1951	76.3
1948	89.3	1952	84.8
1949	65.0	1953	78.8
1950	70.0	1954	62.9

8. The industrial fabricators and other direct scrap producers are Bethlehem's initial source of scrap. It has contracts with a number of such producers, for terms varying from three months to a year, to purchase all or part of the scrap produced in the plants of such companies, which are usually located near one of the Bethlehem plants, at prices keyed to monthly quotations of market prices in the trade magazine "Iron Age". During periods when Bethlehem is operating at a low rate of capacity and consequently is purchasing relatively small amounts of scrap, it is able to obtain a larger percentage of its scrap requirements from such direct producers than during periods of expanding production. Thus in 1949, when Bethlehem's total scrap purchases were 1,436,000 gross tons, its purchases from nonbroker-dealer sources (consisting largely of industrial producers) represented 35% of its purchased scrap, whereas in 1952 when it purchased 2,448,000 gross tons, the percentage purchased from nonbroker-dealer sources declined to approximately 15%. In 1954, when its total scrap purchases declined to 1,659,000 gross tons, the per-

centage of its purchases from direct producers increased to approximately 37%.

In terms of absolute figures, the variations in purchases from direct producers have not been as great as the above percentages might appear to suggest. Thus, in 1949 it purchased approximately 503,000 gross tons from nonbroker-dealer sources; in the peak year of scrap purchases, 1953, the figure was approximately 663,000 gross tons, and in the slack year, 1954, approximately 615,000 gross tons were purchased from nonbroker-dealer sources. The principal change which has occurred in Bethlehem's pattern of purchasing from direct sources has been the fact that since about 1950 it has bought increasing tonnages of such scrap through brokers, principally Luria, rather than directly. Some of the industrial fabricators from whom it formerly purchased directly now sell to it through Luria. In addition, a number of railroads on whose scrap it used to regularly submit bids and receive awards, now sell to it through Luria as the highest bidder in many instances.

9. Bethlehem's broker-dealer suppliers fall into two main categories. The first of these consists of a group of small- and medium-sized dealers operating scrap yards in close proximity to one or another of Bethlehem's mills. In addition to its so-called "hard core" of industrial suppliers, Bethlehem relies on these local scrap dealers as a regular source for meeting the scrap requirements of its individual plants. During periods of relatively low production, it is able to obtain a very substantial part of its scrap requirements from direct producers and from these local yard dealers. However, as its production expands and its requirements of scrap increase, it is necessary for it to reach out in an ever widening circle, geographically, and it purchases a substantial portion of its requirements from brokers and dealers in more remote areas.

10. There have been several significant changes which have taken place during the period covered by the evidence, in Bethlehem's relations with its broker-dealer suppliers. Firstly, some of the local yard dealers who formerly sold to various of the Bethlehem plants directly, have in more recent years shipped their scrap to Bethlehem through Luria as broker. Secondly, Bethlehem has ceased purchasing, or has reduced to extent of its purchase, from other direct dealers and brokers, particularly in the case of scrap purchased on a brokerage basis. Thirdly, the proportion of its purchases from Luria has undergone a radical increase, particularly since 1951, so that in a number of years Luria has been by far the principal supplier of scrap to Bethlehem.

11. Counsel supporting the complaint contend that the changes

which have occurred in Bethlehem's relations with a number of its dealers and brokers and with certain of its direct suppliers, and the metamorphosis in its relations with Luria have been due to a basic agreement or understanding between Bethlehem and Luria whereby the latter became Bethlehem's exclusive or substantially exclusive broker. Counsel concede that there is no "direct evidence" of any "specifically stated agreement, either written or oral" pursuant to which Bethlehem uses Luria as its substantially exclusive broker. However, counsel contend that such an agreement may be inferred from the course of dealings between the parties. To a consideration of the elaborate structure of circumstantial evidence upon which counsel supporting the complaint rely the examiner now turns.

The Statistical Evidence.

12. Set forth below is a table reflecting the percentage of scrap supplied to Bethlehem by Luria from 1947 to 1954. In view of the conflicting contentions as to whether Luria's share of Bethlehem's scrap purchases should be measured in terms of the latter's total scrap purchases or in terms of its purchases from brokers and dealers only, the table uses both methods for measuring Luria's position as a supplier to Bethlehem. The table also reflects the percentage of scrap supplied by Luria to the individual plants, as well as to the company as a whole, in order to give recognition to the contentions of Luria and Bethlehem that a portrayal on the former basis disproves the argument of counsel supporting the complaint.

Percentage of Bethlehem's scrap purchases supplied by Luria and subsidiaries

	1947	1948	1949	1950	1951	1952	1953	1954
Bethlehem Co.:								
(*a*) Percent total purchased scrap	15.4	19.0	21.2	26.9	46.6	61.4	64.0	50.9
(*b*) Percent broker-dealer scrap	16.6	21.2	32.6	38.4	61.1	72.4	81.2	80.9
By plant:								
1. Bethlehem:								
(*a*) Percent total	18.4	24.3	23.5	33.1	42.4	52.0	66.0	62.7
(*b*) Percent broker-dealer	19.3	26.7	33.2	52.8	58.3	63.4	78.7	82.3
2. Johnstown:								
(*a*) Percent total	25.3	18.9	20.9	14.4	54.4	69.3	66.9	44.9
(*b*) Percent broker-dealer	36.2	28.6	39.9	22.6	67.9	73.7	83.0	59.4
3. Lackawanna:								
(*a*) Percent total	------	12.7	19.7	30.2	49.2	57.8	49.5	47.3
(*b*) Percent broker-dealer	------	13.7	31.3	37.7	61.7	70.6	72.0	79.4
4. Sparrows Point:								
(*a*) Percent total	15.2	14.4	16.8	11.0	48.7	79.1	82.9	51.2
(*b*) Percent broker-dealer	15.2	14.4	24.0	14.7	60.8	86.1	91.0	90.8
5. Steelton:								
(*a*) Percent total	34.1	39.1	28.0	18.9	37.1	49.7	64.8	23.1
(*b*) Percent broker-dealer	38.6	45.8	51.8	41.7	61.0	65.1	91.0	99.5

As is apparent from the above figures, there was a significant upturn in Bethlehem's purchases from Luria beginning around 1949 and accelerating sharply after 1950. The increase was particularly pronounced in terms of Luria's percentage of Bethlehem's purchases from

the broker-dealer segment of the market. By 1953 Luria was supplying 81% of the scrap purchased from dealers and brokers. Counsel supporting the complaint contend that substantially all of the remaining scrap falling in this category is accounted for by purchases from dealers or was purchased on a dealer basis. Respondent Bethlehem contends that a substantial part of the remainder consists of brokerage scrap. In view of the fact that records are not kept in such a manner as to permit a ready determination of whether scrap purchases by a mill are made on a dealer or a broker basis, the conflicting contentions cannot be resolved statistically. However, from the evidence as a whole, some of which will be hereafter discussed, the examiner is satisfied that the great preponderance of the dealer-broker scrap purchased from firms other than Luria was purchased from dealers or on a dealer basis.

Both Luria and Bethlehem emphasize in their proposed findings the substantiality of the latter's purchases from suppliers other than Luria. The purchases from direct suppliers and from certain local yard dealers do undoubtedly represent a substantial part of Bethlehem's total scrap supply, particularly in times when it is not operating at peak capacity. Thus in 1954 such sources supplied almost half of Bethlehem's purchased scrap requirements. However, this does not gainsay the fact that Bethlehem obtained from Luria substantially all the scrap which it purchased on a brokerage basis. It is true that the complaint not only charges that Luria agreed to act as Bethlehem's exclusive broker, but also that Bethlehem agreed to buy *all* of its scrap from Luria. However, the latter charge may be regarded as the opposite side of the coin from the former, and may be interpreted as charging Bethlehem with agreeing to purchase from Luria all of the scrap *which it purchased on a brokerage basis.*

The fact that certain of the plants, e.g., Johnstown, obtained particularly large portions of their scrap from sources other than Luria likewise does not necessarily rebut the basic conclusions sought to be drawn by counsel supporting the complaint since Bethlehem's scrap buying policy is determined on an over-all company-wide basis. The relatively large receipts of scrap by some plants from sources other than Luria may merely reflect the proximity of such plants to certain direct suppliers (e.g., industrial fabricators) and to certain local yard dealers, and the correspondingly lower proportion of brokerage scrap ordered shipped to such plants by Bethlehem's head office.

Relations with Other Brokers and Dealers
Schiavone-Bonomo Corporation

13. This company, whose main office is located in Jersey City, New Jersey, has been in the scrap business for a great many years. It

started out as a yard dealer and entered the brokerage business in 1928. A corporation using the present name was organized in 1937 for the specific purpose of handling the company's brokerage activities. All of its operations were later consolidated into this company. During the period from 1952 to 1955, for which there are figures in evidence, the scrap sales of Schiavone-Bonomo were in the order of magnitude of 390,000 to 450,000 tons annually. About 10 to 20% of the scrap originated in the company's own yard and the balance was purchased from other dealers, in some of whom it has an interest.

Schiavone-Bonomo has been a supplier of scrap to Bethlehem for over 24 years. In 1947, the earliest year for which there are figures in evidence, it was Bethlehem's second largest supplier, with sales of approximately 240,000 gross tons, as compared to sales of 295,600 tons by respondent Luria. It was the largest supplier to the Bethlehem, Pennsylvania plant of the company in that year, with shipments amounting to 112,000 gross tons. It also shipped 79,750 tons to Bethlehem's Sparrows Point plant and 47,000 tons to the Lackawanna plant, making it the second largest shipper to these two plants. In the following years its sales to Bethlehem declined significantly as follows: 1948—180,000; 1949—115,000; 1950—158,000; 1951—169,000; 1952—230,000; and 1953—177,200 tons. By 1954 it was no longer in the ranks of Bethlehem's five largest suppliers, as it had been from 1947 to 1953, although it was the second largest shipper to the Bethlehem, Pennsylvania plant, with sales of approximately 44,000 gross tons.

Schiavone-Bonomo's decline as a supplier to Bethlehem was accompanied by an increase in Luria's sales to Bethlehem, which was modest at first and then became very marked beginning in 1951. Luria's sales to Bethlehem were 340,000 tons in 1948 (compared to 295,000 in 1947); 304,000 in 1949; 408,300 in 1950; and 711,000 in 1951. In 1951 Luria's affiliate, Southwest Steel, came into the ranks of the five largest suppliers to Bethlehem, with sales of approximately 196,000 (compared to 169,000 by Schiavone), making a total of over 900,000 tons for the Luria affiliated companies. In 1952 this total arose to approximately 1,450,000 tons and in 1953 to approximately 1,950,000 gross tons. In 1954, a year in which Bethlehem's total scrap purchases were cut in half following the end of the Korean conflict, its purchases from Luria declined to approximately 780,000 tons. Despite this decline Luria supplied over 80% of the scrap purchased by Bethlehem in 1954 from brokers and dealers.

The decline in Bethlehem's purchases from Schiavone-Bonomo was accompanied by the imposition of certain restrictions and limitations on it in the procuring of scrap, which were not imposed on Luria. Prior to 1948 or 1949, in filling orders for Bethlehem of scrap originating in New England, Schiavone-Bonomo was permitted to obtain the

scrap from any point in the New England area. Thereafter scrap which was sold to Bethlehem from New England could only be shipped from the yards of two dealers in Connecticut, in one of which Schiavone-Bonomo had an interest. At about the same time restrictions were placed on the points of origin of scrap coming from the so-called "Capital District" of upper New York State, consisting of Albany and Troy, in that it could come from only two specified yards, one of which belonged to a company in which Schiavone-Bonomo had an interest. Limitations were also placed on the shipments of scrap to the Lackawanna plant of Bethlehem via the Erie Barge Canal. Formerly Schiavone-Bonomo was permitted to ship such scrap from any water point sufficient to accommodate a canal barge. Beginning about 1950 it was limited to shipping points adjacent to its own docks or those of affiliated companies, plus that of one customer in Brooklyn.

Respondent Bethlehem argues that the various restrictions were placed in its orders to Schiavone-Bonomo because these were the shipping points from which the latter had offered it scrap, and this was merely a method of identifying the scrap for the convenience of Bethlehem's scrap department. However, it is clear from the credited testimony of a Schiavone-Bonomo official that his company's identification of the scrap as coming from these specific yards or shipping points was due to advice from Bethlehem that it would not accept scrap originating from other points within these areas, and that after endeavoring to convince Bethlehem to the contrary over a period of time, Schiavone finally accepted the inevitable and merely offered scrap from the points from which Bethlehem had indicated it would accept it. The testimony of the Schiavone official, which indicates that Bethlehem's purchases from his company are now limited largely to scrap originating in Schiavone's own or affiliated yards, was actually corroborated by the testimony of Bethlehem's scrap purchasing agent.[2]

Respondent Bethlehem also argues that there was no difference in treatment between Luria and Schiavone-Bonomo, since there were similar limitations placed in orders given to the former. However, while Luria's orders specified a given geographic area as the point of shipment of the scrap, e.g., "New England Shipping Points", "New York Metropolitan Area And Connecticut", these were broad geographic designations, and did not restrict Luria to specific yards or shipping points within these general areas, as did orders to Schiavone-Bonomo covering shipments from the areas previously discussed.

These restrictions as to points of shipment or origin of scrap placed Schiavone-Bonomo at a disadvantage, vis-a-vis Luria, and impaired

[2] This employee, A. R. Thurn, testified (R. 1740): "[W]e will always when we can use it, when we need the scrap, negotiate with Schiavone-Bonomo *for any scrap they produce in any yard they operate* * * *" [Emphasis supplied].

its ability to operate as a broker, in that it limited its flexibility in obtaining the necessary amounts of scrap to fill orders from Bethlehem, and gave Luria a competitive advantage by permitting it access to a wider number of potential suppliers of scrap. Bethlehem's practice in this respect is contrary to that of other consumers of scrap supplied by Schiavone-Bonomo, including United States Steel. While Schiavone was still technically free, as Bethlehem argues, to buy scrap from other dealers in the areas above discussed for resale to other consumers, this choice was more apparent than real in view of the fact that Bethlehem was by far the largest consumer of scrap in the area within which Schiavone operated. A broker's stock-in-trade is his ability to find a regular home for the scrap of his dealer-suppliers. If he is foreclosed from shipping to the largest consumer in the area, except from a limited number of dealers, his ability to serve other dealers is seriously impaired, particularly where a competitor is not so limited.

In addition to the restrictions on points of origin of scrap, Schiavone-Bonomo also experienced a price disadvantage in selling scrap to Bethlehem, in competition with Luria. Luria has admittedly been paid 50¢, and sometimes $1.00, more a ton on scrap originating from a given point for shipment to Bethlehem, than has Schiavone-Bonomo. This has given Luria a competitive advantage since it was able to offer, and did offer, higher prices for scrap to dealers, thereby precluding Schiavone-Bonomo from buying scrap from such dealers.[3]

Bethlehem contends that the payment of higher prices to Luria has been due to the fact that (a) Luria offered to sell larger tonnages than Schiavone-Bonomo and (b) Luria is a broker, whereas Schiavone is essentially a dealer. This explanation, which is based on the testimony of A. R. Thurn, Bethlehem's scrap purchasing agent, impressed the examiner as a bit of ex post facto rationalizing and as not reflecting the true reason for favoring Luria.[4]

The examiner is satisfied that insofar as the offering of greater tonnages by Luria is concerned, this was a *result* of the favored treat-

[3] Among the dealers lost as a result of the payment of higher prices by Luria was M. Schiavone & Sons of New Haven, Connecticut. Despite a family affiliation and the receipt of financial assistance from Schiavone-Bonomo, Mr. Schiavone gradually reduced its scrap sales to the former around 1950 and began to do an ever-increasing business with Luria and its affiliate Southwest due, in substantial part, to the receipt of higher prices from them.

[4] When first interrogated about the matter of paying higher prices to Luria, Thurn testified that it was characteristic of the scrap industry to pay a higher price for a greater quantity of scrap than for a lesser quantity, and that the prices paid to Luria were usually higher "because Luria sells us the larger tonnage" (R. 1793). However, when later specifically interrogated about paying Luria higher prices than Schiavone-Bonomo, no reference was made to the matter of Luria's selling greater quantities, but the differences in prices were ascribed exclusively to the fact that Luria was primarily a broker and therefore entitled to an extra brokerage fee, whereas Schiavone was essentially a dealer (R. 1911). In their proposed findings counsel for Bethlehem have endeavored to reconcile these different reasons into an integrated explanation of Bethlehem's favored price treatment of Luria.

ment accorded it by Bethlehem rather than a *cause* of Luria's receiving such treatment price-wise. The decline in purchases from Schiavone-Bonomo (whose sales to Bethlehem in 1947 were only slightly below Luria's) was the result of a deliberate choice on the part of Bethlehem to give Luria an increasing part of its brokerage business, rather than a choice on Schiavone-Bonomo's part to offer less scrap. To the extent that Schiavone may later have been unable to offer quantities as large as Luria, this was due, in significant part, to the limitations placed upon it by Bethlehem with respect to the point of origin of scrap coming from certain areas and to the price disadvantage at which it had been placed vis-a-vis Luria.[5]

With respect to any difference in status between Luria and Schiavone-Bonomo being a factor in favoring Luria pricewise, it may be noted that Schiavone is a recognized broker in the scrap industry. In fact both Luria and Bethlehem have recognized its status as a broker.[6] While it may be that a substantial part of the scrap which Schiavone-Bonomo handles is purchased from a number of so-called "affiliated" yards this does not, as respondents suggest, change its essential status as a broker. In the first place there is nothing to indicate what Schiavone's interest in these yards is or that they are not bona fide, independent yards with which it deals at arms' length.[7] Furthermore, it may be observed that the fact Luria has shipped substantial quantities of scrap from its affiliate yards or even from its own yards has not been deemed to affect its status or to cause Bethlehem to pay it a lower price on such scrap.

The examiner is satisfied that the difference in status between Luria and Schiavone-Bonomo has not been a factor in the disparate treatment between the two companies, except to the extent that Bethlehem has deliberately chosen to give Luria its brokerage business and to limit Schiavone-Bonomo's role as a supplier largely to scrap coming from its own yards and from those of its so-called affiliated companies. There can be no doubt that had Schiavone not been so

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[5] At one point in his testimony Thurn suggested that Bethlehem had difficulty in buying more tonnage from Schiavone-Bonomo because the latter was "exporting large tonnages of scrap to foreign countries" (R. 1890). However, this did not occur until 1954, at least four years after Bethlehem begun curtailing purchases from Schiavone. The examiner is convinced that the increase in the latter's export business was an outgrowth of its inability to sell more to Bethlehem on competitive terms, rather than a cause of Schiavone's decline in sales to Bethlehem.

[6] In a list of its broker competitors prepared by Luria, Schiavone-Bonomo is listed as a competitor (CX 126). Bethlehem's purchasing agent, Thurn, while referring to Schiavone as a dealer in seeking to explain the payment of higher prices to Luria, at another point in his testimony when he was seeking to establish that Bethlehem used brokers other than Luria, referred to Schiavone as falling in the broker category (R. 1769).

[7] The only testimony indicative of Schiavone's connection with these yards is that of its Treasurer who stated (R. 2564) that his company had an "interest in other yards which are operated under other names, and which are separate entities, *separate stockholders.*" [Emphasis supplied.]

limited and had it been paid prices comparable to those paid Luria, it would have been in position to act as an outlet for a larger number of unaffiliated dealers in supplying scrap to Bethlehem and others.

Luria Steel & Trading Corporation

14. Luria Steel & Trading Corporation (sometimes referred to herein for convenience as LS&T) started doing business in 1937, at which time it was owned by the same interests as owned respondent Luria. It was engaged in the import and export of scrap, and to some extent in the engineering and steel construction business. As previously noted, there was an exchange of interests within the Luria family in the latter part of 1944, whereby the family of Max Luria, a deceased son of the original founder of the business, sold out its interest in respondent Luria to the family of Alex Luria, and the latter sold out its stock in LS&T to the family of Max Luria. Since that time the two companies have been wholly separate and unrelated. By January 1945, LS&T had scrap brokerage offices in New York and Detroit. In the ensuing years it opened additional offices in Philadelphia, Boston, Norfolk, Pittsburgh, Cleveland, St. Louis, Buffalo and Chicago. LS&T's participation in the scrap business has been as a scrap broker. It has not owned or operated any scrap yards.

Among LS&T's more important customers was respondent Bethlehem. By 1947 LS&T had become the third largest supplier to Bethlehem, with sales approximately 89,000 gross tons. It was the third largest shipper in that year to the company's Bethlehem and Steelton plants. In the year 1948 it was the fourth largest supplier of Bethlehem, with sales of approximately 81,500 gross tons.[8] It was among the five largest shippers to Bethlehem's plants at Bethlehem, Steelton and Sparrows Point during that year. In 1949 LS&T ceased to rank among the five largest suppliers to Bethlehem as a whole, but remained among the five largest shippers to the company's plants at Bethlehem, Steelton and Sparrows Point, its deliveries to those plants being approximately 37,000 gross tons. In 1950 it was likewise not among the five largest suppliers to Bethlehem as a whole, but was the third largest shipper to the Steelton plant with shipments of approximately 8,400 gross tons. Except for the shipment of allocated scrap during the Korean War (in which the originator of the scrap designated the broker), LS&T ceased to be a supplier of scrap to Bethlehem after 1950.

[8] It was actually the third largest supplier among brokers and dealers in that year, but an industrial fabricator which had been the fifth largest supplier in 1947 became the third largest supplier in 1948.

Up to 1949 LS&T was permitted to ship scrap, in filling Bethlehem orders, from various broad geographic areas in the Northeastern and Middle Atlantic States, without any restrictions as to the points of shipment within such areas, except for the Philadelphia area from which it had been requested not to ship scrap. However, beginning in the latter part of 1949, Bethlehem began to impose a number of restrictions as to the points or yards from which LS&T could ship scrap within the areas which had theretofore been open to it. For example, in the northern New Jersey area, it was restricted to three or four yards and was later advised not to ship from one of these yards, that of Tidewater Iron & Steel Company located in the Newark area. On orders for Sparrows Point, LS&T was restricted to obtaining scrap from the immediate Norfolk and Richmond areas, unlike the earlier period when it was permitted to acquire scrap and ship it to Bethlehem from any point in Virginia and North Carolina. During the same period LS&T also began receiving reports from some of its scrap buyers that dealers whom they had contacted were being offered prices by Luria which were equal to or higher than LS&T was receiving from Bethlehem.[9]

As a result of the restrictions as to points of shipment and the reports received from LS&T scrap buyers concerning the prices which were being offered by Luria, LS&T requested a conference with Bethlehem to discuss these matters. In a conference held in November or December 1949 with Bethlehem officials in charge of scrap purchasing, LS&T protested the area restrictions and the prices which it was receiving, as compared to its competitor Luria. The Bethlehem officials

[9] The above findings are based on the uncontradicted and credited testimony of Herbert T. Luria, an LS&T official. Respondent Bethlehem has moved to strike such testimony on the ground that it is hearsay. While it is true that the Bethlehem purchase orders would have been the best evidence as to any restrictions imposed concerning points of shipment, the testimony of the LS&T official is sufficiently reliable to base a finding thereon. Such testimony was not contradicted by any Bethlehem official, although the examiner indicated that he would give great weight to the testimony of the Bethlehem official (Assistant Purchasing Agent Snyder) who was alleged to be the source of such restrictions. The testimony of H. T. Luria comports with the evidence of similar restrictions placed on Schiavone-Bonomo, which has been discussed above. It was also corroborated, in part, by a representative of Tidewater Iron & Steel, who had shipped scrap to Bethlehem through LS&T as broker up to the latter part of 1949, and was then informed that LS&T no longer had any Bethlehem orders but that Luria did. While Tidewater continued to sell to LS&T for shipment to U.S. Steel and other mills, its sales for shipment to Bethlehem after the latter part of 1949 were made only through Luria because it found the latter was the only broker which had orders for scrap from Bethlehem. It may be noted that Tidewater was one of the dealers from which Schiavone-Bonomo was also restricted from making shipments to Bethlehem.

The testimony of the reports received from LS&T scrap buyers concerning price offers allegedly made to dealers by Luria, while hearsay, was not received for the truth of the reports, but as the basis for a later conference with Bethlehem. As will appear, during such conference the Bethlehem officials did not deny the payment of higher prices to Luria.

were reluctant to discuss the matter, their only comment being that Bethlehem could pay any price it saw fit for scrap. Another conference in January or February 1950 on the same subject likewise produced no results from the point of view of LS&T. Finally in March 1950, a conference was arranged on the highest level, with Paul S. Killian, vice president in charge of purchases. After listening to the complaints of the LS&T officials, Killian advised them that Bethlehem had decided to favor Luria in the placement of its orders and that LS&T could no longer look to it for any business. Thereafter LS&T made no substantial effort to do business with Bethlehem and the latter made no effort to buy from LS&T.[10]

Bethlehem suggests in its proposed findings that LS&T was cut off as a supplier because of dissatisfactions with LS&T's performance, particularly because the latter was late in making deliveries and also sought to obtain higher prices after orders had been placed. The evidence upon which Bethlehem relies involves mainly the period after it had become apparent that Bethlehem was going to limit or eliminate LS&T as a supplier, and merely reflects the latter's unwillingness to extend itself for a customer which was placing it at a disadvantage vis-a-vis a competitor.[11] It is significant that at no time during the conferences between LS&T and Bethlehem which took place in the latter part of 1949 and early 1950 was LS&T ever advised that dis-

[10] The above findings with respect to the conferences between LS&T and Bethlehem are based on the testimony of Herbert T. Luria, LS&T vice president, which was substantially uncontradicted. Respondent Bethlehem did not call Vice President Killian or Assistant Purchasing Agent Snyder, who was also present, to contradict the testimony of the LS&T witness; nor was A. R. Thurn, who was then a scrap buyer under Snyder and was present in Snyder's office during the first two conferences, called as a witness by Bethlehem.

[11] Bethlehem refers particularly to a letter received from LS&T dated March 30, 1950, in response to a letter by it, dated March 27, 1950, concerning an apparent delay in filling an order for Steelton, in which LS&T stated:

"* * * since the market has recently been upset it is most difficult to buy within the price limitations of these orders.

"Inasmuch as your present policy appears to place us in a minor role, we do not feel inclined to take large losses on these orders or any other orders that were placed with us under unfavorable conditions. However, we shall continue to do our utmost and hope to be able to complete shipment within a reasonable time."

This letter reflects LS&T's dissatisfaction with its unequal treatment by Bethlehem, and not any general policy of reneging on Bethlehem orders. Since it was written soon after the conference at which it was advised it would not be favored with further orders, its tone is not surprising. The Bethlehem letter of complaint, dated March 27, 1950, was not offered by Bethlehem but from the LS&T reply it would appear to involve only a single order or series of orders for Steelton, rather than a general complaint against LS&T's performance.

Also cited by Bethlehem is a survey made by it in May 1951, of orders on which there had not been full delivery by LS&T during 1950 (RX 82). However, this too involves mainly the period when it had become apparent that LS&T was going to be assigned a very minor role as a supplier to Bethlehem, and is not truly representative of LS&T's performance as a supplier to Bethlehem.

satisfaction with its performance was the reason why it was going to be limited or eliminated as a supplier.[12]

Based on the evidence as a whole, the examiner is satisfied that if there was any dissatisfaction on the part of Bethlehem with LS&T's performance, it was not a significant factor in the curtailment of LS&T's role as a supplier or in its later elimination. On the contrary, the examiner is convinced that such curtailment and elimination were an outgrowth of the same policy decision by Bethlehem which resulted in the curtailment of Schiavone-Bonomo's role as a broker for Bethlehem and in the curtailment or elimination of other brokers, as will hereafter appear. The primary difference between the Schiavone-Bonomo and LS&T situations was that the former as the owner of, or affiliate of, a number of yard operations was still in a position to supply Bethlehem with substantial quantities of scrap on a dealer basis, whereas LS&T which had no such yard operations could not and was therefore expendable.

Beginning around April 1956 LS&T gradually closed down its various brokerage offices, until by 1958 it was no longer in the brokerage business except for the Chicago area. Counsel supporting the complaint contend that this decline in LS&T's scrap operations has been due to its inability to sell to Bethlehem and to other scrap consumers which use Luria as their exclusive broker. Luria contends, on the other hand, that LS&T's more profitable operations in the engineering and steel construction end of its business were responsible for the de-emphasis of its scrap operations.

While the loss of access to the largest user of scrap in the Eastern United States was undoubtedly a handicap for LS&T, the examiner cannot make any finding on the basis of the evidence in the record that this was a significant factor in LS&T's substantial departure from the scrap business, particularly in the absence of statistical evidence as to the proportion of LS&T's business which was represented by sales to Bethlehem and to the other consumers involved. The fact that at least 6 years intervened between the loss of the Bethlehem account and LS&T's departure from the scrap business would tend to minimize any causal connection between these events. It may be argued that the increase in demand resulting from the Korean War and the later lifting of the embargo on scrap exports were responsible for delaying LS&T's exit. However, such speculation does not afford a sufficient basis for any affirmative finding.

[12] Bethlehem requests the examiner to infer that at the last conference in March 1950 LS&T was advised its poor performance was the reason why it would no longer be favored with orders. There is no record basis for such a finding. There was no reference to any such statement having been made in the plausible and uncontradicted testimony of Herbert T. Luria. As already noted, the Bethlehem officials who were present at the conference were not called by Bethlehem to give their version of the incident.

Commercial Steel & Chemical Corporation

15. Commercial Steel & Chemical Corporation of New York, New York, is engaged, among other things, in the scrap brokerage business and sells both imported and domestic scrap. It does not own any scrap yards. The company has been a supplier of scrap to Bethlehem since at least 1942. While it has not ranked among the largest suppliers to the company as a whole, it has been a substantial shipper to several of the company's plants. Thus, in 1947 and 1948 it was among the five largest suppliers to Bethlehem's Sparrows Point plant, with sales of approximately 68,000 and 54,000 gross tons, respectively. In 1948 and 1950 it was also among the five largest suppliers to the Johnstown plant, with sales of approximately 5,800 and 15,500 gross tons, respectively.

Up until about 1950, Bethlehem was one of Commercial Steel's main customers, its sales to Bethlehem representing about 75% of its total scrap business. It sold both domestic and imported scrap to Bethlehem. In the earlier years about 80% of its scrap sales to Bethlehem were of domestic scrap and about 20% imported scrap. During the period from about 1948 to 1950 the proportion of Commercial Steel's sales represented by imported scrap increased to about 40%.

Commercial Steel's sales of scrap to Bethlehem ceased early in 1951. In the spring of that year Commercial Steel offered a quantity of imported scrap to Bethlehem and the latter indicated that it did not wish to buy the scrap directly from Commercial, but suggested that the scrap be sold to Luria which would, in return, sell it to Bethlehem. While the Bethlehem representative, A. R. Thurn, indicated that he liked the scrap which Commercial Steel was importing, he wanted to get it through Luria since he was in need of large quantities of scrap and felt that Luria had the organization to help him acquire the amounts he needed in the open market better than anyone else. Commercial Steel declined the suggestion that it sell the scrap to Bethlehem through Luria.

Although nothing specific was said about domestic scrap in the discussion with Bethlehem, Commercial made no offers of domestic scrap for several months since it desired to sell both domestic and imported scrap to Bethlehem and did not wish to sell them separately. However, around October of that year, after the market for imported scrap had ceased to be as important because the price had become too high in relation to that of domestic scrap, Commercial Steel offered a quantity of domestic scrape to Bethlehem and the latter again declined, suggesting that the scrap be sold to Luria for delivery to it. The Bethlehem representative, Thurn, advised Commercial that he had to rely to a very large extent on Luria as a supplier, and that there would

be too much interference if more than one broker was permitted to cover the same market for it.

Commercial Steel thereafter periodically offered scrap to Bethlehem, but was met with the suggestion that it offer its scrap through Luria. This it declined to do except in one instance, which occurred in October 1952. At that time Commercial Steel had offered to sell Bethlehem 500 tons of imported scrap at $42.50 a ton. The offer was declined. However, the next day a Luria representative telephoned Commercial stating that he understood Commercial Steel had offered 500 tons of imported scrap to Bethlehem at $42.50 a ton, and offered to buy the scrap for $43.50 a ton. Commercial accepted the order and shipped the scrap to Bethlehem for the account of Luria. This was the last shipment made to Bethlehem and no further sales were made to Luria, although Luria had assured Commercial Steel that it would receive as much for its scrap if it sold it through Luria as it would on direct sales to Bethlehem.[13]

Harcon Corporation

16. Harcon Corporation is a substantial scrap broker located in Boston. It does not directly operate any scrap yards, but does have an interest in several scrap yards operating under other corporate names in the New England area, which sell most of their scrap to it. In addition, it has a close working relationship with several hundred yard dealers, auto wreckers and similar sources of scrap, which regularly sell the bulk of their scrap to it.

For a number of years prior to 1950, Harcon was a regular supplier of scrap to Bethlehem, its sales to Bethlehem amounting to about 10% of its total scrap sales. While Harcon was not among Bethlehem's largest suppliers, its shipments were nevertheless substantial. Thus in

[13] The above findings are based on the testimony of Commercial Steel's Treasurer, Joseph Rosenthal. Both Bethlehem and Luria suggest in their proposed findings that the failure to buy from Commercial Steel was due either to a decline in the demand for scrap or to a dispute between Bethlehem and Commercial Steel over a prior lot of imported scrap. Neither of these was, however, given to Rosenthal as the reason for not purchasing directly from him in his conversations with A. R. Thurn, Bethlehem's scrap purchasing agent. The latter was not called as a witness by respondents, and Rosenthal's plausible testimony, to the effect that Thurn advised him Bethlehem wished to buy directly from only a single broker (Luria) in the market, stands substantially uncontradicted. The testimony regarding Bethlehem's difficulties with Rosenthal's company over a prior lot of imported scrap was given by the Bethlehem scrap buyer, Melvin C. Cressman, a subordinate of Thurn, who did not himself talk to Rosenthal and made no claim that this was the reason for the cessation of relations between the companies. Despite all the emphasis on Commercial Steel's alleged derelictions in connection with a lot of imported scrap, in its proposed findings Bethlehem appears to suggest that it was the decline in the demand for scrap during 1951 which was the real reason for refusing Commercial Steel's offers. Aside from the fact that this reason was never mentioned to Rosenthal, the fact is that Bethlehem's scrap purchases increased substantially in both 1951 and 1952 to 2,001,000 and 2,448,000 gross tons, respectively, compared to 1.520,100 gross tons in 1950. The chief beneficiary of this increase was the Luria organization from which Bethlehem bought 917,000 and 1,443,000 gross tons in 1951 and 1952, respectively, compared to 408,000 gross tons in 1950.

1947 and 1948 its sales to Bethlehem amounted, respectively, to $708,000 and $561,000. In 1949, which was one of Bethlehem's slowest years in the postwar period, Harcon's sales to it declined to $86,000. However, in 1950, up to October of that year, Harcon's sales increased to $319,000. Harcon's last sale to Bethlehem was made on October 10, 1950, except for a negligible amount sold in February 1952.

Prior to 1950 Harcon's sales to Luria were relatively small, amounting to about 1% of its total sales. However, following the cessation of business with Bethlehem, there was a sharp increase in Harcon's sales to Luria, which in turn resold some of the scrap to Bethlehem. Harcon's sales to Luria amounted to over $1,000,000 in 1951, representing 17% of its total sales, as compared to sales of approximately $45,000 in 1949 and 1950. There was a steady increase thereafter in Harcon's sales to Luria, except for 1952, and by 1955 Harcon's sales to Luria amounted to over $3,000,000, representing 38% of its total sales. A substantial part of the scrap sold to Luria after 1953 was shipped for export, but part of it was supplied to Bethlehem.

Respondents contend that the cessation of direct sales by Harcon to Bethlehem had no connection with any arrangement between Bethlehem and Luria, but was an outgrowth of the fact that Bethlehem and Harcon had only done business on a minimal and sporadic basis and that relations between them merely phased out in the normal course of events. However, the statistical evidence in the record discloses that there had been a regular and substantial business relationship between them for a number of years and, most significantly, that the volume of business between them was on the increase when it suddenly came to an end in October 1950. Because of the generally unreliable nature of the testimony regarding the break in relations it is difficult to ascertain the precise reasons for, or circumstances of, the cessation of direct dealing between Harcon and Bethlehem in the fall of 1950.[14] However, the examiner is satisfied, from the record as

[14] The principal witness to testify regarding the break in direct relations between Harcon and Bethlehem was Harcon's President, Frank P. Gordon, who was called as a Government witness. Gordon, whose company was then doing an annual business of over $3,000,000 with Luria, was a most reluctant and evasive witness, and at times appeared to be making a deliberate effort to demean his own company in its relations with Bethlehem, so as to justify the latter's not giving it any further business. When first asked why his company had stopped doing business directly with Bethlehem in 1950, Gordon gave the following illuminating explanation:

> They didn't want to buy it [scrap] and I guess maybe we didn't want to sell. We just couldn't get together.

Gordon later opined that the reason was that "we just couldn't get together pricewise." However, after considerable backing and filling Gordon revealed that: "Actually, I never handled the Bethlehem account too much." The account, it developed, had been handled by his father-in-law, who had died shortly prior to the hearing. Respondents cite Gordon's testimony on cross-examination to the effect that his father-in-law had told him Bethlehem was a "rather peculiar account" and not to "chase" them, as indicative of the strained relations between the two companies in 1950. However, Gordon also revealed that his

a whole, that Harcon's cessation in direct dealings with Bethlehem in October 1950 and the sharp increase in its sales to Luria thereafter were not a mere coincidence, but were part and parcel of the basic underlying change which was taking place in Bethlehem's relations with Luria and with other brokers and dealers.

Louis Cohen & Son

17. Louis Cohen & Son (hereinafter referred to as L. Cohen) operate two scrap yards, one in Wilkes-Barre and the other in Scranton, Pennsylvania. It has been a supplier of scrap to Bethlehem for over 30 years. Up until about 1952, L. Cohen was able to fill orders from Bethlehem with both scrap from its own yards which it already owned and with outside scrap which it did not yet own. It was also not limited as to the area from which it could purchase scrap for sale to Bethlehem. Around 1952 L. Cohen was advised by A. R. Thurn, Bethlehem's scrap purchasing agent, of a change in Bethlehem's policy in buying scrap. Thurn advised Cohen that his company would not purchase scrap which Cohen did not actually own, and also requested it to limit its purchases of scrap for Bethlehem to the two counties in which Cohen's yards were located. In connection with an offer of scrap of railroad origin on which L. Cohen was contemplating making a bid, as it had in the past, in anticipation of selling it to Bethlehem, it was advised by Thurn that Bethlehem did not wish to buy such scrap since Cohen would be competing with other brokers in buying it for Bethlehem.[15]

Following Bethlehem's refusal to purchase brokerage scrap which L. Cohen did not own there was a decline in both Cohen's brokerage sales generally and in the proportion of its business done with Bethlehem. At the same time there was a substantial increase in its sales to Luria. L. Cohen's brokerage sales declined from approximately 30% of its business to 10%. Its sales to Bethlehem declined from about 15% of its total sales in 1951 to about 7% in 1952 and reached a low of 3% in 1953. While there was an increase to 12% in 1954, its sales to Bethlehem again declined to 6% in 1955. By way of contrast its sales to Luria, which represented about 3% of its total sales in 1951, increased to 27% in 1952 and reached a high of 46% in 1955.

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conversations regarding the cessation of dealings were: "Just in a general way, nothing particular." It is clear that Gordon's testimony is largely hearsay and of little reliability. In connection with his claim that the two companies couldn't get together price-wise, it may be noted that Harcon apparently had no difficulty in coming to terms with Luria which, in turn, was able to sell the scrap to Bethlehem at an average profit of $1.00 a ton.

[15] The above findings are based on the uncontradicted testimony of a witness from L. Cohen. Counsel for Bethlehem argue that Bethlehem's refusal to purchase brokerage scrap which L. Cohen did not own, was limited to railroad scrap. However, the examiner does not so interpret the testimony of the L. Cohen witness. While he referred to railroad scrap as illustrative of the restrictions imposed by Bethlehem, it is clear from his testimony as a whole that the Bethlehem policy applied to any brokerage scrap which L. Cohen did not actually own.

M. Glosser & Sons, Inc.

18. M. Glosser is a broker and dealer with its yard and office located in Johnstown, Pennsylvania. About 50% of the scrap sold by it is sold on a dealer basis, originating in its own yard, and the balance is sold on a brokerage basis. Glosser has been a direct seller and shipper to Bethlehem, particularly to the Johnstown plant, for many years. Over half of Glosser's sales since 1951 have been made to Bethlehem.

Prior to 1952 Glosser sold scrap to Bethlehem on a brokerage basis, without limitation as to the area from which the scrap could be shipped. By 1952, however, brokerage orders which Glosser received from Bethlehem were limited to certain specified areas. Bethlehem paid Glosser $1.00 a ton more on brokerage scrap than it did on scrap shipped from its own yard. After protesting for some time that it should be permitted to ship brokerage scrap from its own yard and receive an additional $1.00 thereon, Bethlehem acceded to the request in 1956 and also removed some of the limitations on the areas from which Glosser could ship scrap to it.

Buffalo Brokers and Dealers

19. Bethlehem buys from two brokers and dealers in the Buffalo, New York area. They are Morrison & Risman Co., Inc., and Hurwitz Brothers Iron & Metal Co. Both of these companies supply substantial quantities of scrap to Bethlehem, particularly to its Lackawanna, New York plant. Scrap supplied to Bethlehem by these two companies originates to a large extent in their own yards and is sold on a dealer basis. They also supply some scrap to Bethlehem on a brokerage basis. However, in filling brokerage orders they are permitted to obtain the scrap only from the "Local Buffalo, N.Y. Area" and are not permitted to obtain it from other brokers on a subbrokerage basis.[16]

Baltimore Brokers and Dealers
H. Klaff & Co., Inc.

20. H. Klaff is one of four brokers and dealers in the Baltimore, Maryland area, which sell or have sold to Bethlehem. Klaff operates a yard in Baltimore, and also does a brokerage business in ferrous scrap. About half of the scrap sold by it originates in its own yard and the balance is brokerage scrap. Klaff has been a substantial supplier to Bethlehem for a number of years. In 1947 it was the fifth largest supplier to Bethlehem's Sparrows Point plant. At one time

[16] The last finding is based on two purchase orders which are in evidence. Counsel for Bethlehem suggest that these orders are not typical, but are limited to the period of the Korean War when price controls were in effect. However, there is no countervailing evidence in the record by Bethlehem to support this assertion.

it sold Bethlehem both brokerage and yard scrap. However, since 1949 it has not sold Bethlehem any yard scrap. Such scrap has been sold largely to Luria which, particularly since 1952, has sold the bulk of such scrap to Bethlehem, mainly for Sparrows Point.

It is somewhat difficult to determine from the record why Klaff sold its brokerage scrap directly to Bethlehem, but sold its yard scrap through another broker. The explanation by the Klaff witness was that during the period of OPA and OPS price controls his company could not receive a brokerage commission on its yard scrap, and therefore it had no objection to selling through another broker. This attitude, it may be noted, is somewhat at variance with that of a number of other broker-dealer witnesses who indicated a preference for dealing directly with consumers. It also fails to explain why Klaff stopped selling yard scrap to Bethlehem in 1949, when OPA controls were no longer in effect and before OPS controls had been set up.

Whatever the reason for selling its yard scrap to Luria, Klaff did an ever-increasing business with Luria so that by 1953 it was selling approximately 43% of its scrap to Luria, compared to 18% directly with Bethlehem. Of the scrap sold to Luria, approximately 84% was shipped to Bethlehem, mainly at Sparrows Point. The explanation given by the Klaff witness for the fact that his company chose Luria as the broker to handle the bulk of its yard scrap was:

> As far as we know Luria Brothers are the brokers for Bethlehem. They handle Bethlehem scrap, and we have never had any reason to try to get anyone else, or ship through anyone else.

While Klaff, unlike a number of other brokers and dealers, has continued to do a substantial business with Bethlehem on a brokerage basis, an even larger proportion of its scrap now reaches Bethlehem through Luria as broker.

United Iron & Metal Co., Inc.

21. United Iron & Metal is a dealer operating two scrap yards in Baltimore. United was a direct supplier of scrap to Bethlehem from about 1922 to 1951, mainly to the Sparrows Point plant. From 1947 to 1951 United ranked among the five largest suppliers to the Sparrows Point plant. In the years 1948, 1949 and 1950 United was either the largest or second largest supplier to Sparrows Point. United sold to Bethlehem under a series of long-term contracts, covering its entire production of certain grades of scrap at prices based on quotations in the trade publication, "Iron Age." The last of these contracts was for a term of 3 years, from April 16, 1948, to April 16, 1951.

When the last contract expired, negotiations for a new contract were undertaken with A. R. Thurn, who had just become Bethlehem's chief scrap purchasing official. United continued to ship scrap to Bethle-

hem for a number of months while negotiations were pending. In the latter part of 1951 negotiations were terminated and United ceased selling scrap to Bethlehem. From that point forward Luria replaced Bethlehem as the principal purchaser of United's scrap. The great preponderance of the scrap purchased by Luria was, however, resold to Bethlehem at Sparrows Point. Thus, the principal change which occurred was that instead of selling the bulk of its scrap to Bethlehem directly, United sold such scrap to Luria but delivered it to Sparrows Point.[17]

The exact circumstances under which the change, from direct dealing between United and Bethlehem to indirect dealing through Luria, occurred cannot be determined because of the confused and unsatisfactory testimony of the principal witness on this point.[18] However, the examiner is satisfied from the record as a whole that such change is causally related to the over-all change which was occurring in Bethlehem's dealings with a number of other brokers and dealers, and with Luria.

Cambridge Iron & Metal Co., Inc.

22. Cambridge Iron & Metal is a broker and dealer which operates two scrap yards in Baltimore. Cambridge has been a supplier of

[17] In 1950, the first year for which there are figures in evidence, United sold 73% of its scrap to Bethlehem. While it sold about 8% of its scrap to Luria, none of this was delivered to Sparrows Point. In 1951, the year during which its direct sales to Bethlehem came to an end, United's sales to Bethlehem were 67% and to Luria 11%. Between 1952 and 1955 United sold over 90% of its scrap to Luria, except in 1954 when such sales were 84%. In each of these years over 90% of the scrap sold to Luria was resold by Luria to Bethlehem and delivered at Sparrows Point, except for the first year of the new dispensation when about two-thirds of the scrap was resold to Bethlehem. In terms of United's total scrap sales, over 80% of its scrap was delivered to Bethlehem at Sparrows Point after the end of direct dealings, except for the first year, 1952, when about 60% was so delivered.

[18] The principal witness was Jacob S. Shapiro, United's founder and president, who was called as a witness in support of the complaint. Shapiro's testimony as to why he and Thurn couldn't agree on a new contract was thoroughly confused and contradictory. Thus he testified that price differences were a factor, and later that they weren't a factor because OPS controls were in effect; that no complaint had been made about his performance under the old contract, and then that complaints were made; that the length of the term of renewal was not a factor, although correspondence between them indicates the matter was discussed. Shapiro's final explanation of why he and Thurn couldn't agree was: "He said I won't give you no contract. I am against giving you a contract. That's all he would say."

Shapiro's testimony as to how his company switched its business to Luria (upon whom his company was then relying for over 90% of its sales) lacked the ring of verisimilitude. He insisted that he had taken the initiative in going to Ralph Ablon, of Luria, to urge Luria to handle his scrap; that Ablon at first refused because United had been doing business directly with Bethlehem but generously promised to "see what I can do"; and that Ablon finally agreed to handle the scrap since it wouldn't make any difference to United inasmuch as it couldn't collect a commission on its yard scrap under OPS regulations, and because Luria had other outlets for United's scrap, thus decreasing its reliance on Bethlehem. According to Shapiro this promise to afford his company other outlets "worked out very satisfactorily". Despite Shapiro's efforts to rationalize the change as affording his company greater flexibility, the fact is that its reliance on Bethlehem has not basically decreased. An even greater proportion of its scrap continues to be shipped to Bethlehem at Sparrows Point than before, except that Luria now collects a commission.

scrap to Bethlehem at Sparrows Point since 1927. For several years after 1949 it was among the five largest suppliers to Bethlehem's Sparrows Point plant. At one time Cambridge supplied Bethlehem with scrap from its yards and also with scrap which it obtained on a brokerage basis from other dealers, particularly in Washington, D.C., and Virginia. However, in more recent years it has no longer sold its brokerage scrap directly to Bethlehem, but has been selling it to Luria which, in turn, has resold substantial portions thereof to Bethlehem at Sparrows Point. Orders which Cambridge receives from Bethlehem now restrict it to the shipment of scrap from its own yards.

The record indicates that while the proportion of Cambridge's direct sales to Bethlehem has declined after 1951, that sold to Luria has increased correspondingly in the same period, as has the proportion of Cambridge's scrap shipped to Bethlehem through Luria. Thus, it appears that Cambridge's direct shipments to Bethlehem, which represented 64% and 72% of its total sales in the years 1950 and 1951, respectively, declined in the years 1952–1956 to 58%, 52%, 26%, 36%, and 37%, respectively. Its sales to Luria, which were 14% and 7% of its total sales in 1950 and 1951, respectively, increased in the years 1952–1956 to 25%, 36%, 45%, 33% and 40%. Similarly, while only 0.5% of its total scrap sales were shipped to Bethlehem through Luria as broker in 1950, and only 1.8% in 1951, the percentage thereof increased to 17% in 1952, 23% in 1953, and 22% in 1954, declining somewhat in the years 1955 and 1956 to 16% and 13%, respectively.

When direct and indirect sales are added together, it becomes apparent that there has been no major change in the proportion of Cambridge's scrap reaching Bethlehem. The principal change which has occurred is that since 1952 a substantial portion of the scrap handled by Cambridge has been sold to Bethlehem through Luria on a sub-brokerage basis. The circumstances under which this change occurred cannot be determined precisely because of the nebulous state of the testimony pertaining thereto.[19] However, the examiner is satisfied from the record as a whole that the sale by Cambridge of substantial quantities of its brokerage scrap to Luria for shipment to Bethlehem was part of the same over-all change which was occurring in Bethlehem's relations with other brokers and dealers and with Luria.

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[19] The only witness to testify concerning the matter was Cambridge's president, Isaac Shapiro. Shapiro's testimony was characterized by the same evasiveness and obfuscation as that of a number of similar witnesses who testified, at the instance of counsel supporting the complaint, regarding the circumstances of their selling to Luria instead of directly to Bethlehem. One explanation given by the witness for selling to Luria was that it was "easier to do business" with Luria than with Bethlehem because the latter had "a certain time to buy and they have a price." Yet the witness, in later discussing the manner of negotiating with Luria on price, testified that they had to wait until Bethlehem fixed the price before Luria could quote him a price, since the price which

The Boston Metals Company

23. Boston Metals is a substantial scrap dealer and shipwrecker in Baltimore. Most of the scrap which it handles comes from the dismantling of ships which it purchases. However, it also handles scrap of railroad, industrial and dealer origin. Boston Metals has been a substantial supplier to Bethlehem, particularly to the Sparrows Point plant. In 1950 it was the second largest supplier to the Sparrows Point plant, its sales to Bethlehem being over $1,000,000. In 1951 its sales to Bethlehem declined to approximately $850,000. Thereafter its sales to Bethlehem declined sharply, reaching a low of approximately $160,000 in 1954. While there was an increase to $280,000 in 1955, this consisted of the sale of a single lot of obsolete ships which Boston Metals had broken up in Buffalo and sold to Bethlehem's Lackawanna plant. In 1956 it made no sales to Bethlehem.

The precise reason for the change in relations with Bethlehem is difficult to determine in view of the reluctance of the Boston Metals witness who testified to reveal the circumstances thereof. It seems probable that in the early years, a decline in Boston Metals' over-all business, due to the fact that there was little scrapping of ships during the Korean War, was a factor in its not selling more to Bethlehem. Thus, Boston Metals' total sales declined from about $1,500,000 in 1950 to $460,000 in 1953. However, its sales almost doubled in 1954 and were around a quarter of a million dollars in 1955, and were running at an even greater rate in 1956. Yet its sales to Bethlehem continued to decline and even ceased in 1956.

The Boston Metals witness indicated that whereas in former years Bethlehem customarily approached his company and negotiated for its scrap, it had not done so in recent years. The witness was most reluctant to reveal why his company had not sought to sell to Bethlehem in view of the fact that, as he and others testified, Sparrows Point was the natural shipping point for scrap from the area due to freight rates. He sought to attribute his inability to get together with Bethlehem to "a little pride, and a little temperament, both ways." However, his testimony reveals that his company had received reports of a change in Bethlehem's buying policy and that he was unwilling to sell through Luria as a broker, but preferred to sell directly. Appar-

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Luria paid was "match[ed] up" with the price it received from Bethlehem. Another reason given by the witness for selling to Luria was that "they got a market, a spread out market for different places." Yet in most years since 1952 from one-half to two-thirds of the scrap sold to Luria by Cambridge has been delivered to Bethlehem at Sparrows Point rather than to any "spread out market" in "different places". The sales to Luria have been accomplished at the expense of a decline in Cambridge's direct sales to Bethlehem which, in turn, has been largely counterbalanced by Cambridge's indirect sales of brokerage scrap to Bethlehem through Luria, on which the latter has received a commission not available to Cambridge.

ently the factor which enabled Boston Metals to maintain its "pride" in not approaching Bethlehem directly or selling to it through a broker was the fact that, after the lifting of export controls in 1954, it began shipping large quantities of scrap abroad.

Change in Relations with Direct Suppliers
Bethlehem's Elizabethport Yard

24. In addition to the changes which occurred in its relations with dealer-broker suppliers in the direction of favoring Luria with its business, counsel supporting the complaint also rely on changes which occurred in Bethlehem's relations with a number of industrial fabricators, railroads and other direct suppliers as further evidence to support an inference of the existence of an exclusive brokerage arrangement between Bethlehem and Luria. One of these changes involves a scrap preparation yard, which Bethlehem operated for many years at Elizabethport in northern New Jersey. The yard was used to prepare scrap generated by Bethlehem's shipyard in nearby Staten Island and by a number of industrial fabricators in the northern New Jersey area, to which Bethlehem sold steel and from which it purchased scrap generated by their fabricating operations. In April 1952, Bethlehem closed down its Elizabethport yard and arranged with the industrial fabricators to have their scrap sold to either Luria or Schiavone-Bonomo. It assigned certain of the fabricator accounts to Luria and others to Schiavone-Bonomo. It was understood that the scrap would continue to come to Bethlehem, except that it would be handled by one or the other of the two designated firms, which would prepare it and ship it to Bethlehem.

In the case of Schiavone-Bonomo, the scrap was prepared in its own yards in northern New Jersey or in those of certain dealers with which it regularly dealt. Respondent Luria, however, had no scrap yards in the area and the scrap of the accounts which were assigned to it was shipped to yard dealers in the area designated by it to prepare the scrap and later ship it to Bethlehem. In the resale of the scrap to Bethlehem, Schiavone-Bonomo received no commission, irrespective of whether the scrap was prepared in its own yards or in those of another dealer. In the case of Luria, it received a commission on all the scrap which it resold to Bethlehem.

Rheem Manufacturing Company

25. Rheem Manufacturing Company is an industrial fabricator with plants in Linden and Burlington, New Jersey; Sparrows Point, Maryland; Chicago, Illinois; New Orleans, Louisiana; Houston, Texas; and Newark, South Gate, Richmond and San Pablo, California. Its plant at Linden, New Jersey in the northern New Jersey area was one of the

accounts which Bethlehem had turned over to Luria in April 1952, in connection with the closing down of its Elizabethport yard. At that time the scrap at Rheem's Sparrows Point plant was being sold directly to Bethlehem or to H. Klaff, the Balitmore broker-dealer, for resale to Bethlehem. Scrap from Rheem's Richmond, California plant was sold directly to Bethlehem Pacific. The scrap generated at most of the remaining plants was sold to various local scrap dealers or brokers in the area of the various plants.

Luria had been soliciting Rheem's scrap for a number of years, without apparent success until 1952. Shortly after the arrangement pursuant to which Bethlehem released the scrap from Rheem's Linden plant to Luria, a conference was arranged among Bethlehem, Rheem and Luria as a result of which Luria was given the opportunity, on a trial basis, to handle the scrap from all the other Rheem plants, except for Sparrows Point. At the time of this arrangement Bethlehem owned approximately 25% of Rheem's common stock and was a substantial supplier of steel to certain of its plants. In January 1953 Bethlehem advised Rheem that it wished to have Rheem's Sparrows Point plant included in the arrangement with Luria. Thereafter Luria handled the scrap from all of the Rheem plants pursuant to a series of 3-month oral contracts.

In connection with the turning over of the Sparrows Point plant of Rheem to Luria, the record reveals that Thurn of Bethlehem instructed his scrap buyer by memorandum dated January 19, 1953, to "write Pappas [Rheem's director of purchases] that Sp. Pt. scrap will be included in over-all scrap deal with Luria." On January 22, 1953, a letter was addressed by Bethlehem's scrap buyer to Rheem, attention of Papas, as follows:

> In order to complete your records and ours, we would like to confirm arrangements made through Luria Brothers & Co., Inc., whereby we will continue to receive your total production of No. 1 bundles and wheelabrator mill scale originating from your Sparrows Point, Md. plant.
>
> In completing these arrangements, all of the production scrap which you are shipping to us from your various operations is now being handled through Luria Brothers & Co., Inc.
>
> *We thought it advisable to include the Sparrows Point tonnage in the over-all scrap arrangements, and we presume that this meets with your approval.* [Emphasis supplied.]

Since Luria had no yards in the vicinity of the various Rheem plants, it arranged to sell the scrap to local yard dealers for preparation. In the areas where the Rheem plants had been suppliers of Bethlehem (such as the Linden and Sparrows Point plants) or of Bethlehem Pacific Coast (such as the Richmond, California plant), the prepared scrap or an equivalent tonnage, was resold to Luria by the

dealers for delivery to Bethlehem or Bethlehem Pacific. Luria received its usual commission from Bethlehem on its resale of the scrap to the latter. Where the dealers had not been regular suppliers of the Bethlehem companies in areas remote from Bethlehem's plants they were, nevertheless, expected to resell to Luria a tonnage equivalent to that of the Rheem scrap which they had received through Luria. In 1953, the first full year of the arrangement between Luria and Rheem, Luria purchased over 50,000 tons of scrap from Rheem, substantial portions of which continued to be handled and prepared by local dealers.

Generally speaking, the yard dealers whom Luria used for the preparation of the Rheem scrap were the same dealers to whom Rheem had formerly sold the scrap from various of its plants directly. Rheem had requested Luria at the time of making the arrangement with it to use such dealers wherever possible. Rheem communicated with a number of the dealers and advised them they would no longer be able to purchase its scrap directly, but would have to handle it through Luria. One of the dealers, Southern Scrap Material Co., Ltd., of New Orleans, objected to the change. However, George Papas, Rheem's director of purchases, advised Southern Scrap that Bethlehem owned a percentage of Rheem's stock and had suggested to Rheem that it might be advantageous if Luria could handle the material from its plants since Luria was in a position to return an equivalent tonnage to Bethlehem in other parts of the country. Papas further indicated to Southern Scrap that while he didn't care too much about the arrangement, there wasn't much he could do about the change in policy, and that Southern Scrap would have to live with it.[20]

The examiner is convinced, and finds, that Luria was chosen to handle the Rheem scrap because of its relationship with Bethlehem, and that Rheem made the arrangement with Luria because of Bethlehem's advice and urging. Respondents contend that the decision to have Luria handle the Rheem scrap was Rheem's own decision, arising out of its dissatisfaction with the way its existing corps of dealers was handling the scrap, and that Bethlehem's only participation was merely that of "putting in a friendly word for Luria with Papas". However, based on the record as a whole, the examiner is satisfied that

[20] The above findings concerning the advice given Southern Scrap by Papas are based on the uncontradicted, plausible and credited testimony of Stanley M. Diefenthal, a Southern Scrap official, relating a conversation with Papas. Luria contends that if the statement was made by Papas, it was made for the purpose of "mollifying" Diefenthal. The examiner finds that the statement accords too much with the realities of the situation to be regarded as mere idle gossip by Papas. Bethlehem has also moved to strike the statement as hearsay. However, in view of the close relationship between the two companies and the corroboration contained in Bethlehem's letter of January 22, 1953, to Papas, the examiner regards the motion as lacking in merit.

Bethlehem's role was more than that of a friendly bystander. While it may be, as respondents point out, that Rheem was an independent company, nevertheless Bethlehem owned a substantial part of its stock and was a major source of its steel supply. Considering that the change occurred during the Korean conflict when there was a critical shortage of steel, it would not be surprising if Bethlehem were able to bring considerable pressure to bear on Rheem. Any doubt as to whether it did is set at rest by its letter of January 22, 1953, which directed Rheem, albeit politely, to complete the "over-all scrap arrangements" with Luria by having it handle the Sparrows Point scrap.[21] While it may be that Rheem was experiencing some dissatisfaction with its existing scrap outlets, it is significant that it was sufficiently satisfied with them to request Luria to continue to use substantially the same yards to prepare the scrap. Furthermore, even if it be assumed that Rheem's dissatisfaction with existing outlets would have caused it ultimately to make new arrangements, the record is clear that the arrangement which it did make was made when and as it was, and with whom it was, because of Bethlehem.

Respondents also argue that Bethlehem would have no interest in any over-all arrangement between Rheem and Luria since it only received scrap from some of Rheem's plants. However, the scrap from those plants constituted a major portion of the Rheem scrap. Furthermore, Bethlehem would also have an indirect interest in the remainder of the Rheem scrap. Since Luria had other customers more conveniently located to certain of Rheem's plants it could ship the scrap from such plants to those customers, thereby lessening its call on scrap from areas closer to Bethlehem for shipment to such other customers, and thus making more scrap available for Beth-

[21] Thurn gave the tongue-in-cheek explanation that the reference, in his memorandum of January 19 to his scrap buyer, to an "over-all scrap deal with Luria" (which is again referred to in the letter of January 22), did not "mean what you think it means", but referred to a deal which Rheem, rather than Bethlehem, had made, and that he was merely stepping aside as a "favor" to Rheem. However, the letter of January 22 obviously refers to the arrangement as one which Bethlehem had made, informing Rheem that: "We [i.e. Bethlehem] thought it advisable to include the Sparrows Point tonnage" in the arrangement. Respondent Bethlehem cites the testimony of Papas to the effect that he alone made the decision to sell to Luria, and argues that he is "the one person competent to know his own mind". However, Papas' testimony also indicates that he did discuss the matter with Thurn and received the latter's advice. While Papas sought to create the impression that Thurn's advice was given during a casual visit when Thurn just "dropped over", Thurn's own testimony indicates that at Luria's request he set up a conference with Papas which was attended by Ralph Ablon of Luria. While claiming that the ultimate decision was Papas', Thurn conceded that he told Papas in substance:

"These people [Luria] are doing a good job for us. We have come to rely on them and depend on them and know that they know the scrap business. Why don't you give them a trial?" [R. 1966.]

Considering the relationship which existed between Rheem and Bethlehem, this alone would be sufficient to assure favorable consideration for Luria, assuming the advice were as mild as indicated by Thurn and assuming no other pressure were brought to bear.

lehem. While it may also be, as respondents argue, that the total amount of Rheem scrap was not large in relation to Bethlehem's over-all scrap needs, it was sufficiently large to be of interest to both Bethlehem and Luria.

Spicer Manufacturing Division of Dana Corporation

26. Mayer-Pollack, a scrap dealer and broker in Pottstown, Pennsylvania, had since 1920 purchased all of the scrap generated by the Pottstown plant of Spicer Manufacturing Division of Dana Corporation. For some years prior to May 1952 the bulk of the scrap was resold by Pollack to E. & G. Brooke Company at Birdsboro, Pennsylvania, which was later acquired by CF&I. Around 1951 or 1952 Pollack also resold some of the scrap to Bethlehem, which was a supplier of steel to Spicer. Sometime in 1951 Pollack was approached by Luria and advised that Spicer wished Luria to handle its scrap due to the fact that Luria had done a "favor" for Dana's Toledo plant, apparently by supplying it with some new steel. The Luria representative advised Pollack that in view of the friendly business relations between Luria and Pollack in the past, Luria would not insist on obtaining the scrap directly from Spicer, and that if Pollack would agree to supply Luria with a tonnage equivalent to that which it was obtaining from Spicer, Luria would not disturb Pollack's existing relationship with Spicer at Pottstown. Although Pollack did not verify this information with Spicer, it agreed to the proposal of the Luria representative.

For a period of time thereafter Pollack sold to Luria tonnages equivalent to the scrap which it received from Spicer. The actual Spicer scrap was sold by Pollack partly to E. & G. Brooke and partly to Bethlehem. However, in May 1952, after E. & G. Brooke had been acquired by CF&I, Pollack ceased selling the Spicer scrap to Brooke directly but began shipping it through Luria. It also ceased selling the Spicer scrap directly to Bethlehem, and began selling equivalent tonnages to Luria for shipment to Bethlehem. Sales to Luria for shipment to Bethlehem ceased in 1955.

The Spicer scrap situation is cited by counsel supporting the complaint as another instance where an industrial fabricator gave favored treatment to Luria in the handling of its scrap, due to pressure by, or influence from, Bethlehem. There is not, however, sufficient evidence in the record to support counsel's position in this regard.[22] In fact, at another point in their proposed findings, coun-

[22] Counsel supporting the complaint cite the testimony of the Pollack witness that "in between there somewhere the Bethlehem Steel Company came into the picture directly to Spicer at the time of OPS", and "approached Spicer for their scrap" (R. 5020). It is not clear from the witness' testimony that this occurred prior to the time when Luria had

sel supporting the complaint contend that Dana agreed to sell its scrap to Luria because the latter sold it new steel, rather than because Bethlehem had sold it steel.[23] However, while this incident does not support the point for which it is cited, viz, pressure on industrial fabricators by Bethlehem in favor of Luria, the fact that Pollack later began shipping to Bethlehem through Luria as broker, rather than directly, is further evidence of Luria's position as Bethlehem's broker.

The Budd Company

27. The Budd Company is a manufacturer of steel products and operates a number of plants. The evidence offered by counsel supporting the complaint relates mainly to the plant located in the Hunting Park section of Philadelphia. This plant generates large quantities of very desirable scrap material, which it bales into No. 1 Bundles. For a number of years a substantial part of the scrap from the Hunting Park plant was sold to Bethlehem (the principal supplier of steel to Budd), pursuant to a long-term contract which was subject to cancellation on 30 days' notice. The plant also sold large quantities of scrap to Luria. In 1950 21%, out of the 151,000 tons of scrap sold by the Hunting Park plant, was sold to Bethlehem directly and 65% was sold to Luria.

In 1951 a change occurred in Budd's relations with Bethlehem. Instead of shipping scrap intended for Bethlehem directly to that company, on scrap allocated pursuant to Government orders Budd began to ship through Luria as broker. In explaining the decision to designate Luria as broker for Bethlehem, the Budd official in charge of scrap sales testified:

> * * * I think it was almost general knowledge that the Bethlehem Steel Company were changing their policy in respect to buying direct, as they had at one time attempted to buy all of their material direct, and were buying scrap through brokers, and that Luria Brothers Company in Philadelphia was probably the one broker they would choose to do business with. [R. 5204.]

No objection to Luria's designation was received from Bethlehem, and Budd sold additional quantities of scrap to Luria, with instructions that it be shipped to Bethlehem and to other steel mills which were supplying Budd with steel. This was in accordance with Budd policy that "steel mills that did supply us with steel would be assured of a fair treatment in regard to being able to buy our scrap in times of short supply." In 1951 Luria shipped to Bethlehem approximately

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requested Pollack to sell it the Spicer scrap or tonnage equivalent thereto. Furthermore, the Pollack witness' testimony with regard to alleged pressure on Spicer by Bethlehem appears to be based on what he understood to be a general industry situation, rather than any specific and direct knowledge that this had actually been done by Bethlehem.

[23] Proposed Findings of counsel supporting the complaint, p. 198, par. 59–61.

17,000 tons, or 23% of the scrap which it purchased from Budd, the balance being sold mainly to other steel mills, including respondents Lukens, Central, Phoenix, Roebling and CF&I (Claymont). Budd also sold approximately 17,000 tons of scrap directly to Bethlehem in 1951. Whether these sales were all made before Budd began shipping through Luria does not appear from the record, but a substantial portion apparently was.

In 1952 Budd advised Bethlehem that the long-term contract pursuant to which it had sold scrap to Bethlehem was being terminated. Thereafter all of the Budd scrap which was shipped to Bethlehem was sold through Luria. In the years 1952–1955, respectively, Budd sold 85%, 80%, 81% and 78% of its scrap to Luria. The latter, in turn, shipped to Bethlehem 26%, 41%, 50% and 53%, respectively, of the scrap sold to it by Budd. The balance was shipped to other steel mill consumers, including the respondents referred to above.

There is considerable controversy as to whether the decision by Budd to sell the great bulk of its scrap to Luria and to cease selling directly to Bethlehem was entirely its own decision or whether it was influenced by Bethlehem. Respondent Bethlehem argues that the decision was entirely Budd's, and cites the testimony of the latter's scrap official to the effect that the decision to designate Luria as broker on scrap for Bethlehem was his own decision and that he had received no instructions from Bethlehem. On the other hand, the witness also indicated that he had discussed with a Luria representative whether Luria "would be able to sell Budd scrap to Bethlehem" and that the Luria representative, after checking with Bethlehem, responded in the affirmative.

It is unnecessary to determine whether Bethlehem played any direct or open role in Budd's decision to sell to it through Luria. Even if it be assumed that Budd, for reasons of its own, was considering a change in policy so as to sell entirely through brokers, the examiner is convinced and finds that it took action when and as it did only after it was satisfied that that action was in accord with the wishes of its principal steel supplier. It taxes credulity to the utmost to believe that Budd would have taken action in conflict with the policy or wishes of that supplier during a period of critical steel shortage. The testimony of the Budd representative attests to his keen awareness of the necessity of keeping his company's steel suppliers happy. It is also clear from the testimony of that official, despite some efforts to minimize Bethlehem's role, that insofar as the latter was concerned, the

change by Budd merely gave recognition to the change in Bethlehem's policy.[24]

American Car & Foundry Co.

28. American Car & Foundry Co., now known as ACF Industries, Inc., is a fabricator of steel products. For a number of years prior to 1951 ACF had an arrangement with Bethlehem to sell substantially all of the scrap production of its Berwick and Milton, Pennsylvania plants to Bethlehem, at prices geared to the price quotations appearing in "Iron Age". At that time Bethlehem was the principal supplier of steel to the Berwick plant.

During the summer of 1951 a representative of Luria, who had been selling some special scrap to ACF for use in its own foundries, approached ACF and inquired whether it would have any objection to Luria's acting as broker for the purchase and sale of ACF scrap to Bethlehem. The Luria representative indicated that his company was endeavoring to make an arrangement with Bethlehem to act as Bethlehem's broker, and that Bethlehem was agreeable to Luria's acting as broker on purchases of scrap from ACF's Milton and Berwick plants, if the latter were agreeable. The ACF representative inquired whether it would cost his company anything in the way of brokerage and was assured by Luria's representative that brokerage would be paid by Bethlehem and that ACF would get exactly the same return from the scrap as it had under the arrangement with Bethlehem.

Following this discussion a luncheon was arranged by the Luria representative at which the Bethlehem scrap buyer and the ACF official in charge of selling scrap were present. The Bethlehem representative inquired whether it was agreeable to ACF for Luria to act as broker on sales of scrap to Bethlehem and the ACF representative indicated that his company would be willing, provided that it wasn't going to cost ACF anything in the way of brokerage. Upon receiving assurance that it would not, and that the proposed change was acceptable to Bethlehem, toward which as its principal supplier of steel ACF "felt we had an obligation", ACF agreed to the change in existing arrangements for the reason, as its representative testified:

> We were concerned with Bethlehem getting our scrap, and that was being accomplished by the new arrangements, and we were not being penalized in the matter, brokerage or otherwise, by the change in dealing. [R. 3899.]

[24] Bethlehem has moved to strike as hearsay the testimony of the Budd official previously quoted, to the effect that it was "general knowledge" Bethlehem was "changing their policy". In the opinion of the examiner the motion is without merit. The testimony is admissible minimally as indicating the reason, motive or basis for Budd taking action (*Lawlor* v. *Loewe*, 235 U.S. 522). It is also admissible as reflecting the practical construction placed by the industry on the relationship between Luria and Bethlehem and, together with other corroborative evidence, as evidence of the relationship itself.

Beginning around the middle of September 1951, ACF began receiving purchase orders from Luria covering the scrap generated by ACF's Berwick and Milton plants. The scrap covered most of the production of those plants and the orders provided for shipment of the scrap to Bethlehem under the same terms and conditions as the previous orders which had been issued directly by Bethlehem. During the ensuing years ACF continued to sell scrap from these two plants to Luria for delivery to Bethlehem. The price arrangement was substantially the same as it had been with Bethlehem, and the latter paid Luria a commission on the ACF scrap.[25]

Respondents Luria and Bethlehem suggest in their proposed findings that the change in relations between Bethlehem and ACF was an outgrowth of dissatisfaction on the part of both Bethlehem and ACF with the former arrangement, and that Bethlehem accepted Luria's substitution with reluctance rather than lose the ACF scrap. The testimony cited by respondents in support of their contention is so implausible and incredible that the examiner can place no reliance thereon.[26] Even assuming there were differences between the two companies it seems clear that they were not the basic reason for the change. The examiner is satisfied that the change lies more deeply rooted in the change which was taking place during this period in the relations between Luria and Bethlehem, and that the ACF incident is merely another link in that change.

Railroad Scrap

29. Up to about the time of the Korean conflict, Bethlehem had purchased railroad scrap directly from a number of Eastern railroads, including the Pennsylvania Railroad, the Reading Company, the New York Central, the Baltimore & Ohio, the Central of New Jersey and

[25] The above findings are based primarily on the credited testimony of Thomas F. Wilson, who was purchasing agent of ACF during the events at issue. At the time of his testimony Wilson was retired from the company and was a wholly disinterested witness.

[26] The witnesses upon whom respondents primarily rely are Melvin C. Cressman, Bethlehem's scrap buyer, and Frederick W. Toohey, a scrap trader for Luria, both of whom attended the conference with Wilson of ACF. Toohey's testimony regarding this incident was particularly implausible and contradictory. Thus he first testified that he approached Wilson of ACF "on a competitive basis to take the scrap away from Bethlehem with an intention of selling it elsewhere" (R. 6586). Later he claimed that he was seeking to buy the scrap *for* Bethlehem and thought he could render better service to both Bethlehem and ACF (R. 6591–6593). Cressman of Bethlehem gave a highly exaggerated account of the differences between the two companies, particularly over the weights of the scrap shipped by ACF. However, the credited testimony of ACF's Wilson, which was corroborated by a number of other witnesses, indicates that these were normal differences in the industry which go on all the time, and that there was no change in the situation after Luria's intervention. It may be noted that in other respects Cressman's testimony largely corroborates that of Wilson to the effect that at the meeting with Cressman and Toohey, Wilson stated he was willing to cancel the contract with Bethlehem "providing Bethlehem Steel Company had no objection" and that Wilson was concerned because Bethlehem was "a substantial supplier to American Car and Foundry on steel", to which Cressman replied that his company had no objection. It seems clear from all the testimony that the impetus for the change came entirely from Bethlehem and Luria, and was not one which ACF particularly wished.

the Western Maryland. The Pennsylvania Railroad, in particular, was a substantial supplier of scrap to Bethlehem on a direct basis. For a number of years prior to 1950 the Pennsylvania was among the five largest suppliers to Bethlehem's Lackawanna, Steelton and Johnstown plants.

Bethlehem's purchases of scrap from railroads were usually the result of being the highest bidder in response to invitations to bid sent out by the railroads. However, during 1950 Bethlehem discontinued the practice of bidding directly on railroad scrap, except for obsolete locomotives or cars which it purchased for use in kind in its own plant operations and not as scrap. It also continued to purchase occasionally on a direct basis, although not in response to invitations to bid, railroad scrap resulting from train wrecks where the railroad did not have time to issue invitations to bid and wished to dispose of the resulting scrap as soon as possible to some consumer located along its lines. Except for these two items, the bulk of the railroad scrap purchased by Bethlehem since about 1950 has been obtained from Luria, which submitted bids in its own name and was the successful bidder in many instances.

Respondents contend that Bethlehem discontinued the direct purchase of railroad scrap because it found that the "professionals" (presumably brokers and dealers) were better qualified to bid on scrap than it was, but that it had no agreement or understanding with Luria whereby the latter would bid on railroad scrap for Bethlehem. There is, however, documentary evidence in the record, in the form of correspondence between the parties, indicating that Bethlehem did authorize Luria to bid for it on railroad scrap, and agreed to pay Luria $1.00 a ton commission over and above what Luria paid for the scrap. It is urged by respondents that this arrangement was limited to obsolete railroad cars and did not cover railroad scrap generally. The examiner does not so interpret the correspondence between the parties which, at least in one instance, refers to an understanding with respect to "railroad scrap".[27]

Aside from the documentary evidence, however, and even assuming that such evidence relates only to railroad cars, it seems clear that the purchase of almost all of its requirements of railroad scrap from Luria was not mere happenstance, but was the result of a definite policy decision on the part of Bethlehem. This policy was so obvious that in recognition thereof several of the railroads designated Luria

[27] Luria refers to a ruling by the examiner that the evidence in question (CX 472–483) was not sufficient by itself to establish an exclusive agreement with Luria, regarding the purchase of railroad scrap. However, such evidence together with other substantial evidence in the record is now deemed sufficient to support the position of counsel supporting the complaint.

as broker on scrap allocated to Bethlehem during the Korean conflict. Thus, the Pennsylvania Railroad purchasing agent testified that he had designated Luria, rather than others, as broker on almost all scrap allocated to Bethlehem because, based on prior dealings: "We could say that Luria was buying for Bethlehem" (R. 5772).

It is urged that Bethlehem bought the bulk of its railroad scrap from Luria since 1950 not because of any agreement, but because no one else offered it railroad scrap (R. 1957). However, it seems clear that the reason no one else was offering railroad scrap to Bethlehem was because the latter was only buying it from Luria. Thus L. Cohen of Wilkes-Barre, which had formerly bid on railroad scrap for Bethlehem, was advised that Bethlehem would not purchase from Cohen scrap which it did not actually own (R. 5514). Respondents contend that Luria likewise had no assurance that Bethlehem would purchase from it railroad scrap on which it was bidding. However, it seems evident that Luria would not have bid on the substantial quantities of railroad scrap which it did unless it had assurance from Bethlehem that it had a home for substantial portions thereof with Bethlehem. Bethlehem's scrap purchasing official, Thurn, acknowledged in his testimony that Luria did not "buy [railroad] scrap for speculative account, as a regular thing" (R. 1960). While it may be that Luria did not have a firm, express agreement with Bethlehem with respect to each purchase of railroad scrap, it knew that in the normal course of events, it could expect Bethlehem to take specified quantities of such scrap off its hands at cost, plus $1.00 commission. Bethlehem likewise ceased to bid on such scrap because it knew that it could regularly expect to buy such scrap from Luria on this basis. It is clear from the evidence as a whole that Bethlehem did not cease purchasing railroad scrap directly because it wished to leave it to the "professionals" generally, but because it had decided to leave it to a particular "professional", viz, Luria.

Concluding Findings.

30. Up to about 1950 Bethlehem purchased its scrap from a number of different scrap brokers and dealers, and from various direct suppliers such as industrial fabricators and railroads. Around 1950 a number of changes occurred in Bethlehem's scrap buying practices, the most noticeable of which involved its relations with its broker-dealer suppliers. These changes included the cessation of purchases from certain brokers and dealers, the placing of limitations on the areas or yards from which certain brokers and dealers could ship scrap to it, and a rapid expansion in its purchases from one of its broker-dealer suppliers, viz, respondent Luria. The increase in purchases from Luria was accompanied by various forms of favored treatment

toward Luria, including the payment of higher prices in some instances, and the granting of more liberal provisions with respect to areas of shipment. Various brokers and dealers who had formerly been direct shippers to Bethlehem were encouraged to sell their scrap through Luria for shipment to Bethlehem. As a result of these changes, somewhere between 1950 and 1953 Luria became Bethlehem's substantially exclusive broker.

31. One of the substantial brokers eliminated by Bethlehem in 1950 was Luria Steel & Trading Corporation (LS&T). After making several complaints about restrictions imposed upon it with respect to the areas or yards from which it was permitted to ship scrap to Bethlehem, and with regard to alleged price favoritism toward Luria, LS&T was advised by Bethlehem's Vice-President in March 1950 that Bethlehem had decided to favor Luria with its business and that LS&T could no longer look to it for any orders. Another broker, Commercial Steel & Chemical Corporation, was advised in 1951 by the Bethlehem official in charge of scrap purchases, that it should offer its scrap to Bethlehem through Luria, as Bethlehem had to rely heavily on Luria for its scrap supply and that there would be too much interference if more than one broker covered the same market for it.

32. A number of other brokers and dealers who had formerly sold scrap directly to Bethlehem began to ship all or part of their scrap to Bethlehem through Luria after 1950. Thus Harcon Corporation, a substantial New England broker, ceased selling to Bethlehem directly in October 1950, and began to sell large quantities of its scrap to Luria, part of which was resold to Bethlehem. Louis Cohen & Son, a Pennsylvania broker and dealer, was advised by Bethlehem's scrap purchasing official in 1952 that Bethlehem would no longer purchase scrap which Cohen did not own (i.e., brokerage scrap), and that Cohen would have to restrict its purchases for Bethlehem to the immediate area of its yards. A Baltimore dealer, United Iron & Metal Co., Inc., which had been a direct shipper to Bethlehem up to 1951, ceased selling to Bethlehem directly and began shipping through Luria. Another Baltimore broker-dealer, Cambridge Iron & Metal Co., Inc., was permitted to ship its yard scrap directly to Bethlehem, but was required to sell its brokerage scrap through Luria. A third Baltimore broker-dealer, H. Klaff & Co., Inc., while still permitted to ship brokerage scrap directly to Bethlehem, began shipping its yard scrap through Luria around 1949 or 1950 for the reason that: "As far as we know Luria Brothers are the brokers for Bethlehem".

The record contains evidence of a number of other instances similar to those related above in which brokers or dealers were either eliminated as suppliers to Bethlehem, or were required to ship their scrap

through Luria or, if permitted to ship directly, were not permitted to ship brokerage scrap. The few broker-dealers which still ship directly to Bethlehem are relatively small dealers with yards located in close proximity to one or another of Bethlehem's mills. They do not, with minor exceptions, sell it brokerage scrap. One of the few broker-dealers of any size which still ships directly to Bethlehem is Schiavone-Bonomo. However, this company is largely restricted to shipping scrap from its own yards and from those of certain dealers with which it is affiliated. It does not receive a broker's price from Bethlehem, as does Luria, irrespective of whether the scrap originates in its own yards or those of other dealers.

33. The change in Bethlehem's buying practices, insofar as the broker-dealer segment of suppliers is concerned, was also accompanied by certain changes in its dealings with direct suppliers, albeit not as extensively. One of the most significant of these involved its purchase of scrap from railroads. After 1950 Bethlehem ceased to bid on and purchase railroad scrap directly, with certain minor exceptions, and began to purchase substantially all of its requirements of railroad scrap from Luria. Generally speaking, Luria was paid the cost of the scrap, plus $1.00 commission. At least one former supplier of railroad scrap, L. Cohen & Son, was advised by Bethlehem that it did not wish Cohen to bid on such scrap as it would create competition with others bidding for Bethlehem. During the period of scrap allocations, at the time of the Korean conflict, a number of Eastern railroads designated Luria as broker on scrap allocated to Bethlehem because of their understanding that Luria was Bethlehem's broker.

Several industrial fabricators which had formerly sold their scrap directly to Bethlehem likewise began to ship their scrap to it through Luria beginning around 1951. The fabricators in question were all heavily dependent on Bethlehem for their steel supply. In one instance, that of Rheem Manufacturing Company, Bethlehem also had a 25%-stock interest in the company. In the case of Rheem and another of the fabricators, ACF Industries, Inc., it is clear that Bethlehem took an active part in having Luria designated as the broker to handle scrap destined for it. In the case of a third fabricator, the Budd Company, while it is not entirely clear that Bethlehem took the initiative in having Luria appointed to handle Budd's scrap, there is no doubt that Budd acted to choose Luria as broker on scrap destined for Bethlehem only after it was satisfied that it was acceptable to Bethlehem for its scrap to be sold through Luria, rather than directly.

34. The change which has come about in Bethlehem's scrap buying policy is graphically reflected in the statistical evidence of its scrap purchases between 1947 and 1954. Bethlehem's purchases from Luria,

which represented only 16.6% of its scrap purchases from broker-dealer sources in 1947, began increasing significantly in the 1949–1950 period when they rose to 32.6%–38.4%, and even more sharply in 1951 when they rose to 61.1%. This trend continued in the remaining years, and by 1953–1954 Bethlehem's purchases from Luria accounted for 81.2% and 80.9% respectively, of its purchases of scrap from broker-dealer sources. These sharp increases demonstrate concretely the change in Bethlehem's relations with other brokers and dealers which has been heretofore discussed.

While the increase in the proportion of Bethlehem's purchases from Luria is not quite as large in terms of its total scrap purchases, as it is when measured in terms of its purchases from brokers and dealers, it is nevertheless substantial. Thus while Luria's share of Bethlehem's total scrap purchases was only 15.4% in 1947, it increased to 46.6% by 1951 and to 64.0% in 1953, but declined to 50.9% in 1954 following the end of the Korean conflict, when Bethlehem's purchases of broker-dealer scrap fell in relation to its purchases from direct suppliers. The substantial increase in Luria's share of Bethlehem's over-all scrap purchases reflects not only the increased share of broker-dealer scrap purchased from Luria, but also the increase in railroad scrap and scrap of industrial origin obtained through Luria.

35. It is true that the statistical evidence indicates that in the 1953–1954 period Bethlehem was still purchasing a not insubstantial part of its broker-dealer scrap (approximately 19%) from sources other than Luria. However, the examiner is satisfied that all but a small fraction of this was purchased from scrap dealers or on a dealer basis. This cannot be demonstrated statistically in view of the fact that the record contains no breakdown in the figures, as between brokerage scrap and dealer scrap, because of the impracticality of keeping records on such a basis. However, from the testimony and other evidence with respect to Bethlehem's buying practices it seems clear that by 1953, if not earlier, Bethlehem was buying all but a minor fraction of its brokerage scrap from Luria.

36. Any doubt which may exist as to whether Luria is Bethlehem's substantially exclusive broker is resolved by the testimony of the Bethlehem official in charge of scrap purchases, A. R. Thurn. Despite extended, and sometimes belabored, efforts to explain Bethlehem's termination of relations with other brokers or its limitation of purchases from them, in terms of their faulty performance or some similar reason, Thurn conceded that basically it was not his company's policy to buy from more than one broker in a market and that the broker which it had selected for its Eastern plants was respondent Luria. This admission was initially made by Thurn in connection with an explana-

tion of why Luria was the only broker buying scrap for Bethlehem in New England,[28] Thurn stating (R. 1725):

> Luria Brothers has been our only broker buying New England scrap since year by year, month by month, and week by week, demonstrations on the part of others that we tried that the job could not be done to Bethlehem's best advantage with more than one broker.

Although this explanation related specifically to New England, Thurn made it clear that "it is not peculiar to New England" (R. 1725), and that his company had selected Luria on a broader basis because (R. 1758)—

> * * * the most satisfactory performers * * * *for all of Bethlehem's various and sundry requirements and its several plants in the East, was Luria Brothers & Company.* [Emphasis supplied.]

While Thurn also made the claim that "the doors of the Bethlehem Steel Company are open to any seller of scrap", he made it clear that this was limited to a seller who "has scrap which he owns and wants to sell" (R. 1726). In Luria's case, there is no requirement that it own the scrap which it offers to Bethlehem. It frequently buys scrap to fill orders which it has received from Bethlehem. To the extent a broker is limited to offering only scrap which he owns, his brokerage function is seriously impaired. Furthermore, even with respect to scrap which is owned by the seller, the record establishes that Bethlehem has cut down substantially on the quantity of such scrap purcased from broker-dealer sources, and has required or encouraged a number of such suppliers to sell their scrap through Luria.

The basic reason given by Thurn for limiting its purchases of brokerage scrap to a single broker is that Bethlehem does not desire to have different people bidding against each other for the same scrap for Bethlehem's account, thereby driving up the price (R. 1726). This reason, it may be noted, accords with that given to several broker-dealers by Thurn in explaining why he could not buy brokerage scrap from them. Bethlehem's basic reason in choosing a single broker being obviously to prevent competition among brokers purchasing scrap for it, it seems evident that the various reasons assigned by Thurn for not doing business with various brokers and dealers are largely rationalizations.

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[28] Thurn later claimed that he was in error in stating that Luria was Bethlehem's only broker in New England, since Schiavone-Bonomo was also used as a broker in New England (R. 1769). However, as previously found, Bethlehem buys only scrap originating in yards affiliated with Schiavone-Bonomo and pays it a dealer's price. It may also be noted that while referring to Schiavone-Bonomo as a broker in seeking to counter the exclusive brokerage charge, Thurn in later explaining why Luria received a higher price than Schiavone-Bonomo claimed that the latter was essentially a dealer, rather than a broker (R. 1911).

37. It being clear that Luria is Bethlehem's substantially exclusive broker, the only remaining question is whether this relationship is one of mere happenstance or is the result of a conscious agreement, understanding or arrangement between the parties. Respondents contend, in substance, that the dealings between them are on an "order-to-order basis", that Luria is "merely the broker who at any particular time happened to be buying more scrap" for Bethlehem than others, and that there is no continuing obligation on Bethlehem's part to give Luria further orders or on Luria's part to fill such orders. While it may be that technically there is no binding legal obligation to continue the present relationship, the examiner has no doubt that the relationship which exists is more than a casual order-to-order relationship and is one which may be characterized, minimally, as constituting a conscious understanding or arrangement between the parties for Luria to act as Bethlehem's substantially exclusive scrap broker. It is a relationship which has been acknowledged to others in the industry by Bethlehem officials; it is a relationship which has been recognized as such by other brokers and dealers, and by railroads and industrial fabricators, and which has caused a number of these to take action based thereon; it is a relationship which has involved constant consultation and correspondence between Luria and Bethlehem with regard to the latter's scrap requirements and the best way to fill them; and it is a relationship which has caused Bethlehem to grant Luria more favorable terms as to price and area of shipment, and to refer offers from other brokers to it, and to otherwise deal with it on a close and intimate basis. As will hereafter appear, the relationship is also paralleled by a similar one covering the operations of Bethlehem's West Coast affiliate which, in part, is the subject of a written agreement. Such a relationship can hardly be characterized as a casual order-to-order relationship between vendor and vendee, nor as one in which Luria just happens at any particular time to have substantially all of Bethlehem's brokerage orders.

The fact that there is no obligation to continue the present relationship does not gainsay its existence. There is no question but that Bethlehem looks to Luria as its substantially exclusive broker, and that Luria is conscious of Bethlehem's reliance upon it and recognizes its responsibility to keep Bethlehem supplied with brokerage scrap. While dissatisfaction by either or both parties may result in a termination of their relationship, the fact remains that absent a decision to terminate it, the arrangement will continue indefinitely. To this extent it is as effective, in eliminating other brokers as suppliers to Bethlehem, as any express agreement in which the duration and other terms and conditions are defined by metes and bounds.

Bethlehem Pacific Coast Steel Corporation

38. Bethlehem Pacific operates three steel-making plants located, respectively, at Los Angeles and South San Francisco, California, and Seattle, Washington. These plants were acquired by Bethlehem Steel Corporation in 1930, and at the end of World War II they were reorganized into the newly formed Bethlehem Pacific Coast Steel Corporation. The amount of scrap purchased by Bethlehem Pacific is relatively small in comparison with that of its eastern affiliate, Bethlehem Steel Company. In 1953, for example, Bethlehem Steel Company purchased 3,135,343 gross tons of scrap, while Bethlehem Pacific purchased 621,329 gross tons. However, Bethlehem Pacific is the largest purchaser of scrap on the Pacific Coast. It is also more dependent on scrap in its steel-making operations than its eastern affiliate, since it operates no blast furnaces and uses proportionately less pig iron.

39. Approximately 90% of the scrap purchased by Bethlehem Pacific is obtained from brokers and dealers, with only about 10% being purchased directly from industrial or other sources without passing through the hands of brokers or dealers. Scrap brokers as they are known in the eastern scrap markets were unknown on the Pacific Coast until the extension of Luria's activities to that area in 1948. Theretofore scrap had been sold to the consumers mainly by yard dealers. Many of the dealers also sold scrap from the yards of other dealers, and in that way engaged in substantial brokerage operations. They were, however, fundamentally yard dealers who had incidentally extended their activities into the brokerage field.

40. Up to about 1950, Bethlehem Pacific had purchased its scrap from a number of different dealers. With few exceptions, the same dealers were not suppliers to more than one of the plants because of the distances and resulting freight rates which separated them. Bethlehem Pacific did not make any purchases from Luria until 1949. The latter did not operate any offices or yards on the Pacific Coast until 1948 when it opened a brokerage office in San Francisco, California. During the period 1947–1948, for which figures are available, Luria sold insignificant tonnages of scrap to the major West Coast steel mills. Its first sales to Bethlehem Pacific, which were made in 1949, were relatively small. However, in October 1950 it entered into a written agreement to supply Bethlehem Pacific's Los Angeles plant, and thereafter there was a sharp increase in its sales to the company, involving not only the Los Angeles plant but the other two plants as well. This was accompanied by the elimination of, or decline in purchases from, a number of other broker-dealer suppliers.

41. It is the position of counsel supporting the complaint that

Bethlehem Pacific, like its eastern affiliate, has an exclusive brokerage arrangement with Luria. Counsel's position is based, in part on the written agreement entered into in October 1950 with respect to the Los Angeles plant, and in part on the course of dealings between the parties, including the sharp increase in purchases from Luria by all Bethlehem Pacific plants, the decline in dealings with others, and various statements and admissions made by company officials. To a consideration of this evidence the examiner now turns.

The Statistical Evidence

42. As already indicated, Luria made no sales to Bethlehem Pacific prior to 1949. It sold only 15,375 gross tons to the company in 1949, constituting 4.5% of Bethlehem Pacific's scrap purchases from brokers and dealers. In 1950, the year in which a written agreement was entered into with respect to the Los Angeles plant, purchases from Luria increased to 72,461 gross tons, constituting 19.9% of the purchases from brokers and dealers. In 1951 purchases from Luria increased to 195,595 gross tons, accounting for 37.9% of Bethlehem Pacific's total purchases from brokers and dealers. The upward trend continued until 1953, when purchases from Luria reached 413,556 gross tons and constituted 75.4% of broker-dealer scrap purchases. In 1954, following the end of the Korean conflict, purchases from Luria declined to 321,935 gross tons, but increased on a relative basis to 80.4% of the purchases from all brokers and dealers.

Set forth below is a table reflecting Luria's share of Bethlehem Pacific's scrap purchases, both in terms of its purchases from broker-dealer suppliers and in terms of its total scrap purchases from all sources. The table indicates the proportion purchased from Luria by Bethlehem Pacific as a whole, and also contains a breakdown for the individual plants. As will be noted from the figures, the rise in Luria's share of purchases by the Los Angeles and Seattle plants is much more marked than that of purchases by the San Francisco plant, although the percentage of purchases achieved in the latter plant is by no means insignificant.

Luria's percentage of BP's purchases of scrap from all sources and from broker-dealers

	1949	1950	1951	1952	1953	1954
All Plants:						
(a) Percent Total	3.8	17.8	34.6	50.8	66.6	72.3
(b) Percent Broker-Dealers	4.5	19.9	37.9	55.7	75.4	80.4
L.A. Plant:						
(a) Percent Total	1.1	27.7	55.4	69.8	90.6	90.8
(b) Percent Broker-Dealers	1.2	29.6	56.9	73.5	94.2	91.7
S.F. Plant:						
(a) Percent Total	0.2	8.4	22.5	32.0	44.3	48.8
(b) Percent Broker-Dealers	0.3	9.5	24.8	36.7	50.8	56.9
Seattle Plant:						
(a) Percent Total	9.0	14.2	21.4	41.7	54.1	65.7
(b) Percent Broker-Dealers	11.9	16.8	25.4	46.4	70.6	83.1

The Los Angeles Plant
The Written Agreement

43. In October 1950 Luria and Bethlehem Pacific entered into a written agreement pertaining to the purchase of scrap by Bethlehem Pacific from Luria and the opening of a scrap yard by Luria on premises leased from Bethlehem Pacific. The consummation of the agreement was preceded by a period of discussions and negotiations which began in December 1949, and involved officials of the east coast subsidiary of Bethlehem Steel Corporation, as well as those of Bethlehem Pacific on the west coast.

44. In the latter part of 1949 Bethlehem Pacific was contemplating a substantial expansion of the production facilities of its Los Angeles plant and was concerned that it might not be able to obtain all of the scrap needed for an expanded operation through its existing suppliers. It became convinced that it should have a "financially strong dealer in Los Angeles with a yard capable of producing approximately 10,000 tons of scrap per month and with sufficient resources to finance small dealers to the extent of building up a brokerage business of up to 5,000 tons per month" (CX 214D).

During December 1949, while Elwin W. Thomas, the purchasing agent of the Bethlehem Pacific organization was on a visit to Bethlehem's East Coast office at Bethlehem, Pennsylvania, he discussed with Paul S. Killian, Bethlehem's assistant vice president in charge of purchases and with A. W. Snyder, Thurn's predecessor as assistant purchasing agent in charge of scrap, "our Los Angeles scrap situation and the advisability of having a financially strong dealer in that area." Thomas delayed his return to the West Coast after Killian advised him that he believed the situation to be "of sufficient importance for me [Thomas] to delay my return to San Francisco" until after the president of Bethlehem Pacific arrived in the East so that "we can discuss the whole situation with Mr. Killian" (CX 212).

On January 5, 1950, a meeting was held in Bethlehem, Pennsylvania, which was attended by Ralph Ablon, a Luria vice president, and by officials of both Bethlehem and Bethlehem Pacific. Ablon advised the Bethlehem representatives that his company had been approached by both Kaiser Steel and the Columbia-Geneva Division of U.S. Steel to start a yard operation in Los Angeles, but indicated that his company would prefer to do business with the Bethlehem organization. The Bethlehem officials inquired whether Luria would be interested in providing adequate yard facilities if Bethlehem Pacific "agreed to buy a certain percentage, such as 50% of our monthly requirements" from Luria at regular market prices (CX 214F).

Ablon undertook to discuss the proposal with his own people and to advise Bethlehem Pacific later in the month.

In the meantime, Bethlehem Pacific had also received a proposal to open a yard in Los Angeles from California Metals Co., a substantial dealer and broker in Oakland, California. It proposed that Bethlehem Pacific lease to it or finance, the necessary facilities over a 20-year period, at an estimated cost of $410,000, and that the mill enter into a "close working agreement" with it (RX 32). Bethlehem Pacific considered an arrangement with Luria preferable to one with California Metals because Luria did not require direct financial assistance and did not have any conflicting commitments to other West Coast steel producers, as California Metals then had with the northern California plant of Columbia-Geneva. The president of Bethlehem Pacific, while in Bethlehem, Pennsylvania, during the week of January 10, 1950, arranged with Vice President Killian of Bethlehem "to proceed with the negotiations with Luria Brothers & Co. to the end that they will establish suitable facilities in the Los Angeles area for the development and handling of some 12,000 tons per month" (CX 215). It was recognized that such an arrangement with Luria would not, of itself, produce more scrap in the area, but that it would give Bethlehem Pacific "our best assurance of obtaining such a share of our requirements through the medium of one of the best and strongest sources." It was decided that Bethlehem Pacific would not proceed with any arrangement with California Metals and would advise that company accordingly.

Further discussions between Ablon of Luria and Thomas (purchasing agent of Bethlehem Pacific) were held in March 1950. Various problems arose which were discussed, not only with Bethlehem Pacific but with officials of the east coast affiliate, in Bethlehem, Pennsylvania (CX 216). During the course of the discussions Thomas of Bethlehem Pacific recognized that one of the problems involved in any arrangement with Luria was that it might "be difficult to control Luria price-wise" and that "the success of such a relationship with Luria will depend largely upon the relationship between Bethlehem and Luria in the East" (CX 214F).

45. The negotiations between Luria and Bethlehem Pacific culminated in a 10-year lease by Bethlehem Pacific of property adjacent to its Los Angeles plant, and an agreement with respect to the purchase of scrap by Bethlehem Pacific from Luria. The lease was dated October 6, 1950, and was entered into in the name of Luria's wholly owned subsidiary, Lipsett Steel Products Inc. The scrap agreement took the form of a letter from Luria to Bethlehem Pacific dated Octo-

ber 6, 1950, which was accepted by Bethlehem Pacific on October 11, 1950. The agreement contained the following essential provisions:

a. Luria would open a yard "as soon as practicable" on the site "leased to us" by Bethlehem Pacific, and would equip the yard in a manner which would be mutually satisfactory.

b. Bethlehem Pacific agreed to purchase and Luria agreed to sell to Bethlehem Pacific, a minimum of 70% and a maximum of 85% of the monthly requirements of open hearth scrap used by Bethlehem Pacific's Los Angeles plant. This provision was subject to the understanding that Bethlehem Pacific could purchase from others in the San Francisco area, even if this reduced its purchases from Luria to less than 70% of its requirements, provided that it purchased at least 50% of its requirements from Luria during any 3-month period when this occurred.

c. Bethlehem Pacific agreed not to purchase from anyone other than Luria its requirements of certain grades of scrap designated as hydraulic bundles, machine shop turnings and short shoveling turnings, except that it could purchase such grades directly from industrial fabricators.

d. Without regard to the amount of Bethlehem Pacific's requirements for any month, it agreed to purchase from Luria a minimum of 2,500 gross tons of scrap a month.

e. The scrap was to be sold on a delivered basis with the price to be agreed upon on or before the fifth day of each month, and with the "Iron Age" quotation for the Los Angeles market to govern in the event of disagreement, subject to certain adjustments in Luria's favor in the event the "average going market price" or the price paid to others by Bethelehem Pacific was higher than the Iron-Age price.

f. In addition to the price to be paid for the scrap at the agreed rate, Bethlehem Pacific agreed to pay Luria an additional 75¢ per ton with respect to the first 500,000 tons delivered by Luria from the new yard.[29]

g. The term of the agreement was to be for 10 years from December 1, 1950, and was to continue thereafter as agreed, except that it could be terminated at the end of any month thereafter by the giving of at least six months' notice.

46. Because of a delay in the opening of the scrap yard in Los Angeles by Luria, and due to the instituting of government price

[29] The above provision was included at Luria's request to reimburse it, to the extent of $375,000, for the cost of equipping the yard which it had leased. This is in contrast to Bethlehem Pacific's attitude toward the proposal of California Metals. As previously noted, it had refused to enter into an agreement with California Metals for the alleged reason, among others, that it was unwilling to help finance the opening of a yard by the latter at an estimated cost of $410,000, which was to be repaid to Bethlehem Pacific (RX 32B).

controls in February 1951, the parties agreed by letter-agreement prepared by Luria and dated January 29, 1952, which was accepted by Bethlehem Pacific on March 3, 1952, that most of the provisions of the agreement of October 1950 would be suspended until the termination of price controls. By letter-agreement prepared by Bethlehem Pacific on October 26, 1953, and accepted by Luria on October 27, 1953, it was agreed that the original agreement of October 6, 1950, would be deemed to have come into full operation as of February 13, 1953, following the termination of price controls. The beginning date of the lease was fixed as June 30, 1951, instead of December 1, 1950. The actual opening of the yard did not occur until later in 1951.

The Agreement in Operation

47. Despite the delay in the opening of the yard by Luria and the purported suspension of portions of the formal agreement for a period of time, there was a steady and substantial increase in Bethlehem Pacific's purchases of scrap from Luria for the former's Los Angeles plant. The trend in Luria's favor started in 1950, even before negotiations for the formal agreement had been concluded. In 1950 Luria became the largest single supplier to the Los Angeles plant, the scrap sold by it constituting 27.7% of the Los Angeles plant's scrap purchases, as compared with only 1.1% supplied by Luria in 1949. In 1951, the first full year after the agreement had been entered into, Bethlehem Pacific purchased 55.4% of the scrap for its Los Angeles plant from Luria. By 1954 Luria was supplying 90.8% of the scrap purchased by Bethlehem Pacific for such plant. In terms of scrap purchased from broker-dealer sources the peak year was 1953, when Luria supplied 94.2% of the scrap purchased by Bethlehem Pacific from such sources for the Los Angeles plant.

48. When negotiations with Luria were started, Bethlehem Pacific had proposed that Luria supply it with a relatively modest 50% of its monthly scrap requirements at Los Angeles, and it was contemplated by Bethlehem Pacific that it would continue to deal with several of its existing dealer-suppliers as "secondary sources" (CX 215). This apparently was not acceptable to Luria, and the agreement as signed required Bethlehem Pacific to buy at least 70% of its requirements of open hearth grades from Luria, and all of its requirements of certain special grades. Moreover, in practice, as above indicated, Bethlehem Pacific was soon buying over 90% of the total scrap requirements of the Los Angeles plant from Luria. In addition, it eliminated almost all of the dealers whom it had considered using as "secondary sources" of supply.

Elimination of Other Suppliers

49. During the period from 1947 to 1950 the following Los Angeles dealers ranked among the larger suppliers of scrap to the Los Angeles plant of Bethlehem Pacific for all or part of the period: A–1 Iron & Metal Co., Alpert & Alpert, N. S. Colen & Son, Eastern Iron & Metal Co., J. Levin & Sons, Gate City Iron & Metal Co. and National Metal & Steel Corporation. In addition, there were several other firms which, while not among Bethlehem Pacific's larger suppliers, nevertheless supplied it with substantial tonnages, including Booster Iron & Metal Co., Berg Metals Corp., Finkelstein Supply Co. and Dave Needle & Son. Of these, Eastern Iron & Metal, Gate City Iron & Metal, and J. Levin were acknowledged by Bethlehem Pacific as being among its important suppliers, and A–1 Iron & Metal and Booster Iron & Metal as being among those who could supply it with additional tonnages "if the dealers were adequately financed" (CX 214–I).

In the period after 1950 all but J. Levin were eliminated as direct suppliers to Bethlehem Pacific's Los Angeles plant. Levin's sales to Bethlehem Pacific, which were 25,000 tons in 1947, declined to 7,000 tons in 1953 and 8,400 tons in 1954, compared to sales by Luria of 225,000 tons in 1953 and 182,000 tons in 1954. Of the other former direct suppliers, a number began to ship to Bethlehem Pacific through Luria. Included in this category were A–1, Alpert, Berg, Booster, Eastern, and Gate City (now known as Alex Novack & Sons). Most of these, except for Alpert and Berg, received substantial loans or other financial assistance from Luria. Eastern Iron & Metal, which from 1947 to 1950 was one of the largest suppliers to Bethlehem Pacific and thereafter began shipping through Luria, went out of business entirely in April 1954 when its president became assistant manager of the Los Angeles yard operated by Luria's affiliate, Lipsett. Several of the former suppliers, which were unwilling to ship through Luria, ceased to supply scrap to Bethlehem Pacific. Included in this category were National Metals, N. S. Colen, Needles, and Finkelstein.

While certain of the dealers claimed that they had ceased selling to Bethlehem Pacific because they preferred to sell through Luria due to the receipt of financial assistance or for some similar reason, a number indicated that the cessation of sales to Bethlehem Pacific was due to the latter's unwillingness to buy from them directly. In several instances dealers were specifically advised that they would have to sell through Luria. Thus, a representative of N. S. Colen testified that he was advised "purchases for Bethlehem Pacific Coast would be conducted by the Luria Brothers Company" and that his company was approached by Luria "to sell to Bethlehem and to them as brokers" (R. 11,840). Colen declined this offer because it wished to sell directly.

Thereafter certain of the yards from which it had purchased scrap for sale to Bethlehem Pacific began selling to Luria. A representative of Berg Metals was advised by a Bethlehem Pacific official that "Luria was the exclusive contractor" for Bethlehem Pacific, and that the "setup [with Luria] is here on the West Coast and also back East" (R. 11,899, 11,902). Berg acceded to the Bethlehem Pacific advice and thereafter began selling substantial quantities of scrap to Luria for shipment to Bethlehem Pacific. A representative of Dave Needles was informed by E. W. Thomas that he would "have to go through Luria" (R. 11,955), but declined to do so. A representative of Finkelstein Supply was also informed by Thomas that Bethlehem Pacific "were going to have Luria as their broker" and that Finkelstein would have to sell its scrap through Luria (R. 12,066).

50. The examiner entertains no doubt that under the impetus of the agreement entered into with Bethlehem Pacific in October 1950, Luria has become Bethlehem Pacific's substantially exclusive broker in supplying scrap to the Los Angeles plant. While this was not specifically spelled out in the agreement, it was contemplated by Bethlehem Pacific in entering into the agreement that Luria would become its exclusive broker for the Los Angeles plant for the reason, as expressed by Bethlehem Pacific's purchasing agent, E. W. Thomas (R. 11,121) that—

* * * we don't see any particular advantage in having several brokers competing for the same scrap for the same mill.

Bethlehem Pacific contends that, in spite of the view above expressed, it does deal with more than one broker. It is true that sometime in 1955, after the impetus of the present proceeding, Bethlehem Pacific began buying undisclosed, but apparently small, quantities of scrap from another broker, Charles Harley & Company. It is also true that since about 1953 it has bought small quantities of scrap from The Purdy Company, a broker and dealer whose Los Angeles manager had theretofore been a Bethlehem Pacific employee for many years. However, all but a small fraction of the scrap sold by Purdy has consisted of scrap which was prepared in its own yard and sold on a dealer basis. In 1953 Purdy supplied 1.1% of the scrap purchased by Bethlehem Pacific's Los Angeles plant, compared to 90.6% supplied by Luria. Of the balance, approximately 3% was supplied by J. Levin & Sons, a dealer, and approximately 3% was supplied by Kaiser Steel Corporation. This pattern was repeated substantially in 1954. It is clear, therefore, that except for minor purchases made on a dealer basis or from direct suppliers, substantially all of Bethlehem Pacific's purchases for its Los Angeles plant are made from Luria as its substantially exclusive broker.

The San Francisco Plant

51. While the proportion of scrap supplied by Luria to the San Francisco plant of Bethlehem Pacific has not been as great as that supplied to Los Angeles, there has nevertheless been a very marked change in Luria's position as a supplier to San Francisco, beginning at or about the time of the Los Angeles arrangement. In 1949 it supplied only 0.2% of the scrap purchased by the San Francisco plant from all sources and 0.3% of the scrap purchased from broker-dealer sources. By 1951 Luria was supplying 22.5% of the total scrap and 24.8% of the broker-dealer scrap purchased for the San Francisco plant. In 1954 Luria supplied 48.8% of the total scrap and 56.9% of the broker-dealer scrap. Prior to 1950 Luria was not among the five largest suppliers to the San Francisco plant. In 1950 it became the third largest supplier, and in the years 1951 to 1954 it was by far the largest supplier. While the change in the ranks of the other suppliers to the San Francisco plant was not as far-reaching as that in Los Angeles, there were nevertheless major changes in Bethlehem Pacific's relations with certain of the suppliers of the San Francisco plant after 1950.

Changes In Relations With Other Suppliers

52. During the period after 1950 Bethlehem Pacific ceased buying from a number of former suppliers of the San Francisco plant. Among the dealers or dealer-brokers from which Bethlehem Pacific ceased purchasing directly were The Learner Co., N. Circosta & Co., Salco Iron & Metal Co., East Bay Iron & Metal Co. and Associated Metals Co. of California. It also ceased direct purchases from the Southern Pacific Railroad. With the exception of East Bay and Associated, all of the foregoing had been in the ranks of Bethlehem Pacific's five largest suppliers to the San Francisco plant during some part of the period from 1947 to 1951. After 1950 or 1951 these suppliers, with the exception of Learner, began to sell substantial quantities of scrap to Luria for delivery to Bethlehem's Pacific San Francisco plant.

In several instances the suppliers testified that they began shipping through Luria as a matter of their own choice because they had received financial assistance from Luria or for some other reason. Among those in this category was Circosta, who received a substantial loan from Luria in 1951. Another dealer-broker who received financial assistance from Luria was Salco. However, while the Salco representative indicated that financial assistance was a factor in his company's selling through Luria, he also testified that another reason was (R. 11,343) :

* * * the desire of the consumers seemed to be that they were more interested in getting scrap through a larger broker rather than directly from a dealer.