5. Authorizing any creditor to utilize respondent's name or any trade name or style which respondent may adopt or use in connection with any debt collection activity whether directly or through third parties on the part of such creditor;

6. Representing directly or by implication that:

(a) Respondent is engaged in the business of collecting delinquent accounts with authority to effect collection by whatever means necessary;

(b) Any delinquent account has been referred to it for collection;

(c) Any legal or other action will be instituted to effect collection or reflect unfavorably on the credit rating of the debtor;

Provided, however, It shall be a defense hereunder for respondent to establish that it is engaged in the bona fide collection of delinquent accounts, has the authority and good faith intent to take any represented action, and the specific account in question has been referred to it for collection;

7. Engaging in any scheme, practice or business activity by and through which creditors may falsely represent that a delinquent account has been referred to a bona fide, independent collection agency; any third party has the authority to effect collection of a delinquent account; the delinquent account has been referred to an instrumentality of or agency affiliated with any governmental unit.

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

IN THE MATTER OF

SEWING MACHINE COMPANY OF AMERICA DOING BUSINESS AS DOMESTIC CREDIT COMPANY ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8693. Complaint, July 13, 1966—Decision, April 5, 1967

Order requiring a St. Paul, Minnesota, sewing machine retailer to cease using bait advertising, fictitious pricing and savings claims and other deceptive selling practices as set forth in the order below.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that Sewing Machine Company of America, a corporation, doing business as Domestic Credit Company, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota. Respondents Eldon J. Metaxas and Ralph T. Corrigan are individuals and officers of said corporate respondent. They formulate, direct and control the acts and practices of said corporate respondent, including the acts and practices hereinafter set forth. The offices and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota.

Respondents, at times, trade under the name of Domestic Credit Company.

PAR. 2. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale and distribution of sewing machines to the public.

PAR. 3. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintain, and at all times mentioned herein have maintained, a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 4. In the course and conduct of their business as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms and conditions of sale of their products.

Among and typical, but not all inclusive, of such statements and representations are the following:

Singer—console cabinet. This famous make sewing machine is equipped to zig-zag, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of $44.00. $5.50 discount for cash. Write: Credit Manager, Domestic Credit, 1538 West Larpenteur, St. Paul, Minnesota.

PAR. 5. By and through the use of aforesaid statements and representations, and others of similar import not specifically set out herein, by oral statements and representations of their salesmen, and by the use of the trade name Domestic Credit, separately and in connection with such statements and representations, the respondents represent, and have represented, directly or by implication:

1. That their principal business is that of lending money, providing credit to purchasers of merchandise, and buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit.

2. That as a finance company they are making a bona fide offer to sell a repossessed sewing machine, as described in said advertisement, for reason of default in payments therefor by the previous purchaser, and on the terms and conditions stated.

PAR. 6. In truth and in fact:

1. The respondents principal business is not that of lending money, or providing credit to purchasers of merchandise, or buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit. Respondents are engaged in the business of selling sewing machines to the public.

2. The respondents are not a finance company making a bona fide offer to sell a repossessed sewing machine as described and on the terms and conditions stated, but said offer was and is made for the purpose of obtaining leads and information as to persons interested in the purchase of sewing machines. After obtaining leads through response to said advertisements, respondents, or their salesmen, call upon such persons, but make no bona fide effort to sell said sewing machine which was and is manifestly unsuitable, undesirable and not the product described in their advertisement, after which they attempt to and frequently do sell a different and higher priced product.

Therefore, the statements and representations referred to in Paragraphs Four and Five hereof were and are false, misleading and deceptive.

PAR. 7. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their sewing machines, respondents, or their salesmen, have made numerous oral statements with respect to higher and lower prices of their sewing machines and the resultant savings to purchasers.

By and through the use of said statements with respect to the prices of their sewing machines, respondents have represented, directly or by implication, that their products are being offered for sale at special or reduced prices and that savings are thereby afforded purchasers from respondents' regular selling prices.

PAR. 8. In truth and in fact, the respondents' products are not being offered for sale at a special or reduced price and savings are not granted respondents' customers because of a reduction from respondents' regular selling price. In fact, respondents do not have a regular selling price but the prices at which respondents' products are sold vary from customer to customer depending on the resistance of the prospective purchaser.

Therefore, the statements and representations referred to in Paragraph Seven hereof were and are false, misleading and deceptive.

PAR. 9. In the conduct of their business, at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms and individuals in the sale of sewing machines of the same general kind and nature as those sold by respondents.

PAR. 10. The use by respondents of the aforesaid false, misleading and deceptive statements, representations and practices has had, and now has, the capacity and tendency to mislead members of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are true and into the purchase of substantial quantities of respondents' products by reason of said erroneous and mistaken belief.

PAR. 11. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and of respondents' competitors and constituted, and now constitute, unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce in violation of Section 5 of the Federal Trade Commission Act.

Mr. William A. Somers and *Mr. Harold G. Sodergren* supporting the complaint.

Mr. Thomas M. Murphy, Kempe & Murphy, West Saint Paul, Minn., for respondents.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

FEBRUARY 23, 1967

PRELIMINARY STATEMENT

By its complaint, issued July 13, 1966, the Federal Trade Commission charged respondents with using deceptive means to sell sewing machines in violation of Section 5 of the Federal Trade Commission Act.

The deceptive means charged were: 1) respondents, by using the name Domestic Credit Company and by their advertising, created the false impression that their principal business was lending money rather than selling sewing machines; 2) the advertised offers of machines were bait to obtain leads to persons interested in purchasing sewing machines, because the respondents made no bona fide effort to sell the advertised machines but instead attempted to sell a more expensive machine; 3) respondents also misrepresented that their sewing machines were sold at a special or at reduced prices. In fact, respondents did not have a regular selling price, as their prices vary from customer to customer.

In addition, the complaint identified respondents, stated the relationship between them, and made the usual jurisdictional allegations, including the allegation that respondents are in commerce and the acts charged take place in commerce.

Respondents' answer, filed August 15, 1966, admitted the state of incorporation of Sewing Machine Company of America and it admitted that Eldon J. Metaxas was an officer thereof; but respondents' answer denied that the corporate respondent did business as Domestic Credit Company or that Ralph T. Corrigan was an officer of corporate respondent. (Respondents, during pretrial, admitted that the corporate respondent did business as Domestic Credit Company. During the hearing Eldon J. Metaxas testified that Ralph T. Corrigan was secretary-treasurer of the corporate respondent during 1964 and 1965, but dropped out as secretary-treasurer shortly after the Commission issued its complaint, although he continued as a salesman (Tr. 301–302).) Respondents also admitted the jurisdictional allegations of the complaint, but generally denied the other allegations.

This case was first assigned to Honorable Joseph W. Kaufman, who conducted a prehearing conference, certified the necessity of holding hearings in more than one place to the Commission who approved. He then entered a prehearing order dated September

14, 1966. This order fixed the dates and places of the hearings and provided for discovery of the names of witnesses and for the production of documents. The undersigned was substituted for Mr. Kaufman on October 12, 1966, and heard the evidence.

Hearings commenced Monday, December 5, 1966, at Rockford, Illinois, and continued there on two successive days. After a day's interval for travel, hearings resumed first at Mason City, Iowa, on Thursday and Friday, December 8 and 9, 1966, and then at Minneapolis, Minnesota, on Monday, December 12, 1966; all pursuant to the Commission's order, dated September 8, 1966, that modified Rule 3.16 of the Rules of Practice.

At the conclusion of complaint counsel's case, counsel for respondents moved to dismiss. Ruling was then reserved (Tr. 307). The motion is now denied.

This Initial Decision is based on the record as a whole and on the demeanor of the witnesses. References [1] to particular parts of the record are cited as examples only. Proposed findings of fact and conclusions of law submitted by counsel supporting the complaint and not included herein in substance or in the language proposed are rejected as immaterial, irrelevant, or erroneous. Respondent by letter dated January 18, 1967, waived submission of findings and conclusions. The following findings of fact, conclusions, and order are made.

FINDINGS OF FACT

A. Respondents and Their Business

1. Respondent Sewing Machine Company of America is a corporation organized, existing and doing business under and by virtue of the laws of Minnesota. Respondent Eldon J. Metaxas is an officer of corporate respondent. Respondent Ralph T. Corrigan is a salesman who had been secretary-treasurer of corporate respondent during 1964 and 1965 but had dropped out as an officer shortly after the Commission issued its complaint. He has since continued with the corporation as a salesman (Tr. 301–302). Metaxas directs and controls the acts and practices of the corporate respondent including the acts and practices hereinafter set forth. While an officer Corrigan also directed and controlled the acts and practices of corporate respondent (Tr. 301–302). The office and principal place of business of the respondents is located at 1538 West Larpenteur Avenue, St. Paul, Minnesota (C; A).

[1] The following abbreviations will sometimes be used: C=Complaint, A=Answer, Tr.=Transcript page, CX=Commission's Exhibit, RX=Respondents' Exhibit.

2. Respondents, at times, trade under the name of Domestic Credit Company. That company is a division of the corporate respondent (Tr. 300–301). (Prehearing Order dated September 14, 1966.)

3. The respondents are now, and for some time last past have been, engaged in the advertising, offering for sale, sale, and distribution of sewing machines to the public (C; A).

4. In the course and conduct of their business, the respondents now cause, and for some time last past have caused, their said products, when sold, to be transported from their place of business in the State of Minnesota to purchasers thereof located in various other States of the United States, and maintain and, at all times mentioned herein, have maintained a substantial course of trade in said products in commerce, as "commerce" is defined in the Federal Trade Commission Act (C; A).

5. In the course and conduct of their business, as aforesaid, and for the purpose of inducing the purchase of their products, respondents have made various statements and representations in advertisements in newspapers of general circulation respecting the kind, quality, price, terms, and conditions of sale of their products (C; A).

6. In the conduct of their business at all times mentioned herein, respondents have been in substantial competition, in commerce, with corporations, firms, and individuals in the sale of sewing machines of the same general kind and nature as those sold by respondents (C; A).

B. The Use of the Name Domestic Credit Company Charge

1. In connection with their business, respondents have caused advertisements in newspapers of general circulation to be run for the purpose of inducing the purchase of their products (C; A).

2. A typical advertisement showing the character of the statements and representations made is the following:

> Singer—console cabinet. This famous make sewing machine is equipped to zig-zig, buttonhole, hem, etc. In like new condition. Guaranteed. Balance of $44.00. $5.50 [per month or] discount for cash. Write Credit Manager, Domestic Cred, 1538 West Larpenteur, St. Paul, Minnesota. (Brackets were added on basis of testimony of respondent Metaxas that the advertisement contained a misprint (CX 50, 54; Tr. 302–303)).

3. Similar advertisements were ordered by the corporate respondent in newspapers of general circulation in rural areas in

Illinois, Iowa, and other States (see CX 55 a–c, 58; Stipulation; Tr. 133, 180).

4. By the use of such advertisements, and particularly by the use of the name Domestic Credit and the word "balance" respondents represented that they were in the business of lending money and providing credit to purchasers of merchandise and that they were making a bona fide offer to sell a repossessed sewing machine, as described in said advertisements, because of default by a purchaser in making payments.

5. A number of prospective purchasers of sewing machines testified that in answering the advertisement they believed they were dealing with a finance company (Tr. 67, 87, 107, 154, 181, 194, 236, 261), although others thought they were dealing with a sewing machine company that had repossessed its machines (Tr. 47, 217).

6. The business of corporate respondent is primarily that of selling sewing machines. The name Domestic Credit is unregistered and used to designate a division of the corporate respondent (Tr. 300–301). In a number of instances the corporate respondent, rather than finance its sales sold the credit or assigned the conditional sale to a commercial credit concern (Tr. 41, 57, 238).

7. Although in some instances cash payments were made to Domestic Credit (Tr. 201, 251), clearly the credit operation was incidental to and not the major factor in respondents' business. Moreover, the suggestion that such machines were repossessed naturally led customers to expect a relatively new, rather than an old, machine. The Singer sewing machines showed to customers in almost all cases were older machines. In addition, they were mostly trade-ins (Tr. 313). Hence, advertising the Singer sewing machines as if they were repossessed by a credit company was false, misleading, and deceptive.

C. The Bait-and-Switch Charge

1. The advertisements used by respondents created the impression on some customers that a new repossessed Singer sewing machine was being advertised (Tr. 87).

2. In fact, the Singer sewing machine first showed to customers had the appearance of being very old in most instances. Respondents' technique was designed to direct the customers' attention to the newer Domestic sewing machines (Tr. 7, 58, 68, 95, 109, 155). In one instance respondent Metaxas explained to a witness that the Singer machine showed first was heavy duty

"that it would sew heavier material which, of course, in ordinary sewing you wouldn't" (Tr. 91). In other instances respondent Metaxas said the old machine he showed was not the one advertised (Tr. 181); the advertised machine had already been sold (Tr. 22). In still another instance respondent Metaxas did not even show the sewing machine advertised (Tr. 219).

3. In some instances, the corporate respondent's salesman demonstrated the old Singer sewing machine before showing a Domestic sewing machine of new appearance (Tr. 19, 108, 116). In other instances, little or no demonstration or sales talk was given (Tr. 36, 71, 72). Whenever the customer indicated disinterest in the old Singer sewing machine, respondents stopped all effort to sell it and brought in a Domestic sewing machine that had a new appearance (Tr. 16, 58, 61, 72–74, 96–97, 249). In two instances respondent Corrigan told the customer that she would not be interested in the old machine, which was advertised, and that he would show her a newer one (Tr. 35, 262, 271).[2] In another instance, the customer had to insist upon seeing the old machine before Corrigan brought it in and then he scoffed at it (Tr. 237).

4. In some instances, the customer witnesses made it clear that no amount of salesmanship would have caused them to buy the older machine (Tr. 97, 144, 255), although in a number of instances customers stated they would have bought the Singer sewing machine if it had been like the machine advertised (Tr. 101, 111–113, 138, 155, 182, 197, 237, 248, 262–3).

5. While several of the customers testified that the old Singer sewing machine first produced did not conform to the advertisement (Tr. 86–87, 137–138, 155, 160, 237, 246–247), this was presumably because they believed that the advertisement meant a sewing machine that had built-in capabilities[3] for zigzag sewing and buttonhole stitching (Tr. 103). In fact, the old Singer sewing machine by the use of separate attachments could perform zigzag sewing and buttonhole stitching (Tr. 103, 143, 315, 322, 327). And, at least one Singer sewing machine had built-in zigzag features (Tr. 117). Respondents' salesman made no effort to demonstrate such attachments when the customer showed disinterest in the old Singer sewing machine (Tr. 104–105).

6. Gross profits on the sale of trade-in Singer sewing machines were a fraction of the gross profit realized on the sale of the

[2] We do not credit the general testimony of respondent Metaxas to the contrary (see Tr. 345).

[3] The words "equipped to" appearing in the advertisement are ambiguous: Webster's New Collegiate Dictionary, 1961 Edition, has the following definition of "Equip—1. To furnish for service; to fit out, as troops. 2. To dress; array."

Domestic sewing machines (compare prices at Tr. 339 with the sales prices shown in CXs 1–44, 46, 48–49, 51–54, 56–57, 59–62, 64–65, less the approximate cost of the machines showed in CX 68 *in camera*).

7. Very few of the trade-in Singer sewing machines were sold in the States of Illinois and Iowa where the consumer witnesses who had testified about respondents' sales techniques had come from (Tr. 357).

8. Respondents' salesmen carried very few Singer sewing machines as compared with the newer appearing Domestic sewing machines (see Tr. 283), and respondents stocked fewer Singer sewing machines than the newer Domestic sewing machines (compare Tr. 280–281 with Tr. 283).

9. Respondents secured leads for the sale of sewing machines from advertising, from display advertising, and from referrals (Tr. 362–3). However, in Illinois and Iowa, there was no display advertising (Tr. 363). The only advertisements were for Singer sewing machines (Tr. 312, 362).

10. From the foregoing, we find that the respondents' advertising of repossessed Singer sewing machines, which were actually trade-ins, was primarily for the purpose of obtaining leads for the sale of the higher priced, higher profit Domestic sewing machines and that respondents by their selling techniques attempted to divert the consumer from purchasing the Singer machines and concentrated on selling the higher priced Domestic sewing machines (Finding C 1–9).

D. The Fictitious Price Charge

1. In some instances, respondents made a specific oral representation to customers about the regular price of a new Domestic sewing machine (Tr. 7, Model 264, \$239.95; Tr. 36, Model 464, \$269.95; Tr. 219, \$268 or \$269; Tr. 238, \$269.95); and, then, offered a discount varying from \$50 to \$150 below the stated price (Tr. 7, 36, 69, 182, 195, 219, 238).

In other instances, customers relied on the representation contained in the booklet supplied with the machines. For Model 264 the stated price was \$239.00. A discount off this stated price was also granted (Tr. 55, 87).

2. The salesman for corporate respondent in offering the discount usually represented that the Domestic machine was repossessed and that the discount was given because part payment had already been received (Tr. 36, 68, 87, 109, 136, 157, 182, 219, 238, 250, 263).

3. The Domestic sewing machines that were sold appeared to most of the customers, who testified, to be new machines (Tr. 11, 18, 23, 37, 47, 56, 88, 119, 159, 184, 254, 267). The attachments were in unopened plastic bags, the electric cord was wound, there was no lint evident, and a new guarantee was given (Tr. 11, 12, 18, 23, 36, 47, 56, 88–90, 120, 159, 220, 253).

4. While respondent Eldon Metaxas testified that he had cleaned up the repossessed machines and had obtained new guarantee cards and new attachments for them (Tr. 347–349), he kept incomplete records of their serial numbers and had no way of telling whether or not any particular machine was new or repossessed (Tr. 379–380, 386). He could not even estimate the percentage of machines repossessed (Tr. 366–7); or the number repossessed (Tr. 346). Moreover, Metaxas admitted that in the process of salesmanship, customers were sometimes told a not entirely factual story, such as not naming a neighbor if the machine was repossessed from one (Tr. 352) or if he felt the facts might create hard feelings (Tr. 351). In addition, he did not contradict the testimony of the witnesses who said the Domestic sewing machines they had received were new. Moreover, there was no notation on the sales documents pertaining to such witnesses that the machines sold were used (CX 48–49, 51–54, 56–57, 59–62, 64–65). The warranty or guarantee card given the customer, in fact, specifically described the machine as "this new Domestic Sewing Machine" (CX 47). By contrast, it was stipulated that the Singer sewing machines sold were used machines (Tr. 357–358).

5. There was no testimony tending to establish a regular price for Domestic sewing machines in the areas in which the witnesses who were called by complaint counsel resided (Tr. 79, 123, 149, 214–215), except in that area within about a 90-mile radius from Des Moines, Iowa, where one dealer testified that his price for a Domestic sewing machine, Model 265, was $150; and for Model "646" [sic], $180–$200 (Tr. 171–172, 177). The other dealers merely said there were no dealers selling Domestic sewing machines in their sales area.

6. Respondent Metaxas testified that there were other direct salesmen working in Iowa and Illinois (Tr. 354, 355) who were selling Domestic sewing machines and he found out what they had on their factory suggested list. He also used the suggested prices of the White Sewing Machine Company [4] for comparable

[4] This company sells the Domestic sewing machine (Tr. 281) and the White sewing machines, but the latter are sold on a franchise arrangement (Tr. 298).

machines. When he called on customers, he asked them to bring out their Montgomery Ward and Sears, Roebuck catalogues and to do some comparative shopping from these catalogues. He never quoted or advised his salesmen to quote a price other than the suggested list price. The ultimate price quoted would depend on what he received in trade. Almost every time he would have something offered in trade, more often than not a sewing machine, but he had an occasion when he took in a veal calf; another salesman took in a motorcycle. They traded "shotguns—everything" (Tr. 356). The suggested list price of White sewing machines was used as the place to begin fixing the ultimate price (Tr. 356).

7. In practice, based on the sales documents for the 80 odd sales of Domestic sewing machines that respondents produced and complaint counsel offered in evidence, the sales prices quoted for the two best sellers, Models 264 and 464, ranged from a low of $90 (CX 21) to a high of $269 (CX 42, 2nd invoice) for Model 264; and from a low of $110 (CX 1) to a high of $350 (CX 10) for Model 464 (CX 42, 2nd invoice). In 17 cases, $239.95 the suggested retail price, was stated as the price for Model 264. In 34 cases a different price was stated (CX 21–44, 46, 48, 51, 53, 57, 61, 65). In two cases the price $239 instead of $239.95 was quoted. In seven cases, $269.95 was the suggested retail price for Model 464, and in 15 cases a different price was quoted (CX 1–20, 52, 54). In those cases in which a cash price equal to the suggested retail price was quoted, a deduction with a notation "trade in & disc" reduced the price paid well below the suggested price or notation of a lesser cash payment was marked "paid in full." (*Id.*)

8. As appears from the foregoing, there was no established price for the retail sale of Domestic sewing machines in the marketing area, which was covered by the testimony of the consumer witnesses, either for respondents or generally. Respondents fixed different prices in a great number of instances. Hence the quotation of an established price was false, misleading, and deceptive.

E. Effects

1. A store owner in Elgin, Illinois, testified that in his opinion the drop in sales of sewing machines by his store was caused by spurious advertising (Tr. 128).

2. The hearing examiner draws the inferences that: a) prospective sales of sewing machines by respondents' competitors would normally be diverted to respondents because of the false

advertising and other unfair acts and practices shown; and b) such false advertising and other unfair acts and practices have had and now have the capacity and tendency to mislead a number of the purchasing public into purchases of substantial quantities of respondents' products by reason of the erroneous and mistaken belief that the representations made were and are true. The examiner further infers that the foregoing acts and practices prejudice and injure the public and respondents' competitors.

REASONS FOR DECISION

The hearing examiner credited the testimony of the consumer witnesses who described respondents' sales technique. No witnesses were permitted in the courtroom while another witness was testifying. The demeanor of the witnesses and the consistency of their experience under such circumstances impressed the hearing examiner.

The consumer witnesses were misled by respondents' advertising. And, the advertising was literally false in at least one respect, that trade-in Singer sewing machines but not repossessed ones were involved. The consumer witnesses would have bought a Singer machine if it was as advertised or was as they interpreted the advertisement. The testimony of respondent Eldon Metaxas, while plausible to a degree, shed no light on the reason for advertising a trade-in machine as repossessed or the reason for using the fictitious name "Domestic Credit Company." A person reading the advertising would almost necessarily picture a new model machine that had been taken over by a finance company and not an old appearing model. The fact that the older appearing model Singer by the attachment of legs could become a console and by the addition of mechanical attachments could perform the stitches advertised, is beside the point.

Moreover, Eldon Metaxas' testimony, supported by several consumer witnesses, that he and his salesmen always made a good try to demonstrate the old Singer machine before he brought in the newer Domestic sewing machine and that he did not bring in the newer machine until he was convinced that he could not sell the Singer, is also not a good defense even if true. Respondents' business operation, taken as a whole, demonstrated that the Singer machines were not intended to be sold. They were so old in appearance that they immediately repelled several customers. They were not as new as one would expect from the advertisement. The salesmen carried relatively few of them on their trips and respondents stocked relatively few. Very few old Singers were sold in Iowa and in Illinois. And, the gross profit on the Singers was much less than the gross profit on the Domestic sewing machines. Moreover, the instances where the Singer machine was not shown to the customer or was disparaged, are sufficient for us to conclude that respondents used such machines merely to secure leads to customers and to secure entry into their homes. What, really, was meant to be sold was the higher profit, higher cost but less well-known Domestic sewing machine. Thus, we conclude that misleading advertising and a bait-and-switch operation were clearly established.[5]

With regard to the third point in the case, the quoting of a fictitious price, it was very clear from the consumer witnesses' testimony and the sales documents that respondents did not quote a regular price. The prices quoted by respondents varied tremendously. And, there was no proof that anyone else had established a price, except the proof about the Des Moines marketing area where prices of one dealer were much lower than the suggested retail prices that Metaxas claimed as his base. Considering the net prices paid by respondents (CX 68, *in camera*) the markups to the suggested price would be unreasonable in any normal operation.

We do not credit the claim that all sales made to consumer witnesses were sales of repossessed machines. Eldon Metaxas frankly admitted that the talk about repossession was sometimes not factual. His admission was an understatement. Moreover, he could not even estimate the number or the percentage of machines repossessed, nor could he produce any records. The sales records in evidence bore no indication that the machines sold were used or repossessed machines. The warranty card that Metaxas said he filled out for such customers expressly referred to the machine warranted as a new one. These circumstances, in addition to the testimony describing the new appearance of the machines by the consumer witnesses, leads us to determine that the Domestic machines in most instances were new ones and the prices fixed on them were fixed on the basis of charging what the traffic would bear.

Hence, we have determined that respondents were deliberately quoting prices they knew were fictitious.

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[5] Discussion of applicable policy and decisions appears unnecessary in view of the detailed consideration of the same problems by Hearing Examiner Moore in *Royal Construction Company, et al.*, Docket 8690, Initial Decision dated January 30, 1967 [p. 762 herein], now on appeal to the Commission, and *Consolidated Sewing Machine Co., et al.*, Docket 8705, Initial Decision dated February 14, 1967 [p. 356 herein].

One last point concerns the inclusion of the individual respondents in the order. We take the position that the individuals should be included. The evidence is clear that each participated in the unfair acts and practices. The use of the fictitious name Domestic Credit in the advertising and the rapid movement of principals in and out of the company with their obviously erratic method of keeping records leads us to believe that the public will not be protected unless the individuals who were principals in the unfair acts and practices are included in the order. It would be too simple for the individual respondents to open up shop under a new name and to continue the same type of misleading activity. The use of "Domestic Credit" in advertising is an indication of the instability of the corporate respondent. To limit the order to the corporate respondent would leave the door open to continued misleading operations by the individuals responsible here. Hence we adopt the following conclusions and the order.

CONCLUSIONS

1. The Federal Trade Commission had jurisdiction over respondents, and the acts and practices complained of took place in commerce, as "commerce" is defined in the Federal Trade Commission Act.

2. Respondents, in their advertising, misrepresented the character of their operation and misrepresented the goods advertised.

3. Respondents utilized a bait-and-switch technique by falsely advertising an old trade-in Singer sewing machine for the purpose of obtaining leads. And, when access to a customer was obtained, respondents sought to sell a more expensive, higher profit Domestic sewing machine.

4. Respondents misrepresented the price quoted to customers as an established price. In fact, there was no established price. Respondents fixed the price to each customer on the basis of what the traffic would bear.

5. These false and misleading activities diverted customers to respondents and were thus detrimental to respondents' competitors and to the public at large.

6. The acts and practices established constituted unfair acts and practices in commerce prejudicial to the public interest and were in violation of Section 5 of the Federal Trade Commission Act.

7. The following order should be entered.

ORDER

It is ordered, That respondents Sewing Machine Company of America, a corporation, and its officers, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, doing business under the name of Domestic Credit Company or any other name or names, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of sewing machines or any other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Using the word "credit" or any word or words of similar import or meaning as a part of their trade or corporate name or representing in any manner that respondents' business is that of lending money or providing credit to purchasers of merchandise, or buying, selling or otherwise dealing in commercial paper incident to the purchase of merchandise on credit.

2. Misrepresenting in any manner the status or nature of respondents' business.

3. Advertising or offering any product for sale for the purpose of obtaining leads or prospects for the sale of their products unless the product shown or demonstrated to the prospective purchaser does in all respects conform to the representations and description thereof as contained in the advertisement or offer.

4. Using, in any manner, a sales plan, scheme or device wherein false, misleading or deceptive statements or representations are made to obtain leads or prospects for the sale of other merchandise.

5. Representing, directly or by implication, that any merchandise is being offered for sale when such offer is not a bona fide offer to sell such merchandise.

6. Representing, directly or by implication, that any price for respondents' products is a special price or reduced price, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents in the recent regular course of their business; or misrepresenting, in any manner, the prices at which such products have been sold or offered for sale by respondents.

7. Misrepresenting, in any manner, savings available to purchasers of respondents' products.

FINAL ORDER

No appeal from the initial decision of the hearing examiner having been filed, and the Commission having determined that the case should not be placed on its own docket for review, and that pursuant to Section 3.21 of the Commission's Rules of Practice (effective August 1, 1963), the initial decision should be adopted and issued as the decision of the Commission:

It is ordered, That the initial decision of the hearing examiner shall, on the 5th day of April, 1967, become the decision of the Commission.

It is further ordered, That Sewing Machine Company of America, a corporation, and Eldon J. Metaxas and Ralph T. Corrigan, individually and as officers of said corporation, doing business under the name of Domestic Credit Company, shall, within sixty (60) days after service of this order upon them, file with the Commission a report in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

IN THE MATTER OF

DAVID CRYSTAL, INC.

MODIFIED ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 6412. Complaint, Sept. 13, 1955—Decision, April 7, 1967

Order modifying a cease and desist order issued February 21, 1956, 52 F.T.C. 856, against a New York City manufacturing clothier by allowing the use of the designation "London" in advertising and labeling, provided there is a clear disclosure that the garments are made in the United States.

ORDER REOPENING PROCEEDING AND MODIFYING ORDER TO CEASE AND DESIST

This matter having come before the Commission upon respondent's letter of March 6, 1967, requesting authorization to use the designation "of London" in connection with the sale of wearing apparel, provided a disclosure is made that said wearing apparel is styled and made in the United States; and

The Commission having treated respondent's letter as a petition for reopening this proceeding and for modification of the order to cease and desist issued on February 21, 1956 [52 F.T.C. 856]; and

The Commission having noted that the order to cease and desist is based on a consent agreement, and being of the opinion that the requested modification is warranted and will not be prejudicial to the public interest:

It is ordered, That this proceeding be, and it hereby is, reopened.

It is further ordered, That the order to cease and desist issued on February 21, 1956, be, and it hereby is, modified to read as follows:

ORDER

It is ordered, That the respondent, David Crystal, Inc., a corporation, its officers, agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale and distribution of wearing apparel in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication that the country of origin of the design or manufacture of respondent's wearing apparel is England or any other part of the British Isles, or any other country, if such is not the fact.

2. Using any pictorial representation which simulates in appearance the British Royal Coat of Arms unless accompanied by clear and conspicuous language indicating country of origin.

3. Using the word "London" in the advertising or labeling of said wearing apparel without clearly and conspicuously disclosing that the wearing apparel is styled and manufactured in the United States of America.

4. Using the word "Limited," or its abbreviation "Ltd.," to designate, describe or refer to any wearing apparel which respondent manufactures or designs unless the word "Limited" or its abbreviation "Ltd." is used as part of the name of a corporation actually in existence.

5. Using the phrase "By Appointment to H. M. the Late King George VI" or any other words or phrases of similar import to designate, describe or refer to any wearing apparel which respondent manufactures, sells and distributes unless said wearing apparel is designed or manufactured in England or the British Isles.

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 the order to cease and desist set forth herein.

IN THE MATTER OF

CAMPBELL TAGGART ASSOCIATED BAKERIES, INC.

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

Docket 7938. Complaint, June 14, 1960—Decision, Apr. 7, 1967*

Consent order requiring the Nation's second largest chain baking company with headquarters in Dallas, Texas, to divest four acquired baking plants and related assets, and also forbids it to acquire any domestic producer or seller of baking goods for the next 10 years without prior approval of the Federal Trade Commission.

COMPLAINT

The Federal Trade Commission, having reason to believe that the above-named respondent has violated and is now violating the provisions of Section 7 of the amended Clayton Act (U.S.C., Title 15, Section 18), and Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45), 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 as follows:

COUNT I

PARAGRAPH 1. Respondent, Campbell Taggart Associated Bakeries, Inc., is a corporation doing business under and by virtue of the laws of the State of Delaware, with its principal offices

*Reported as amended by hearing examiner's order of April 24, 1963, by adding a subparagraph to Paragraph Eight.

and place of business located at 6211 Lemmon Avenue, Dallas 21, Texas.

Respondent was organized under the laws of the State of Delaware in 1927 and through ownership of voting stock maintains control of approximately 50 subsidiaries which operate approximately 67 baking plants located in 58 cities and 21 States, principally in the South, in the Midwest and in the State of California. In addition, respondent exercises control over its subsidiaries by placing its officers in key executive positions in its subsidiaries and by directing the formation and control of the policies, practices and acts as hereinafter referred. Further, respondent directs and controls the purchase of primary ingredients used by its subsidiaries, directs and controls advertising and promotional programs engaged in by its subsidiaries, and directs and controls prices and selling areas of its subsidiaries.

Respondent, through the ownership and control of its subsidiaries, is now, and has been, directly and indirectly, engaged in the manufacture, distribution and sale of bread and bread-type rolls and in the purchase of the necessary ingredients therefor. These products are primarily sold under the well-known and extensively advertised trade name of "Rainbo." Respondent is the second largest commercial baker in the United States and its total sales during the year 1959 were $173,389,607.

PAR. 2. Respondent's subsidiaries are located in various States of the United States other than the State in which the respondent maintains its principal place of business.

In the regular course and conduct of its business, as described herein, respondent ships, or causes to be shipped, bread and bread-type rolls directly from its bakeries to the purchasers thereof, some of whom are located in States other than those from which such shipments originated. Furthermore, in the regular course and conduct of its business, respondent purchases various raw materials for the manufacture of the products of the bakeries operated by its subsidiaries, as well as the supplies, equipment and other needs for such manufacture, and ships, or causes to be shipped, such items to said bakeries, many of which are located in States other than those from which said shipments originated.

In the exercise of such controls and activities by respondent, there is maintained across State lines a steady flow of correspondence and other contracts between and among respondent and its subsidiaries. By these means and methods, among others, respondent has maintained, and still does maintain, a course of trade in commerce, as "commerce" is defined in the amended

Clayton Act and in the Federal Trade Commission Act, in bread and other bakery products, among and between the various States of the United States.

PAR. 3. Sales of bread and bread-type rolls are usually made from each of respondent's bakeries, or bakery plants owned or controlled by one of respondent's subsidiaries, throughout an effective area of distribution of approximately 150–300 miles from each plant. This area of distribution is governed by the distance each plant can economically ship its products. Within this effective area of distribution, each plant encounters competition from local independent bakers, regional bakers and other national bakers. In addition to these marketing areas, the bakery plants owned or controlled by respondent's subsidiaries and independent local bakers, regional bakers and other national bakers are all in competition with one another in various other sections of the country as hereinafter alleged.

PAR. 4. Prior to the acquisition alleged herein, Grocers Baking Company was a corporation organized, existing and doing business under and by virtue of the laws of the State of Kentucky, with its principal place of business located at 1455 South 7th Street, Louisville, Kentucky.

It was engaged in the manufacture, distribution and sale of bread and other bakery products, and, in addition to its own plants, owned and controlled three subsidiaries which were engaged in the manufacture, distribution and sale of bread and other bakery products. Grocers Baking Company, and its subsidiaries, owned and operated plants located as follows:

Corporation	Location of plants
Grocers Baking Company	Louisville, Kentucky Paducah, Kentucky Owensboro, Kentucky Bowling Green, Kentucky Lexington, Kentucky
Grocers Baking Company of Johnson City (Subsidiary).	Johnson City, Tennessee
The Grocers Baking Company (Subsidiary).	Bedford, Indiana New Albany, Indiana
The Hi-Class Baking Company (Subsidiary).	Evansville, Indiana

For the fiscal year ending June 28, 1958, the combined sales of Grocers Baking Company and its subsidiaries, in bread and bakery products, were $13,001,289, which volume placed it among the ten largest commercial bakers in the United States. In addition, the value of shipments of Grocers Baking Company in the State of Kentucky placed it in the number one position in that State with approximately 19% of the total sales of bread and bakery products.

PAR. 5. Grocers Baking Company, and its various subsidiaries, in the regular course and conduct of their businesses, shipped or caused to be shipped bread and bread-type rolls directly from the bakeries to the purchasers thereof, some of whom were located in States other than those from which such shipments originated. Furthermore, in the regular course and conduct of their businesses, Grocers Baking Company, and its subsidiaries, purchased various raw materials for the manufacture of the products of the bakeries, as well as supplies, equipment and other needs for such manufacture, and shipped, or caused to be shipped, such items to said bakeries, many of which were located in States other than those from which said shipments, originated. By such means, among others, Grocers Baking Company, and its subsidiaries, maintained a course of trade in commerce, as "commerce" is defined in the amended Clayton Act and in the Federal Trade Commission Act, in bread and bread-type rolls among and between the various States of the United States.

PAR. 6. In April, 1959, respondent acquired all of the assets of Grocers Baking Company and its subsidiaries. Prior to this acquisition, respondent competed substantially, through bakeries operated by some of its various subsidiaries, with some or all of the baking plants operated by Grocers Baking Company in the sale and distribution of bread and bread-type rolls. Such baking plants of respondent are located in Indianapolis, Indiana; Nashville, Tennessee; Cincinnati, Ohio; Memphis, Tennessee; and Asheville, North Carolina.

PAR. 7. Beginning on or about January, 1950, respondent has entered into a continuous practice of acquiring the assets of certain additional corporations located throughout the United States engaged in the manufacture, sale and distribution of bread and bread-type rolls. All of these acquired corporations at the time of the said acquisitions, in the regular course of their respective businesses, manufactured, sold and distributed bread and bread-type rolls in and throughout various States of the United States or purchased or received shipments of various ingredients such as flour and yeast, or other essential products and materials, related to the manufacture, sale and distribution of bread and bread-type rolls, from producers, suppliers, manufacturers or processors located throughout the United States. All of the acquired corporations, prior to and at the time of the acquisitions, were engaged in commerce, as "commerce" is defined in the amended Clayton Act and the Federal Trade Commission Act.

PAR. 8. In a series of transactions referred to in Paragraph Seven herein, respondent acquired all or part of the assets of the following corporations, which operated bakeries which were engaged in the manufacture, sale and distribution of bread and bread-type rolls.

In 1954, respondent acquired the following corporations, all located in the State of California:

(1) Kilpatrick's San Francisco Bakery, 2030 Folsom Street, San Francisco 10, California, a California corporation with annual sales in 1953 of $4,032,310.97, with a baking plant located in San Francisco, California.

(2) Kilpatrick's Marvel Bakery, 1312 East 8th Street, Oakland, California, a California corporation with annual sales in 1953 of $3,630,098.91, with a baking plant located in Oakland, California.

(3) San Joaquin Baking Company, L. and Los Angeles Streets, Fresno, California, a California corporation with annual sales in 1953 of $3,979,555.87, and with baking plants located at Fresno and Modesto, California.

(4) Holsum Bread Company, 715 North Court Street, Visalia, California, a California corporation with annual sales in 1953 of $867,953.47, with a baking plant located in Visalia, California.

(5) Old Home Bakers, 3266 Montgomery Way, Sacramento, California, a California corporation with annual sales in 1953 of $4,501,231.88, and with baking plants located at Sacramento and Chico, California.

The above-listed acquired corporations collectively sold approximately 31% of the bakery products in their marketing area at the time of the acquisitions. These acquisitions constituted a new market entry into this area by respondent and made respondent the largest producer of bakery products in this area.

In 1959, respondent acquired Mead's Fine Bread Company, 1950 Texas Avenue, Lubbock, Texas, a Texas corporation which owned and operated, among others, three bakeries located in Roswell and Clovis, New Mexico and Lubbock, Texas. For the fiscal year ending October 31, 1958, the combined sales of these three acquired bakeries in bread and bakery products were $4,462,230. This acquisition eliminated one of the largest independent wholesale bakeries in the Roswell and Clovis, New Mexico and in the Lubbock, Texas markets.

In addition to the above-listed corporations, respondent has acquired, among others, all or part of the stock or assets of the following corporations, and in each instance eliminated an independent wholesale bakery as a competitive factor in its respective market area.

In 1950, respondent acquired Zim's Bakery, Colorado Springs, Colorado.

In 1951, respondent acquired Purity Baking Company, El Paso, Texas.

In 1956, respondent acquired Jessee Baking Company, Grand Island, Nebraska.

In 1960 respondent acquired Noll's Baking Company of Alton, Illinois, through one of its subsidiaries.*

In each and all of the acquisitions as alleged herein, respondent organized subsidiaries for the express purpose of operating the acquired properties.

PAR. 9. Respondent has violated Section 7 of the amended Clayton Act in that the acquisition of Grocers Baking Company, as well as the other acquisitions listed in Paragraph Eight, either individually or collectively, may have the effect of substantially lessening competition or tending to create a monopoly in the respondent in the following ways, among others:

1. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls within the "section of the country" of the State of Kentucky and, also, within certain substantial portions of that State.

2. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls in other "section(s) of the country" in which Grocers Baking Company had bakery plants and in which respondent competed with Grocers Baking Company in the sale and distribution of these products.

3. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls in the "section of the country" consisting of the entire distribution area of the bakeries of Grocers Baking Company.

4. Respondent has become, actually or potentially, the leading and dominant supplier of bread and bread-type rolls in other "section(s) of the country" consisting of the entire combined

* Added by order of hearing examiner dated April 24, 1963.

distributional area of the acquired California corporations and consisting of the distributional areas of the other acquired corporations, individually and collectively.

5. Respondent has eliminated actual or potential competition by and between it and Grocers Baking Company, and by and between it and other bakeries acquired and described in Paragraph Eight, in each of the "section (s) of the country" or market areas described.

6. Respondent may substantially lessen actual and potential competition throughout the country in the manufacture, sale and distribution of bread and bread-type rolls.

7. Respondent has eliminated Grocers Baking Company, and the bakeries it has acquired as alleged in Paragraph Eight, as independent competitive factors in the manufacture, sale and distribution of bread and bread-type rolls in the "section (s) of the country" described.

8. Respondent has enhanced its competitive advantage in the manufacture, sale and distribution of bread and bread-type rolls to the detriment of actual and potential competition throughout the country.

9. Respondent has significantly increased the trend to industry-wide concentration of the manufacture, sale and distribution of bread and bread-type rolls.

10. Respondent has precluded and prevented suppliers of various items and products used in the manufacture, sale and distribution of bread and bread-type rolls from selling the same to Grocers Baking Company, and to the other bakeries described in Paragraph Eight.

11. Respondent has enhanced its power and ability to preclude or foreclose new entrants into the bread and bread-type rolls industry in the sections of the country described.

PAR. 10. The foregoing acquisitions, individually and collectively, and the acts and practices of respondent, as herein alleged, constitute violations of Section 7 of the Clayton Act (U.S.C., Title 15, Section 18) as amended and approved December 29, 1950.

COUNT II

PAR. 11. All of the allegations of Paragraphs One through Nine hereof are hereby realleged and incorporated herein by reference, and made a part of this Count II as though each were set forth in full herein.

PAR. 12. By its policies and practices of acquiring bakeries throughout the United States, respondent has acquired the power and ability to achieve an actual or potential monopoly in the manufacture, sale and distribution of bread and bread-type rolls in the United States.

By virtue of its position in the bakery industry and its continuous growth by acquisitions, respondent has acquired an actual or potential monopoly power to impede and prevent the growth and business opportunities of its competitors, as well as their ability to survive in the manufacture, sale and distribution of bread and bread-type rolls in the United States.

In the course and conduct of its business in commerce, respondent has used its increasingly dominant position and economic power to engage in, and is now engaged in, performing or effectuating various policies, acts and practices in the business of manufacture, distribution and sale of bread and bread-type rolls in the United States. Among such acts, methods and practices are:

1. Direct payments of cash to grocers for preferred space for the display of respondent's products;

2. Reductions in prices or charges to some grocers or retailers—without relation to any savings in respondent's costs in the manufacture, distribution or sale of its products—for the purpose, or with the effect, of gaining entry into the stores of such grocers or retailers, thereby enhancing the potential resale of these products at the expense of competitive products; and

3. Giving discriminatory rebates, discounts and allowances, by various methods, in order to enable the purchasers of respondent's bread, as well as its other bakery products, to reduce the consumer prices therefor, or in lieu thereof, to enjoy a greater net profit on retail sales of respondent's products.

PAR. 13. The effect of the acquisitions alleged and the consequent and effectuating policies, methods, acts and practices of respondent as alleged, has been or may be:

1. To divert to respondent, from its competitors, who are not in the economic position to successfully engage in such policies, methods, acts and practices, a substantial share of the sales of bread and bread-type rolls;

2. To discourage or tend to foreclose the entry of any new competitors in the manufacture, distribution and sale of bread and bread-type rolls;

3. To lessen, hinder, restrain and suppress competition in the manufacture, sale and distribution of bread and bread-type rolls;

4. To actually or potentially enable respondent to dominate the manufacture, sale and distribution of its products, in various sections of the country; and

5. To tend to create a monopoly in respondent in the manufacture, sale and distribution of bread and bread-type rolls in those sections of the country where respondent sells and distributes such products.

PAR. 14. The foregoing policies, methods, acts, practices and acquisitions of respondent, as herein alleged, are all to the prejudice and injury of respondent's competitors and to the public; have a tendency or capacity to hinder and prevent, and have hindered and prevented, actual or potential competition in the manufacture, sale and distribution of bread and bread-type rolls in commerce and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act (U.S.C., Title 15, Section 45) and constitute a violation thereof.

Mr. Edward H. McGrail and *Mr. V. Rock Grundman, Jr.,* for the Commission.

Mr. Frederick M. Rowe and *Mr. Ronald J. Wilson,* of *Kirkland, Ellis, Hodson, Chaffetz & Masters,* Washington, D.C.

Mr. Frazor T. Edmondson and *Mr. Donald H. Mackaman,* Dallas, Tex., attorneys for respondent.

INITIAL DECISION BY JOHN B. POINDEXTER, HEARING EXAMINER

JULY 11, 1966

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FINDINGS OF FACT—Continued

PRELIMINARY STATEMENT

The complaint in this proceeding was issued by the Federal Trade Commission on June 14, 1960, charging Campbell Taggart Associated Bakeries, Inc., a corporation, sometimes hereinafter referred to as Campbell Taggart or respondent, with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, as a consequence of a series of acquisitions, beginning in January 1950.

The complaint contains two so-called counts. Count I challenges the legality under Section 7 of the amended Clayton Act of each of the following alleged transactions: [1]

1. The alleged acquisition of Zim's Bakery (Dan-Dee Bread Co.) of Colorado Springs, Colorado, in 1950;

2. The alleged acquisition of Purity Baking Company of El Paso, Texas, in 1951;

3. The alleged acquisitions of Kilpatrick's Bakeries, its subsidiaries, and Old Home Bakers of California, in 1954;

4. The alleged acquisition of Jessee Baking Company of Grand Island, Nebraska, in 1956;

5. The alleged acquisition of Grocers Baking Company and its subsidiaries, of Kentucky, Indiana, and Tennessee, in 1959; and

6. The alleged acquisition of Mead's Fine Bread Company of Lubbock, Texas, Roswell and Clovis, New Mexico, in 1959.

On April 24, 1963, the complaint was amended so as to challenge the acquisition of Noll's Baking Co. of Alton, Illinois, in 1960.

Count I further alleges that respondent, incorporated under the laws of Delaware in 1927, through ownership of voting stock, maintains control of approximately 50 subsidiaries which operate approximately 67 baking plants located in 58 cities and 21 states, principally in the South, in the Midwest, and in the State of California. Count I further alleges that respondent exercises control over its subsidiaries by placing its officers in key executive positions in its subsidiaries, and by directing the formation and control of the policies, practices, and acts as hereinafter referred to. Count I also alleges that respondent directs and controls the purchase of primary ingredients used by its subsidiaries, directs and controls advertising and promotional programs engaged in by its subsidiaries, and directs and controls prices and selling areas of its subsidiaries. Count I further alleges that, through the ownership and control of its subsidiaries, the respondent is and has been, directly and indirectly, engaged in the manufacture, distribution, and sale of bread and bread-type rolls, and in the

[1] The transactions are listed in the order of their occurrence, datewise, not in the order in which they are alleged in the complaint.

purchase of the necessary ingredients therefor; and that respondent is the second largest commercial baker in the United States, and its total sales during the year 1959 were $173,389,607.

Count I further alleges that the various acquisitions, individually or collectively, may have the effect of substantially lessening competition or tending to create a monopoly in the respondent by making the respondent the leading and dominant supplier of bread and bread-type rolls in various geographic areas, by precluding suppliers of ingredients from selling to each of the acquired companies, and by enhancing respondent's power and ability to preclude or foreclose new entrants into the bread industry in each of their locations; and, throughout the country, respondent may substantially lessen competition and enhance its competitive advantage in the bread business to the detriment of competition and had significantly increased the trend to industry-wide concentration.

Count II, after incorporating by reference the allegations of Count I in their entirety, charges that respondent's policies and practices of acquiring bakeries created in respondent the power and ability to achieve an actual or potential monopoly in the bread business in the United States, and gave respondent monopolistic power to the prejudice of its competitors and their ability to survive. Count II also charges that respondent used its dominant position and economic power resulting from the acquisitions to perpetuate various trade practices, including cash payments, price reductions, and discriminatory allowances to its customers in violation of Section 5 of the Federal Trade Commission Act.

On October 18, 1960, respondent filed an answer, denying the charging allegations of the complaint. Respondent pleaded specially that it did not bake any bread, and was not engaged in the baking business; that it was a holding and service company which owned voting stock in autonomous subsidiary corporations whose operating officers, many of whom owned substantial voting stock, were responsible for the production, distribution, and sale of the subsidiaries' products in their respective areas of operation.

Following a pre-trial conference at which guidelines for the conduct of future hearings were prescribed by the hearing examiner on the record, hearings were held during 1961–1965 in California, Washington, D.C., Dallas, Texas, Louisville, and Paducah, Kentucky. At the original hearings held in Louisville and Paducah in 1963, the hearing examiner sustained objections made by counsel for respondent to the receipt in evidence of certain exhibits offered in evidence by complaint counsel, being some of approximately 75 Section 6(b) reports, designated as *Special Report Survey of Manufacturers of Bakery Products,* which had been prepared and submitted by respondent, its subsidiaries, and numerous third party baking companies, in response to formal request by the Commission. Each of these special reports, sometimes called 6(b) reports, was identical, on multi-page forms, and was issued by the Commission pursuant to authority granted it by Section 6(b) of the Federal Trade Commission Act. Each exhibit stated on its face that it was a "Special Report form in connection with a survey of sales of bakery products made by wholesale bakers, grocery chain bakers and home service bakers for the years 1958 through 1961, inclusive," and called on the particular bakery to execute and give certain financial, statistical, marketing, and distribution information called for in the form. Counsel for respondent objected to the receipt in evidence of these special reports on several grounds, among them being that said special reports and the information contained therein were unlawfully obtained, since such special report forms had not been approved by the Bureau of the Budget prior to their issuance as required by the Federal Reports Act.[2]

The hearing examiner sustained respondent's objections to the receipt in evidence of such special report exhibits on the ground of non-compliance with the provisions of the Federal Reports Act. Ultimately, the Commission sustained the ruling of the hearing examiner and the special report forms were submitted to the Bureau of the Budget for approval. Conditioned on substantial changes being made therein, the Budget Bureau approved the special report forms. In March 1964, using the approved forms, complaint counsel began a resurvey of the baking firms originally surveyed. A stipulation, dated December 14, 1964, authorized written cross and redirect examination with respect to the resurvey responses, thus obviating further oral testimony with respect thereto. Over respondent's objections, the resurvey exhibits (CX 447–521), together with written cross and redirect exami-

[2] The Federal Reports Act (5 U.S.C. § 139(c) and Bureau of the Budget Circular A-40) provides, in substance, that no Federal agency shall conduct or sponsor the collection of information upon identical items from ten or more persons unless, in advance of adoption or revision of any forms to be used in such collection, the agency shall have submitted such forms to the Director of the Budget Bureau and the Director shall have stated that he does not disapprove the proposed collection of information.

nation, were received in evidence at a hearing held on May 18, 1965. Complaint counsel then rested their case-in-chief. Thereupon, respondent requested and was granted leave to file a written motion to dismiss the complaint.

On May 28, 1965, respondent filed a written motion and supporting memorandum to dismiss the complaint on the ground that complaint counsel had failed to satisfy their burden of proof to support the allegations of the complaint with respect to each and all of the challenged transactions and trade practices, individually and collectively. This motion to dismiss was denied by the hearing examiner by order dated July 9, 1965.

Thereafter, on August 31, 1965, after appearing with complaint counsel before the examiner in chambers on August 13, 1965, respondent filed a formal notice of election to rest its case on the evidence already in the record made during complaint counsel's case-in-chief. The election was based on complaint counsel's alleged failure to "carry their burden of proof to establish the allegations of the complaint," including their "failure to present reliable evidence of market shares, on the record, with respect to any and all of the charges of the complaint, as required by the judicial and Commission decisions in merger cases" (Notice, pp. 1–2, August 31, 1965). Approximately 95 witnesses testified at various sessions of the hearings, all being called at the instance of complaint counsel. Several witnesses were recalled and testified at different sessions of the hearings. The record contains approximately 5,000 pages of transcript and a total of approximately 602 exhibits, most of them being multi-page documents, aggregating several thousand pages.

Proposed findings of fact, conclusions of law, briefs thereon, and a proposed order have been submitted and filed by respective counsel. Complaint counsel's proposed findings contain 164 typewritten pages, with an additional 53 pages (containing a total of 171 footnotes) attached thereto which complaint counsel designate as "Appendices." These "Appendices" contain figures, statistics, and tabulations which purport to show, among other things, percentages of market shares and universe figures based on the figures contained in the Section 6(b) survey reports by wholesale bakery plants (CX 447–521), which were received in evidence and are in the record.

Respondent has filed a motion, and memorandum in support thereof, to strike or disregard certain portions of complaint counsel's proposed findings and conclusions, which respondent claims are based on complaint counsel's own characterizations and conclusions as set out or tabulated in the so-called "Appendices," rather than on record evidence. Respondent says that the market share rankings, as proposed by complaint counsel and contained in the so-called "Appendices," are not supported by record evidence. For example, respondent asserts that, in the so-called "Appendices" attached to complaint counsel's proposed findings, complaint counsel are not simply presenting the sum of figures already in the record; "they are taking individual sales statistics in the record, characterizing them as totals, and then drawing unsupported conclusions from their own characterizations—all without benefit of record testimony or record evidence." Complaint counsel filed an answer opposing said motion and requesting that respondent's motion be considered as a reply to complaint counsel's proposed findings, conclusions, and order.

On March 1, 1966, oral argument was held on the proposed findings filed by respective counsel and on respondent's motion to strike or disregard certain portions of complaint counsel's proposed findings. The proceeding is now before the undersigned hearing examiner for initial decision. All proposed findings of fact and conclusions of law not specifically found or concluded herein have been rejected.

Upon the basis of the entire record, the hearing examiner makes the following findings of fact, conclusions of law drawn therefrom, and issues the following order:

FINDINGS OF FACT

I

The Business and Organization of Campbell Taggart Associated Bakeries, Inc.

1. Campbell Taggart Associated Bakeries, Inc., is a corporation organized in 1927 under the laws of the State of Delaware, with its home office and principal place of business located at 6211 Lemmon Avenue, Dallas, Texas.

2. Campbell Taggart Associated Bakeries, Inc., owns a majority of the common (voting) stock of 58 separate so-called subsidiary corporations which, in turn, operate 71 bakery plants in 71 cities, located in 22 States of the United States. These 71 bakery plants bake and sell bread, bread-type rolls, and other bakery products at wholesale, principally under the trade names

of Rainbo, Colonial, and Kilpatrick, to both chain and individually-owned grocery stores, supermarkets, restaurants, and public institutions, such as schools, hospitals, etc. (Complaint, Answer; Tr. 2543). Two subsidiary corporations sell and distribute bakery products under the trade name Manor at retail by means of house-to-house routes. A subsidiary, Bel-Art Advertising, Inc., provides advertising services for the baking plants, and two additional subsidiaries, American Foods, Inc., and Rainbo Foods, Inc., manufacture and distribute refrigerated biscuits and ice popsicles (Madsen, Tr. 2540–42).

3. The total net sales of Campbell Taggart subsidiaries for 1958 through 1962 are as follows:

Year	*Total net sales (000 omitted)*
1958 (CX 319)	$162,434
1959 (CX 320)	173,389
1960 (CX 321)	197,576
1961 (CX 322)	202,162
1962 (CX 522A)	208,739

4. The names of the 58 subsidiary corporations first mentioned and the percentage of their common stock owned by respondent, Campbell Taggart Associated Bakeries, Inc., as of 1962, as well as the percentage of its common stock in American Foods, Inc., and Rainbo Foods, Inc., are as follows:

Affiliated company	*Percent of outstanding common stock owned*
Rainbo Baking Co. of Albuquerque	69.07
Colonial Baking Co. of Asheville	52.27
Colonial Baking Co. of Atlanta	53.87
Colonial Baking Co. of Augusta	51.27
Rainbo Baking Co. of Aurora	51.00
Rainbo Baking Co. of Beaumont	51.95
Colonial Baking Co. of Cedar Rapids	56.06
Colonial Baking Co. of Chattanooga	50.77
Rainbo Baking Co. of Cincinnati	91.53
Rainbo Baking Co. of Clovis	90.00
Colonial Baking Co. of Columbus	51.50
Rainbo Baking Co. of Corpus Christi	99.33
Manor Baking Co. (Dallas, Tex.)	50.28
Rainbo Bread Co. (Denver, Colo.)	50.80
Colonial Baking Co. of Des Moines	62.26
Colonial Baking Co. of El Dorado	61.76
Rainbo Baking Co. of El Paso	95.00
Rainbo Baking Co. of Emporia	65.50

Affiliated company	*Percent of outstanding common stock owned*
Colonial Baking Co. of Evansville	85.83
Colonial Baking Co. of Fort Smith	90.00
San Joaquin Bakeries, Inc. (Fresno, Calif.)	60.74
Rainbo Bread Co. of Grand Island	60.00
Rainbo Baking Co. of Harlingen	53.43
Rainbo Baking Co. of Houston	52.93
Betts Baking Co. (Hutchinson, Kans.)	58.89
Colonial Baking Co. of Indianapolis, Ind.	50.47
Colonial Baking Co. of Jackson	50.47
Rainbo Baking Co. of Johnson City	95.00
Rainbo Baking Co. of Joliet	50.58
Manor Baking Co. (Kansas City, Mo.)	54.85
Rainbo Baking Co. of Lexington	90.00
Colonial Baking Co. of Little Rock	54.17
Rainbo Baking Co. of Louisville	95.83
Rainbo Baking Co. of Lubbock	94.44
Colonial Baking Co. of Memphis	52.62
Colonial Baking Co. of Alabama	57.56
Colonial Baking Co. of Muncie, Ind.	50.40
Colonial Baking Co. of Nashville	50.50
Rainbo Baking Co. of Oklahoma City	51.63
Colonial Baking Co. of Owensboro	75.00
Paducah Colonial Baking Co.	90.00
Peoria Colonial Baking Co.	50.46
Rainbo Baking Co. of Phoenix	50.64
Rainbo Bakers, Inc. (Pueblo, Colo.)	58.50
Rainbo Bread Co. of Roanoke	54.40
Rockford Colonial Baking Co.	50.47
Rainbo Baking Co. of Roswell	97.00
Rainbo Baking Co. of Sacramento Valley	64.70
Rainbo Bread Co. of Saginaw	63.09
Rainbo Bread Co. of St. Joseph	65.17
Colonial Baking Co. of Saint Louis	58.90
Rainbo Baking Co. of San Antonio	51.00
Kilpatrick's Bakeries, Inc. (San Francisco, Calif.)	59.78
Colonial Baking Co. of Springfield	64.13
Rainbo Baking Co. of Tucson	52.50
Rainbo Baking Co. of Tulsa	59.92
Rainbo Baking Co. of Waco	85.90
Rainbo Baking Co. of Wichita	52.96
American Foods, Inc. (Dallas, Tex.)	60.00
Rainbo Foods, Inc. (Dallas, Tex.)	60.00

(See CX71A–H)

5. Thus, respondent's majority stock ownership in each of the subsidiary corporations ranges between 50.28% and 99.33% of the outstanding common (voting) stock in the particular corporate subsidiary. The minority stock interests are generally owned by the operating heads (President or Vice President) of

the subsidiary corporate baking plant. In some instances, there is an agreement that Campbell Taggart may buy back the stock at book value in the event the owner ceases to be the operating head of the plant (Madsen, Tr. 2580–81).

6. Officials of Campbell Taggart serve on the Board of Directors of many of the subsidiary corporate baking plants. As of July 17, 1961, Mr. Frazor T. Edmondson, Secretary of Campbell Taggart and a Director and Vice Chairman of its Executive Committee, Mr. Alexander T. Page, Treasurer of Campbell Taggart, and Mr. Walter J. Lyman, Assistant Secretary of Campbell Taggart, were the Secretary, Treasurer, and Assistant Treasurer, respectively, of each of the 60 subsidiary corporations (CX 71A–H). Mr. Edmondson, Legal Counsel and Chairman of the Executive Committee of Campbell Taggart, as well as a Director of 25 of its corporate subsidiaries, testified, among other things, that he had only attended three or four Board meetings of the subsidiaries in the last few years (Tr. 2976), and his position as Secretary of the subsidiaries was administrative, and, being located in the home office of Campbell Taggart, he could relieve the plant heads of administrative details, such as the maintenance of stock transfer records, property records, etc. Mr. Edmondson further testified that he did not participate in the marketing decisions of these subsidiary corporations in his role as director or secretary (Tr. 2976–2981). Mr. Alexander T. Page, Treasurer of Campbell Taggart and of each subsidiary corporate baking plant, testified that he keeps the books, prepares all Federal and State income tax returns, franchise taxes, and similar reports to the States and Federal Government for respondent and its corporate subsidiaries (Tr. 2935–36).

7. The Board of Directors of Campbell Taggart has the over-all responsibility to the stockholders for the operation and management of the company, including the acquisition of stocks or other assets of other companies, and for the expenditure of capital for the benefit of subsidiary corporations (CX 99; Tr. 2521). The Board of Directors, from among its members, elects an Executive Committee, including a Chairman thereof, which committee oversees the day-to-day operations of the corporate respondent. In turn, another committee, called the Operating Committee, appointed by the Board from among the officers of Campbell Taggart, oversees the day-to-day operations of the various departments in the headquarters of Campbell Taggart, such as production, sales, engineering, purchasing, and finance (CX 77; Tr. 2526, 2736). The Operating Committee determines the amount of

capital expenditures to be made in each subsidiary baking plant for the coming year, and where the funds for such expenditure will be obtained (CX 76). In stock acquisitions or other assets of companies which Campbell Taggart may consider for acquisition, the Operating Committee makes an investigation and a recommendation to the Executive Committee which, in turn, makes its recommendation to the Board of Directors (Tr. 2522).

8. At its headquarters in Dallas, Texas, Campbell Taggart maintains various departments, from which it provides services to its various subsidiary corporate baking plants, such as research, sales, production, engineering, advertising, accounting, auditing, and purchasing. For these services, Campbell Taggart charges each subsidiary corporation a fee of 2½% of the annual sales of the subsidiary corporation (Madsen, Tr. 2547). The basic formula for bread and bread-type rolls for the subsidiary baking plants was developed in the Campbell Taggart laboratory in Dallas, but the local plant operating head is not obligated to strictly adhere to this formula, and may change the formula to suit tastes of customers in the particular area (Tr. 2654–55).

9. The Sales Service Department, located in the Dallas headquarters of Campbell Taggart, reviews reports prepared and mailed in by the local subsidiary baking plants, containing information with respect to sales, tonnage, "stale returns," etc. (Hazelrig, Tr. 2812, 2842). If these statistics indicate potential problems, the Sales Service Department may make suggestions for improved performance (Tr. 2816, 2848). Upon the request of a plant operator, the Sales Service Department may assign a sales service representative to visit the plant, study the local problem or situation, and make recommendations to the plant manager (Tr. 2741–43).

10. Campbell Taggart maintains a purchasing service in its headquarters, where it purchases supplies, including flour, for the subsidiary baking plants (Vesecky, Tr. 2983–84, 2990). The corporate subsidiary baking plants submit weekly Inventory Reports on forms furnished by Campbell Taggart, from which the Purchasing Department of Campbell Taggart determines the flour needs of the corporate subsidiary (Tr. 2992). Upon the basis of the information contained in these weekly Inventory Reports, the Purchasing Department obtains quotations on the price of the total amount of the flour requirements for each plant as reflected in these reports, and the flour is purchased by Campbell Taggart with instructions to the mill to ship a specific amount of

flour from the total purchase direct to the particular subsidiary baking plant or plants. The flour supplier then bills the subsidiary consignee baking plant, and that plant pays the supplier direct (Tr. 2988–2997). However, Mr. Vesecky testified that, in some instances, the local subsidiary baking plant buys some items direct, without purchasing through the Campbell Taggart Purchasing Department. These items have included cracked wheat, sugar, shortening, transportation equipment, and uniforms (Tr. 2993, 2997–98).

11. The Accounting Department, the Auditing Department, and the Payroll Records Department are maintained in the Dallas headquarters of Campbell Taggart, where records and reports submitted by the subsidiary baking plants are kept. The reports and forms, which the subsidiary baking plants are required to file with Campbell Taggart, as well as detailed instructions for the completion and submission of these reports, are set forth in an Accounting Manual (CX 310), which was prepared by Campbell Taggart. These reports and forms are uniform for each plant, and, from them, the operating results of one subsidiary plant may be compared with those of any other subsidiary baking plant. Also, each individual baking plant, as distinguished from each subsidiary corporation, is required to submit to Campbell Taggart a weekly Inventory Report. This report contains information as to the amounts of ingredients used by that particular plant each week in its baking operations (CX 310; Tr. 2878). From this information, the Purchasing Department of Campbell Taggart may determine the flour and other ingredient requirements for the subsidiary baking plants (Tr. 2992).

12. Bel-Art Advertising, Inc., a wholly-owned subsidiary of Campbell Taggart, operates as an advertising agency for the subsidiary baking plants, and receives agency commissions from these plants as compensation for any advertising services which it has performed for such plant (Joyner, Tr. 2718–2720, 2725). At the request of a subsidiary baking plant, Bel-Art will assist the plant in preparing most any type of local advertising promotion, such as newspaper, radio, television, billboard, or point of purchase materials which the subsidiary baking plant may decide to use (Tr. 2722, 2724, 2730). Neither Campbell Taggart nor any of its subsidiary baking plants use any national advertising. All advertising is done by and in the name of the individual subsidiary baking plant in its local area of distribution (Tr. 2728).

13. As a majority stockholder in each corporate subsidiary bak-

ing plant, Campbell Taggart selects the President or operating head of each baking plant, and determines the amount of his salary and also the amount of dividends, if any, to be paid by the subsidiary corporate baking plant. Campbell Taggart also approves all capital expenditures of each subsidiary in excess of $750 (Madsen, Tr. 2543, 2550, 2569, 2611). Occasionally, it may become necessary for Campbell Taggart to make a loan to one of its subsidiary corporations, or guarantee the payment of a loan made by one of its subsidiary corporations (Madsen, Tr. 2559, 2562).

14. The President or operating head of each subsidiary corporation baking plant decides what prices are to be charged for all products baked at his particular plant. The local plant head also has charge of all the sales, advertising, and merchandising within his area of distribution (Madsen, Tr. 2683; Joyner, Tr. 2730; Edmondson, Tr. 2972–76; Hazelrig, Tr. 2853; Page, Tr. 2934–36). All decisions with respect to pricing, promotion, and sales are made by the local plant heads, and Campbell Taggart does not participate in these decisions (Knoles, Tr. 1128; Snyder, Tr. 1376; Gossadge, Tr. 3362; Mabie, Tr. 3501; Rains, Tr. 3640, 3645, 3648; Stafford, Tr. 3979; Ford, Tr. 4201–4202; Mitchell, Tr. 4312; Elliott, Tr. 4355; Branaman, Tr. 4593–95). Campbell Taggart did not supply any funds or credit with which to finance or subsidize prices for bread or other products, or any other marketing concessions by any subsidiary, and each local plant used its own funds to finance any marketing concessions which it gave (Knoles, Tr. 1121, 1125; Snyder, Tr. 1376; Rains, Tr. 3649).

II

The Baking Industry

A. *Product Categories*

15. The sixty subsidiary corporations in which Campbell Taggart is the majority stockholder, including the bakery plants which were acquired as a result of the challenged transactions, are engaged primarily in the production and sale of bakery products. The Bureau of the Census has classified the industry of bread baking under what it designates product *"Code 2051—Bread and Related Products"* (CX 166). The baking industry produces a wide variety of products, which include bread and bread-type rolls, refrigerated doughs and mixes, frozen bread and biscuits,

sweet yeast goods, soft cakes, pies, pastries, doughnuts, biscuits, crackers, pretzels, and potato chips (CX 166, Table 6A, p. 20E–13; Cooper, Tr. 379; Parsons, Tr. 91; Madsen, Tr. 2541).

16. The complaint alleges that the "line of commerce" is "bread and bread-type rolls." In the baking industry, bread and bread-type rolls include white pan bread, white hearth bread (such as French and Italian bread) (Fontana, Tr. 155), dark breads (such as whole wheat, cracked wheat, rye, and pumpernickel), specialty breads (such as raisin, diet, protein, and buttermilk), and rolls baked with bread-type dough (such as brown and serve, hamburger, wiener, kaiser, and parkerhouse) (CX 166, Table 6A, 20E–13). The 1954 Census of Manufacturers of Bakery Products received in evidence as CX 166, referred to above, contains statistics compiled from information obtained by the Bureau of the Census from manufacturers of bakery products. However, the statistics published in CX 166 are mere totals, since the Bureau of the Census is prohibited by law from publishing any statistics that identify individual companies. As stated in paragraph 15 above, the Bureau of the Census has classified the baking of bread under what is designated as Standard Industrial Classification, Industry Code *2051—Bread and Related Products* (SIC 2051).[3]

17. For the purpose of summarizing the product information contained in the 1954 Census of Manufacturers of Bakery Products, the code structure used is a 4-digit code for the total primary products in an industry, a 5-digit code for the class of product, and a 7-digit number for the individual product; thus, the Code *2051—Bread and Related Products* is used for the total primary products for the baking industry (excepting retail single-shop bakeries); Industry Code 20511 for bread and bread-type rolls; and Industry Code 2051111, etc., for the individual products making up the category of bread and bread-type rolls, such as white pan bread, white hearth bread (such as French and Italian bread), whole wheat, cracked wheat, rye, and pumpernickel, specialty breads (such as raisin, diet, protein, and buttermilk), and rolls baked with bread-type dough (such as brown and serve, hamburger, wiener, kaiser, and parkerhouse). Sweet goods of all types, including yeast raised doughnuts, sweet rolls, pies, pastries,

[3] This classification, *Code 2051—Bread and Related Products*, does not include statistics for retail single-shop bakeries, that is, plants or establishments producing bakery products primarily for direct sale to consumers on the premises, these being classified in retail trade, Industry Code 5462, and not in Industry Code 2051.

and cakes are excluded from the category of bread and bread-type rolls, both in the baking industry and in the Census classification SIC 20511 (CX 166, Table 6A, p. 20E–13).

18. The Standard Industrial Classification does not provide for separate industry data for the different types of bakeries included in Industry Code 2051. In order to provide additional detail to reflect the differences among bakeries, *i.e.*, interrelationships of value and type of bakery products shipped, materials used, value added by manufacture, employment, etc., Industry Code 2051 has been divided into four sub-industries, namely, Wholesale Bakeries, Grocery Chain Bakeries, House-to-House or Home Service Bakeries, and Retail Multi-Outlet Bakeries. These four sub-industries under Standard Industrial Classification *2051—Bread and Related Products* will hereafter be discussed individually.

19. All bread and bread-type roll products are produced in similar production processes entailing the mixing of ingredients, principally flour, yeast, shortening, and water, then raising the dough, molding the dough into the shape of the loaf or roll, raising the dough again in the pan, baking, cooling, slicing, if necessary, and wrapping (Pennington, Tr. 220; Kilpatrick, Tr. 610–611). All bread products are produced with the same equipment, by the same labor force, distributed on the same trucks, sold to the same type of accounts, to the same type of consumer, for the same purpose, *i.e.*, consumption (Ecker, Tr. 955). White and variety breads are competitive, and the housewife will generally buy one or the other, rarely one of each (Moore, Tr. 988; Stankey, Tr. 1179; Fahn, Tr. 1290). In recent years, the industry has developed bread and related bakery products in new forms, including frozen products and refrigerated doughs, ready for baking by the housewife (Parsons, Tr. 91; Cooper, Tr. 379; Madsen, Tr. 2541–42).

20. According to the Census data, the aggregate value of shipments by the baking industry for 1958, the last year of record, was $3,578,968,000 for bread and related products, and $2,220,-959,000 for bread and bread-type rolls (CX 167, Table 6A, p. 20E–12). These figures do not include the sales of bread and related products by single unit retail bakeries, or sales of refrigerated dough. If sales by single-shop retail bakeries with baking on the premises are included, the total value of shipments of bread and other bakery products for 1958 was $4,741,979,000 (CX 167, Table 1, p. 20E–3).

B. *Types of Producers and Methods of Distribution in the Baking Industry*

1. *Wholesale Bakeries*

21. Bakery products are distributed through a variety of means from the baking plant to the ultimate consumer. Wholesale bakeries generally produce bread and related products in a local baking plant, and distribute these products daily by delivery trucks operated by a driver-salesman. Some delivery trucks are stationed at, and operated from, the baking plant. Others may operate from depots or loading stations, sometimes located as far as 250 miles from the plant (Langedorf, Tr. 845; Inglis, Tr. 1849, 1854). Large transport trailers carry bakery products from the baking plant to the depots, where the baked goods are loaded onto the delivery trucks (Kilpatrick, Tr. 593; Gossadge, Tr. 3333). Customers of wholesale bakeries are mainly retail grocery stores, restaurants, and institutions, such as schools, hospitals, and military bases (Parsons, Tr. 72–75; Kilpatrick, Tr. 608–609; Snyder, Tr. 652; Little, Tr. 685). Sales by wholesale bakers to their customers, particularly retail grocery stores and restaurants, are made on a consignment basis. Driver-salesmen pick up all unsold products, which are more than two or three days old in the case of bread, and four or five days old in the case of sweet goods, and credit the customer's account with the wholesale price of these "stale returns." The wholesale bakeries' customers pay only for those products which are actually resold or consumed (Pettis, Tr. 529; Kilpatrick, Tr. 606; Knoles, Tr. 707; Hazelrig, Tr. 2753). The grocer determines the brand or brands of bread to be carried for sale in his store, the location and amount of space on his bread racks where the different brands of bread baked by competing wholesale bakeries are placed by their driver-salesmen and displayed for sale to the store's customers. The grocer controls the amount of bread that may be placed on the rack by the particular wholesale bakery driver-salesman (Pettis, Tr. 497; Robbins, Tr. 557; Holiday, Tr. 1057).

2. *"First" Position on Bread Racks*

22. Modern grocery stores are planned so that the flow of customer traffic will follow a set pattern, and bread racks are placed by the grocer along an aisle in this flow of traffic at a location convenient to the store's customer. It seems to be the consensus

among bakers that the best or "first" position on the bread rack is the preferable location. This is the position or place on the bread rack which is first observed by the customer in following the traffic pattern through the store. The consensus among wholesale bakers who testified in this proceeding is that the "first" position is the most desirable on the bread rack, since the greatest number of bread sales are made from this position. Therefore, they believe that the baker who has the "first" position will sell the most bread. Also, most bakers believe that a customer is more likely to select bread from a full stack on the rack than from a depleted stack of bread on the rack. Therefore, bakers attempt to keep the racks supplied with a full stack of their particular brand of bread, and each strives for more space on the bread rack, as well as "first" position (Tr. 234, 949, 995-96, 2754, 3240–41, 3252, 3522–24). Grocers do not want to "run out" of bread, and they insist that bakers maintain an adequate supply of fresh bread on the racks (Tr. 1959–1960, 1989). Some grocers even request the driver-salesman to leave extra bread in the back room so the grocer won't run out (Tr. 558).

3. *"Overloading" Bread Racks and "Stale Returns"*

23. At hearings in California, a considerable portion of the time was spent in receiving testimony relating to "overloading" or "loading" bread racks in grocery stores. The terms are synonymous. "Overloading" a bread rack has been described as placing more loaves of bread on the rack than would normally be expected to sell between deliveries over and above a reasonable "carry-over" (Tr. 302–303, 366–67, 438, 467, 475, 527, 749–750, 3241, 3577, 3712, 4502). The bread remaining unsold on the bread rack is picked up by the driver-salesman and is called "stale returns," and disposed of by the bakery. The desirable amount of so-called "carry-over" appears to be somewhere in the area between 15% and 20% of the average amount of bread sold in the particular store (Tr. 486–87, 542, 751, 771, 798–99). The proper rate or percentage of so-called "stale returns" cannot be determined or measured with mathematical precision. Many factors influence the rate or percentage of "stale returns," such as the type of store, economics, weather or climatic conditions, seasonal factors, promotional activity, civic functions, wrapping on the bread, etc. Even a new bakery moving into an area will tend to increase the rate of "stale returns" for bakers who were already

in that particular market (Tr. 95–97, 384–87, 521, 535, 738–39, 802, 962, 1057, 1617). Union contract limitations as to the days of the week on which driver-salesmen may deliver supplies of fresh bread to stores or the opening of a new super market in an area may affect the rate of "stale returns" (Tr. 801–802).

24. Out of aggregate shipments of bread and bread-type rolls of $2,004,371,000 in 1954, and $2,220,959,000 in 1958 (exclusive of sales by single unit retail bakeries), wholesale bakeries accounted for $1,647,418,000 in 1954, and $1,762,171,000 in 1958 (CX 166, Table 6A, p. 20E–13; CX 167, Table 6A, p. 20E–12).

4. *Home Service or House-to-House Bakeries*

25. Home service or house-to-house bakeries produce bread and related products in plants similar to those of wholesale bakeries. Instead of distributing their products to grocery stores, restaurants, and institutions, home service bakeries distribute on route trucks direct to the customer by delivery to the door of the housewife. Home service bakeries sell their products at retail price levels, and bypass the retail grocery store in the distribution process (Pennington, Tr. 193). From the aggregate shipments of bread and bread-type rolls of $2,004,371,000 in 1954, and $2,220,-959,000 in 1958 (exclusive of sales by single unit retail bakeries), home service bakeries accounted for $182,036,000 in 1954, and $213,021,000 in 1958 (CX 166, Table 6A, pp. 20E–13, 14; CX 167, Table 6A, pp. 20E–12, 13).

5. *Grocery Chain Bakeries*

26. Grocery chain bakeries are owned by retail grocery chains, such as The Great A & P Tea Company (CX 469A–Z–5); Safeway Stores, Inc. (CX 511A–S); and Kroger Co. (CX 481A–R). Such grocery chain bakeries produce bread and related products for sale in their own retail stores where store employees arrange the products on the bread rack (Perry, Tr. 1401, 1417). Grocery chain stores, which operate their own baking plants, usually give their own products preferred position on the bread rack, and may exclude or limit the bread products of wholesale bakeries (Lewis, Tr. 4516). In 1954, the grocery chains operated 142 baking plants, which accounted for 7% of the value of shipments of the bread and bread-type rolls industry (SIC 20511). In 1958, the number of plants in this category increased to 178, and the value of shipments increased to 9.5% of the value of shipments of the

bread and bread-type rolls industry (SIC 20511). More than one-half of the shipments from these plants were of bread and bread-type rolls (SIC 20511; CX 166, Table 6A, pp. 20E–13, 14; CX 167, Table 6A, pp. 20E–12–14).

27. Out of aggregate sales of bread and bread-type rolls of $2,004,371,000 in 1954, and $2,220,959,000 in 1958 (exclusive of sales by single unit retail bakeries), grocery chain bakeries accounted for $140,081,000 in 1954, and $212,018,000 in 1958 (CX 166, Table 6A, pp. 20E–13, 14; CX 167, Table 6A, pp. 20E–12, 13). A & P, Safeway and Kroger reported the following total value of bread and bread-type rolls produced during 1961, the last year for which the record contains data:

Company	*Total value of bread and bread-type rolls*
The Great A & P Tea Co. (CX 469H)	$119,570,000
Safeway Stores, Inc. (CX 511F)	33,266,620
Kroger Co. (CX 481C)	28,774,917

6. *Retail Multi-Outlet Bakeries*

28. This category, Retail Multi-Outlet Bakeries, is included as one of the four sub-industries under Standard Industrial Classification *2051—Bread and Related Products,* and refers to retail bakeries selling chiefly through nonbaking outlets operated by the same company. Retail multi-outlet bakeries do no baking and receive bakery products from a plant at another location. The total value of all products produced in retail multi-outlet bakeries was $61,805,000 in 1954, and $92,353,000 in 1958 (CX 166, Table 4, p. 20E–11; CX 167, Table 4, p. 20E–10). It should be noted that this category, Retail Multi-Outlet Bakeries, does not include statistics for retail single-shop bakeries, that is, plants or establishments producing bakery products primarily for direct sale to consumers on the premises, for the reason that retail single-shop bakeries have been classified by the Bureau of the Census in its 1954 and 1958 Census of Manufacturers of Bakery Products (CX 166 and 167, respectively) under a different classification from *2051–Bread and Related Products.* Single-shop bakeries have been classified under what the Census Bureau calls Retail Trade, Industry *Code 5462.*

C. *Ownership of Baking Companies*

29. Some baking plants are independently owned, either by an individual, partnership, or corporation, with no connection to

any other baking plant (American Bakery, CX 448G; Pankey Bros. Bakery, CX 504E; Baby Bear Bread Company, CX 491G), whereas another ownership may operate several baking plants in only one particular area or region of the country. As of 1962, some of the regional baking chains included Southern Bakeries Co., with headquarters in Atlanta, Georgia, operating 18 plants in the Southeast (CX 509H), with reported sales of all products in 1958 of approximately $25,000,000 (CX 523); Mrs. Bairds' Bakeries, Inc., with headquarters in Fort Worth, and operating 9 plants in Texas (CX 450H), whose 1958 total sales of all products were approximately $23,400,000; Brown-Greer & Co., with headquarters in Knoxville, Tennessee, operating 4 plants in Tennessee, Kentucky, and Virginia (CX 453H, Z–1, Z–16, Z–34), with reported total sales of all products during 1958 of $13,700,000; and Betsy Ross Bakeries, Inc., with headquarters in Bluefield, West Virginia, operating 7 plants in Ohio, West Virginia, and Kentucky (CX 452H), and reporting 1958 sales of all products at $2,462,326.

30. Other corporations own baking plants in several sections of the country. These are referred to as "chain" bakeries. As of 1962, the national chain bakeries included Continental Baking Company, with headquarters in Rye, New York, with 75 baking plants (CX 461H); American Bakeries Co., headquarters in Chicago, Illinois, with 48 baking plants (CX 447H); General Baking Co., headquarters in New York, N.Y., with 48 baking plants (CX 468F); Interstate Bakeries Corp., headquarters in Kansas City, Missouri, with 32 baking plants (CX 474H); Ward Baking Co., headquarters in New York, N.Y., with 23 baking plants (CX 520H); and Langendorf United Bakeries, Inc., headquarters in San Francisco, California, with 14 baking plants (CX 488H). To these companies should also be added the 71 subsidiary baking plants majority-owned and controlled by respondent, Campbell Taggart Associated Bakeries, Inc. These national chain bakeries, including the 71 plants majority-owned and controlled by respondent, reported the following total sales (in thousands of dollars) for 1958, 1959, 1960, 1961, and 1962, respectively, the last year for which the record contains data (CX 522):

Year	Continental Baking Co.	Campbell Taggart subsidiary baking plants	General Baking Co.	American Bakeries Co.	Interstate Bakeries Corp.	Ward Foods, Inc., formerly Ward Baking Co.	Langendorf United Bakeries
1958	$328,004	$162,435	$166,104	$152,114	$116,873	$104,594	$69,932
1959	385,941	173,390	169,163	159,234	124,298	101,951	71,204
1960	410,642	197,577	171,878	162,243	140,456	122,225	74,259
1961	429,747	202,163	167,540	157,496	139,082	120,223	73,825
1962	454,287	208,739	167,715	157,258	149,874	120,496	72,045

D. *Postwar Trends in the Baking Industry*

31. Since World War II, costs for ingredients and labor have increased the costs of production and distribution in the baking industry (Lerek, Tr. 296; Goeppert, Tr. 433; Pennington, Tr. 202; Warisse, Tr. 3276). To counteract rising costs, many baking plants have been modernized and enlarged in recent years, and new automatic equipment installed, such as continuous mix machines and new ovens. This modern equipment increases the daily output potential of the plant, and lowers the baking cost of bread per load (Perry, Tr. 1416; Meyer, Tr. 1587; Inglis, Tr. 1852–53; Greer, Tr. 3572; Lewis, Tr. 4481–83). Also, with improved highways and mechanized equipment the geographic area of distribution of a modern baking plant has been increased from approximately 50 miles from the plant to several hundred miles (Warisse, Tr. 3237; Goeppert, Tr. 426; Pettis, Tr. 519; Bird, Tr. 737; Langendorf, Tr. 845; Inglis, Tr. 1854). As of the date of hearings, Oroweat Baking Co. and Pepperidge Farms baked goods in Los Angeles, California, and transported them more than 800 miles for distribution around Clovis and Roswell, New Mexico (CX 458Z–31). Winn-Dixie produced baked good in Greenville, South Carolina, and shipped them into Georgia, Tennessee, North Carolina, Virginia, Kentucky, and Indiana, more than 300 miles (CX 521K–L). The controlling considerations in plant distribution today are population density; topographical barriers, such as mountains; television and newspaper coverage for advertising purposes; union contracts which limit the distance a driver-salesman may cover by restricting his maximum number of working hours; and intensity of competition in the new area (Parsons, Tr. 77, 90; Pennington, Tr. 212–14; Evers, Tr. 4560; Marcheck, Tr. 3178).

32. Some baking companies increase their volume by acquiring other bakeries, while others have diversified into other related industries (Lewis, Tr. 4461). Since 1952, some companies have diversified and broadened their product line. For example, Continental Baking Company has gone into the production of frozen food, potato chips, English muffins, peanut storage, and the rental business (CX 524A–B). General Baking Company has gone into the production of candy, and has acquired an advertising agency (CX 524C). American Bakeries and Ward Baking

Company have gone into the manufacture of frozen foods (CX 524C–D; CX 524E–F).

33. In the face of postwar changes and increased competition in the baking industry, those firms, which were unable to meet the increased competition and rising costs of production and distribution, have faced the alternatives of going out of business, or affiliating with, or selling out to, a larger company (Pettis, Tr. 511, 515; Pugh, Tr. 1518–19; Meyer, Tr. 1593).

34. During the postwar years, retail grocery chains have begun the production of bread and related products in their own baking plants. Between 1954 and 1958, the number of baking plants owned by retail grocery chains grew from 142 to 178 (CX 166, CX 167, Table 1, p. 20E–3). The value of shipments by grocery chain bakeries increased from $265,851,000 to $382,499,-000, and their share of total shipments of bread and bread-type rolls increased from $140,081,000 in 1947 to $212,018,000 in 1954 (CX 166, Table 5B, p. 20E–12; CX 167, Table 5B, p. 20E–11). These postwar conditions have resulted in a trend toward fewer, but larger, baking plants.

35. In 1954, there were 18,714 bakeries in operation in the United States, including single-shop retail bakeries with baking on the premises (SIC 2051, 5462), and their total value of shipments was $3,711,299,000. Of the 18,714 total bakeries, 5,426 were wholesale bakeries, 142 grocery chain bakeries, 217 house-to-house bakeries, and 318 retail multi-outlet bakeries, or a total of 6,103 bakeries under the Census Industrial Classification Code 2051, with total shipments valued at $3,067,017,000, and 12,611 single-shop retail bakeries with baking on the premises (SIC 5462), with total shipments valued at $644,282,000 (CX 166, Table 1, p. 20E–3). Four years later, in 1958, there were 17,886 bakeries in operation, including single-shop retail bakeries (SIC 2051, 5462), with total value of shipments of $4,741,979,000. Of these, 5,199 were wholesale bakeries, 178 grocery chain bakeries, 361 house-to-house or home service bakeries, and 247 retail multi-outlet bakeries, or a total of 5,985 bakeries under SIC 2051, with total value of shipments at $4,098,612,000; the remainder, 11,901, were single-shop retail bakeries under SIC 5462, with total value of shipments at $643,367,000 (CX 167, Table 1, p. 20E–3).

36. Thus, there were 828 fewer bakeries of all types in the

United States in 1958 than in 1954, although total value of shipments increased by $1,030,680,000. Also, there were 118 fewer SIC 2051 bakeries than in 1954, although total value of their shipments increased by $1,031,595,000. Likewise, there were 710 fewer single-shop retail bakeries with baking on the premises (SIC 5462) in 1958 than in 1954, with a decrease in total value of shipments of $915,000. In short, present day trends in the baking industry, as in other industries, lead to fewer establishments or bakeries, with modern, automatic equipment, resulting in lower baking costs per loaf, but increased volume and value of shipments per bakery (Findings 31 and 35).

E. *Growth Through Acquisition*

37. Each of the so-called national chain bakeries referred to in Finding 30 herein has achieved substantial growth through acquisitions. CX 524A–G shows the relative growth of these particular companies by acquisitions during the period 1950–1964. A brief outline of the acquisitions made by each of these companies is as follows:

Acquiring company	Acquired company	Plants acquired	Year acquired	Acquiring company's assets	Year
Continental Baking Co.	Southern California Baking Co., San Diego, Calif.	1	1952	$61,237,249	1950
	Smith Baking Co., Lincoln, Nebr.	1	1953	73,912,638	1954
	Royal Baking Co., Raleigh, N.C.	1	1954	116,626,014	1958
	Markwardt Baking Co., Joplin, Mo.	1	1955		
	DiCarlo National Bakery, Inc., San Pedro, Calif.	1	1958		
	Omar, Inc., Omaha, Nebr.	4	1958		
	Rochester Bread Co., Rochester, Minn.	1	1958		
	Braun Baking Co., Pittsburgh, Pa.	1	1958		
	Finney's Holsum Baking Co., Greenville, Tex.	1	1959		
	Brownies Chip Co., Oklahoma City, Okla.	1	1959		
	Love's Bread & Biscuit Co., Ltd., Honolulu, Hawaii.	2	1960		
	Cain's English Muffin Co., Chicago, Ill.	1			
	Holsum Bakers, Inc., Tampa, Fla.	1	1961		
Campbell Taggart Subsidiaries	Dan-Dee (Zim's) Bakery, Colorado Springs, Colo.	1	1950	30,100,360	1950
	Purity Baking Co., El Paso, Tex.	1	1951	46,003,300	1954
	Jessee Baking Co., Grand Island, Nebr.	2	1955	61,051,469	1958
	Kilpatricks Bakery, Inc., San Francisco, Calif.	1	1954		

	Kilpatricks Marvel Bakery, Oakland, Calif.	1	1954	76,456,979	1961
	San Joaquin Baking Co., Fresno, Calif.	2	1954	80,265,108	1963
	Old Home Bakers Co., Sacramento, Calif.	2	1954	....	
	Holsum Bread Co., Visalia, Calif.	1	1954	....	
	Grocers Baking Co., Louisville, Ky.	9	1959	....	
	Mead's Fine Bread Co., Lubbock, Tex.	3	1959	....	
	Noll's Baking Co., Alton, Ill.	1	1960	....	
General Baking Co.	Becker Baking Co., Spartanburg, S.C.	2	1953	38,485,660	1950
	Van DeKamp's Holland Dutch Bakeries, Los Angeles, Calif.	2	1956	42,288,671	1954
	Eddy's Bakeries, Inc., Helena, Mont.	13	1957	59,321,160	1958
	Vernell's Buttermints, Inc., Seattle, Wash.	1	1958	59,450,096	1961
	Thompson's Candy House, Seattle, Wash.	1	1958	58,709,317	1963
	Boulevard Baking Co., Philadelphia, Pa. (joint venture with Penn. Fruit Co.)	1	1960	....	
	Sage Advertising Service, Inc.	....	1959	....	
American Bakeries Corp.	Purity Bakeries Corp., Chicago, Ill.	40	1953	30,377,656	1950
	Stella Baking Co., Danville, Ill.	1	1959	49,716,507	1954
	Atlas Baking Co., Richmond, Va.	1	1962	53,617,271	1963
	Grable's Bakeries, Inc., Miami, Fla.	1	1963	....	
	Dressel Bakeries, Inc., Chicago, Ill.	3	1963	....	

Acquiring company	Acquired company	Plants acquired	Year acquired	Acquiring company's assets	Year
American Bakeries Corp. (Cont'd.)	Mrs. Hackel's Bakery, Inc., Chicago, Ill. (acquired by Dressel Bakeries, Inc.).	1	1964	....	
	Langendorf United Bakeries, Inc.	18	1964	....	
Interstate Bakeries Corp.	O'Rourke Baking Co., Buffalo, N.Y.	1	1950	20,134,490	1950
	Mrs. Karl's Bakeries, Inc., Milwaukee, Wis.	1	1951	28,150,532	1954
	Ambrosia Cake Co., Jacksonville, Fla.	3	1954	37,516,887	1958
	Remar Baking Co., Oakland, Calif.	1	1954	44,334,866	1961
	Butter Cream Baking Co., Sacramento, Calif.	1	1954	52,199,934	1963
	Campbell-Sell Baking Co., Denver, Colo.	1	1957	....	
	Kingston Cake Co., Kingston, Pa.	1	1959	....	
	Cobb's Sunlit Bakery, Green Bay, Wis.	1	1960	....	
	Schall's Tasty Baking Co., Traverse City, Mich.	1	1961	....	
	Sweetheart Associated Co., Bismarck, N. Dak.	3	1962	....	
	Memphis, Tenn., baking plant of Hart's Baking Co.	1	1964	....	
Ward Foods, Inc. (Formerly Ward Baking Co.).	La Nasa Baking Co., New Orleans, La.	1	1950	28,968,713	1950
	Watts Baking Co., High Point, N.C.	1	1952	28,226,913	1954
	Durham Baking Co., Durham, N.C.	1	1953	30,597,660	1958

Langendorf United Bakeries, Inc.	Made Rite Bakery, Inc., Rocky Mount, N.C.	1	1953	35,441,294	1961
	Johnston Pie Co., Los Angeles, Calif.	1	1959	37,571,161	1963
	New England Bakery, Inc., Pawtucket, R.I.	1	1959		
	Bell Bakeries, Inc., Jamaica, N.Y.	5	1959		
	Farm House Frozen Foods, Inc., Miami, Fla.	2	1960		
	Jersey Farm Baking Co., Detroit, Mich.	2	1963		
	Rose Royal Cheese Cake Co., El Segundo, Calif.	1	1964		
	Nancy Alice Pie Co., Santa Barbara, Calif.	1	1964		
	California Wafer & Biscuit Co., South San Francisco, Calif.	1	1964		
	Hol-Grain Products Co., Seattle, Wash.	1	1950	8,786,698	1950
	Keller Baking Co., Portland, Oreg.	1	1952	12,816,008	1954
	Grandma Baking Co., Oakland and Los Angeles, Calif.	2	1955	16,315,912	1958
	Peerless Baking Co., San Luis Obispo, Calif.	1	1955	18,583,369	1961
	Cities French Bakeries, Berkeley, Calif.	1	1956	18,017,341	1963
	Jordan Baking Co., Tacoma, Wash.	1	1956		
	Rush Ashbrook Bakery, San Francisco, Calif.	1	1958		
	Valley Queen Bakery, Inc., Watsonville, Calif.	1	1962		

38. Thus, it is seen that, during the period 1952–1961, Continental Baking Company, with $454,287,000 net sales in 1962 (CX 522A), acquired 17 [4] baking plants located in twelve States; General Baking Company acquired 19 plants located in four states during the period 1953–1958; American Bakeries Corp. acquired 65 bakeries located in four States during the period 1953–1964; Interstate Bakeries Corp. acquired 15 baking plants located in nine States during the period 1950–1964; Ward Foods, Inc., formerly Ward Baking Company, acquired 18 plants located in seven States during the period 1950–1964; Langendorf United Bakeries, Inc., acquired 8 bakeries located in three States during the period 1950–1958 (Langendorf, itself, being acquired by American Bakeries, Inc., in 1964); and, finally, during the period 1950–1960, the subsidiaries of respondent acquired the 24 baking plants which are the subject of this proceeding. In the course of these acquisitions respondent and its subsidiary companies increased their assets from $33,430,592 in 1951, to $74,249,805 in 1960, an increase of $40,819,213. During the same period, net sales increased from $100,607,186 to $197,576,870, an increase of approximately $97,000,000 (CX 312–321).

F. *Line of Commerce*

39. Complaint and respondent's counsel agree that the relevant "line of commerce" or product market in this proceeding is "bread and bread-type rolls," classified by the Bureau of the Census under what it calls Standard Industrial Classification Code 20511 (SIC 20511), but counsel do not agree that sales by retail single-shop bakeries should be included along with sales of bread and bread-type rolls by SIC 2051 bakeries (such as those operated by respondent and its subsidiaries) to determine the total universe of production market shares in the appropriate areas of geographic competition. Complaint counsel say, in effect, that, since the Bureau of the Census has classified retail single-shop bakeries in the retail trade, Industry Code 5462, and not in Code 2051—Bread and Related Products, therefore, neither

[4] Four of the above 17 plants, which had been acquired from Omar, Inc., in 1958, were sold by Continental in November 1962, pursuant to a consent order in Docket No. 7880 [60 F.T.C. 1183], a proceeding brought against Continental by the Federal Trade Commission. The complaint in that Section 7 proceeding, filed in 1960, alleged that Continental was "the largest commercial baker of white bread" in the United States, with some 86 plants located in approximately sixty-four cities in 29 States and the District of Columbia, and distributed by approximately 333 agencies and depots throughout forty-four States.

retail single-shop bakeries, nor their production output of bread and bread-type rolls, should be included in determining the total universe of manufactured bread and bread-type rolls. Complaint counsel urge that only the four sub-industries classified by the Census Bureau under its industry Code 2051—Bread and Related Products, namely, Wholesale Bakeries, Grocery Chain Bakeries, House-to-House or Home Service Bakeries, and Retail Multi-Outlet Bakeries and their production output should be included and considered in determining the total universe production market shares of bread and bread-type rolls in the appropriate area or areas of geographic competition in this proceeding.

40. At first glance, it would appear that, since respondent and its subsidiary bakeries are wholesale bakeries, and are classified by the Census Bureau in its 1954 and 1958 Census of Manufacturers (CX 166 and 167, respectively) under the Industry Code 2051—Bread and Related Products (SIC 2051), which includes only four sub-industries, namely, Wholesale Bakeries, Grocery Chain Bakeries, House-to-House Bakeries, and Retail Multi-Outlet Bakeries, only production figures from these four sub-industries should be included in determining the total production market share universe of bread and bread-type rolls for use in this proceeding. However, the method of production of bread products (SIC 2051) and bread and bread-type rolls (SIC 20511) is the same for Wholesale Bakeries, Grocery Chain Bakeries, Home Service Bakeries, and Retail Multi-Outlet Bakeries as it is for retail single-shop bakeries, that is, plants or establishments producing bakery products principally for direct sale to consumers on the premises. Of course, there may be differences in the size and age of equipment in the large wholesale bakeries in Census Classification Codes 2051 and 20511 from the equipment used in retail single-shop bakeries (SIC 5462). Nevertheless, the baking process for bread and bread-type rolls is the same. Most of the witnesses who were asked the question at hearings testified that the retail single-shop bakery, which bakes and sells bread and bread-type rolls on the premises, is a competitor of the wholesale bakery selling in the same city, town, or area, whether it be a national so-called chain or local independent (Parsons, Tr. 91, 100; Fontana, Tr. 171–187; Pennington, Tr. 266; Cooper, Tr. 358; Moore, Tr. 986–87; Stankey, Tr. 1449–1450; Kilpatrick, Tr. 1348). Since they are competitors, their production of bread and bread-type rolls should be included in computing the total universe of market shares. In making that

determination, the actualities of the market place are more important factors to be considered than the manner or method in which the Census Bureau may have classified retail single-shop bakeries. Upon the basis of a preponderance of the evidence, it is found that the production of bread and bread-type rolls by wholesale bakeries, grocery chain bakeries, house-to-house bakeries, retail multi-outlet bakeries, and retail single-shop bakeries is the relevant "line of commerce" for the purpose of this proceeding.

G. *Area of Geographic Competition*

41. In determining the "section of the country" or relevant geographical market, the majority opinion of the Supreme Court in *United States* v. *Philadelphia National Bank, et al.,* 374 U.S. 321 (1962), said (at 357):

> We part company with the District Court on the determination of the appropriate "section of the country." The proper question to be asked in this case is not where the parties to the merger do business or even where they compete, but where, within the area of competitive overlap, the effect of the merger on competition will be direct and immediate. * * * This depends upon "the geographic structure of supplier-customer relations."

Further, in an earlier case, *Tampa Electric Co.* v. *Nashville Coal Co., et al.,* 365 U.S. 320 (1960), the Court said (at 327):

> *Second,* the area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies. In short, the threatened foreclosure of competition must be in relation to the market affected.

Also, in *Brown Shoe Co., Inc.* v. *United States,* 370 U.S. 294 (1961), that Court said (at 336):

> Congress prescribed a pragmatic, factual approach to the definition of the relevant market and not a formal, legalistic one. The geographic market selected must, therefore, both "correspond to the commercial realities" of the industry and be economically significant.

42. Most bread customers prefer fresh bread. Therefore, the distance from its plant in which a bakery can sell and distribute its products is limited by the perishable nature of the product. The average shelf life of white bread is two or three days, depending on weather, economic conditions in the area, the type of wrapping, and other factors. If not sold by the store within two or

three days, the unsold bread, called "stale returns," is then picked up by the bakery plant driver-salesman and the racks restocked with fresh bread (Finding 21 herein; Tr. 74–75, 214, 605, 731, 2809–2810). Other limitations on distance are topography, population density, competition, union contracts covering driver-salesmen, advertising media, and other factors mentioned in Finding 31 above. For these reasons, actual competition between wholesale baking plants takes place on a local or regional level, and not on a national level. Upon the basis of a preponderance of the evidence, it is found that the geographic market area of competition of the baking plants here under consideration ranges from approximately 50 miles from the plant to several hundred miles (Goeppert, Tr. 426; Pettis, Tr. 519; Kilpatrick, Tr. 605–606; Bird, Tr. 737; Langendorf, Tr. 845; Inglis, Tr. 1854), depending on the area, type of store, etc.

43. In order to measure the competitive effect of the acquisitions complained about, it will be necessary to consider the market and distribution area of each acquired plant and the alternate sources to which a purchaser in that particular market area can practicably turn for supplies. *Tampa Electric Co.* v. *Nashville Coal Co., supra.* Each challenged acquisition will be examined.

III

The Challenged Acquisitions

44. Count I of the complaint challenges the legality, under Section 7 of the Clayton Act, of the alleged acquisitions by subsidiaries of Campbell Taggart Associated Bakeries, Inc., of baking companies located in seven separate geographic areas of the United States, as follows:

1. Zim's Bakery (Dan-Dee Bread Co.) of Colorado Springs, Colorado, in 1950;
2. Purity Baking Company of El Paso, Texas, in 1951;
3. Kilpatrick's Bakeries, its subsidiaries, and Old Home Bakers of California, in 1954;
4. Jessee Baking Company of Grand Island, Nebraska, in 1956;
5. Grocers Baking Company and its subsidiaries, of Kentucky, Indiana, and Tennessee, in 1959;
6. Mead's Fine Bread Co., of Lubbock, Texas, Roswell and Clovis, New Mexico, in 1959; and
7. Noll's Baking Co. of Alton, Illinois, in 1960.

45. Section 7 of the Clayton Act (15 U.S.C.A. § 18), as amended, effective December 29, 1950, provides:

No corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no corporation subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another corporation engaged also in commerce, where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

46. To establish violations of Section 7 of the Clayton Act in this proceeding, complaint counsel must establish, by a preponderance of the reliable and probative evidence in the record, with respect to each of the acquisitions challenged in the complaint, that a corporation engaged in commerce:

(1) Acquired the stock, other share capital, or any part of the assets of another corporation also engaged in commerce at the time of the challenged transaction;

(2) That each such acquisition substantially affected competition in an identified "line of commerce" in a "section of the country"; and

(3) That the effect of each such acquisition "may be substantially to lessen competition, or to tend to create a monopoly" in such "line of commerce" in a "section of the country."

47. At the request of complaint counsel, hearings were held and testimony received with respect to only two of the seven areas in which the challenged acquisitions were located, namely, the California and Kentucky areas. In addition to the oral testimony, there were also received in evidence various documentary and statistical exhibits with respect to the acquisitions in California, and Section 6 Special Survey Reports concerning the acquisitions in the Kentucky area, Lubbock, Texas, Roswell and Clovis, New Mexico. The California acquisitions will first be considered.

A. *The Acquisitions in California*

1. *The Kilpatrick Bakeries*

48. Prior to January 1954, Harold, Donald and James Kilpatrick were the sole stockholders of Kilpatrick's San Francisco Bakery, a corporation, located in San Francisco, California, and Kilpatrick's Marvel Bakery, a corporation, located in Oakland, California. These two bakery corporations jointly owned all of the outstanding stock of the San Joaquin Baking Company, with

plants located at Modesto and Fresno, California, which, in turn, owned all of the outstanding stock of the Holsum Baking Company, which operated a baking plant at Visalia, California. The Kilpatrick brothers decided to affiliate with respondent (Tr. 583; 2663–64). As a result of negotiations instituted by Mr. Harold Kilpatrick in 1953, and consummated in January 1954, Harold, Donald and James Kilpatrick and the respondent, Campbell Taggart Associated Bakeries, Inc., entered into an agreement wherein and whereby the assets and business of the Kilpatrick bakeries in San Francisco and Oakland were purchased by a new Delaware corporation, Kilpatrick Bakeries, Inc., which was formed by respondent, Campbell Taggart. A second Delaware corporation was formed by Campbell Taggart, San Joaquin Bakeries, Inc., which purchased the assets of the Modesto, Fresno, and Visalia bakeries from San Joaquin Baking Co., Holsum Baking Co., and the Kilpatrick brothers (CX 103; Edmondson, Tr. 2965–68). The former Kilpatrick's San Francisco Bakery, Kilpatrick's Marvel Bakery, San Joaquin Baking Company, and Holsum Baking Company were dissolved and the Kilpatrick brothers converted the assets of the five baking plants to the new corporations. The total price paid by Kilpatrick's Bakeries, Inc., and San Joaquin Bakeries, Inc., to the Kilpatrick brothers for the five bakeries was $4,361,174, plus the value of inventory. $1,000,000 of the purchase price was paid in cash, and the balance represented in promissory notes executed by the newly-formed corporations, Kilpatrick's Bakeries, Inc., and San Joaquin Bakeries, Inc., payable in yearly installments, and guaranteed by Campbell Taggart (CX 103).

49. As a result of the acquisitions, Campbell Taggart acquired a 59.78% stock interest in Kilpatrick's Bakeries, Inc., the new owner of the two former Kilpatrick bakeries located in San Francisco and Oakland, and a 60.74% stock interest in San Joaquin Bakeries, Inc., the new owner of the three bakeries located in Modesto, Fresno, and Visalia (CX 71G, 71D). The Kilpatrick brothers and their associate, Mr. Randall Risvold, purchased approximately 30% of the stock in Kilpatrick's Bakeries, Inc. (CX 17B). Mr. Harold Kilpatrick continued as President in the new corporation, and his brothers, Donald and James, as Vice Presidents (CX 71G). The Kilpatrick brothers, along with the former operating heads of the San Joaquin plants, Messrs. Arthur Bradford, Wendell Asbury, and Rex Knoles, purchased stock interests in San Joaquin Bakeries, Inc., of approximately 25% (Tr. 1624–26). Mr. Arthur Bradford became President and Director of the new San Joaquin Bakeries, Inc., and continued as manager of the

Fresno plant; Messrs. Harold Kilpatrick, Wendell Asbury, and Rex Knoles became Vice Presidents and Directors, respectively; and Mr. Frazor T. Edmondson, Vice President and Secretary and a member of the Board of Directors and Executive Committee of Campbell Taggart, was elected Secretary of the new corporation (CX 71D). Mr. Knoles continued as Manager of the Modesto plant and Mr. Asbury continued as Manager of the Visalia plant.

50. For the year 1953, the year prior to the acquisitions, the net sales of bread and bread-type rolls, profits, and assets of the former Kilpatrick bakeries were as follows:

	Net sales	Net profit	Assets
Kilpatrick's San Francisco Bakery (CX 279C)	[4] $3,315,263	$393,939	$3,397,137
Kilpatrick's Marvel Bakery (Oakland) (CX 281C)	[4] 3,404,346	337,213	1,915,072
San Joaquin Bakers (Modesto and Fresno) (CX 284C)	4,162,376	231,981	2,336,046
Holsum Baking Co. (Visalia) (CX 286C)	1,065,228	19,685	617,728

a. *Areas of Distribution*

51. Mr. Harold Kilpatrick identified the area outlined in red on a map, CX 19, as the general area of distribution of the Kilpatrick San Francisco and Oakland plants at the time of their acquisition in 1954. The two plants transported bread about 100 miles to the north, to the town of Willits, approximately 100 miles to the south, to the town of Jamesburg, and about 65 miles from their Oakland plant to their Stockton depot to the east. The San Francisco and Oakland plants are indicated by green dots, and the depots within the area of distribution are indicated by red dots. The effective area of distribution from the depots ranged from 15 to 50 miles, sometimes more, depending on the area, type of store, etc. (Tr. 605–606).

b. *Commerce*

52. Prior to the acquisitions in 1954, the Kilpatrick plants in San Francisco and Oakland had purchased their major raw ma-

[4] Adjusted to account for interplant transfers between Kilpatrick's San Francisco and Oakland bakeries.

terials from companies outside the State of California (CX 104A; Tr. 614). The newly-formed corporate subsidiary of respondent, Kilpatrick Bakeries, Inc., has continued to purchase its chief raw materials from the same suppliers located outside the State of California, and has continued to use the same brand name for its bread, "Kilpatrick" (Tr. 614–15).

2. *San Joaquin Baking Company and Holsum Bread Company*

53. Prior to the acquisitions, as stated in paragraph numbered 48 above, Kilpatrick's San Francisco and Oakland bakeries owned all of the stock of the San Joaquin Baking Company, which operated wholesale baking plants in Modesto and Fresno, California; the San Joaquin Baking Company, in turn, owned all of the stock of Holsum Bread Company, which operated one plant at Visalia, California (CX 103; Tr. 584). In 1954, all of their assets, along with these three plants, were purchased by the new Delaware corporation formed by respondent, San Joaquin Bakeries, Inc. (CX 103; Tr. 697). Their 1954 sales, profits, and assets are set out in paragraph numbered 50 above.

a. *Areas of Distribution*

54. Mr. Rex Knoles, General Manager of the San Joaquin Baking Company's Modesto plant, who became a stockholder and Vice President of San Joaquin Bakeries, Inc., after the acquisition in 1954, and who continued as General Manager of the Modesto plant, identified the area of distribution of the Modesto plant by marking with a red crayon on a map, CX 27. The furthermost area of distribution of the Modesto plant was to Stockton to the north or northwest; Los Banos on the south; Patterson and Vernalis on the west; and Buck Meadows on the east (Tr. 1060, 1067). Approximately one-third of the plant's business is in and around Stockton, and approximately 20% in Modesto (Tr. 1069).

55. The Fresno plant of San Joaquin Bakeries, Inc., is located in what is known as the San Joaquin Valley south of Modesto (CX 55). Prior to the acquisition in 1954, the Fresno plant was a member of the W. E. Long Bakery Cooperative, from which the plant received purchasing and cost accounting services. The plant used the "Betsy Ross" label, a trade-mark used by the W. E. Long Company (Tr. 1610–1611). The Fresno plant operates approximately 55 bread routes, with one depot located at Merced, California (Tr. 1600).

56. Mr. Arthur Bradford, President and Manager of the Fresno plant of San Joaquin Bakeries, Inc., identified the area of distribution of the Fresno plant by encircling it with a red line on a map, CX 55. The distribution area includes the town of Fresno, and extends north to Merced; to Mendota and Dos Palos to the west; to Five Points, Hardwick, and Kingsburg to the south; and to Orange Cove and Reedley to the east. Some of the area outlined by Mr. Bradford is mountainous, and deliveries are made only to stores and towns located on highways projecting out from the main area (Tr. 1597–99).

57. The Visalia plant of the San Joaquin Bakeries, Inc., formerly known as the Holsum Bread Company plant prior to 1954, is located southeast from the Fresno plant and serves an area generally south and southeast of the area served by the Fresno plant. Mr. Wendell Asbury, Vice President of San Joaquin Bakeries, Inc., and Manager of its Visalia plant, and who served as Manager prior to the acquisition in 1954, outlined the distribution area of the plant with a blue pencil on a California road map, which was received in evidence as CX 57. The northern portion of its distribution area generally embraces the width of the San Joaquin Valley, extending to the east from Visalia as far as Three Rivers; to the north from Visalia as far as Seville and Yettem; and, west from Visalia, beginning at a point a little west of Stratford, extends further west in a narrow strip as far as Avenal. Beginning at a point below Delano, south of Visalia, the distribution area narrows like a long arm, and includes the towns of Wasco, Shafter, Bakersfield, Lamont, Arvin, and extends as far south of Visalia as Tehachapi, in the mountains, immediately north of Los Angeles, California (Tr. 1644–47).

3. *Old Home Bakers, Inc.* (*Sacramento and Chico Plants*)

58. At some time prior to December, 1953, Mr. Earl Schnetz, President and controlling stockholder in Old Home Bakers, Inc., a company which operated a baking plant in Sacramento and a plant in Chico, California, made an offer to sell controlling interest in the two plants to Campbell Taggart Associated Bakeries, Inc. Campbell Taggart refused the offer. Subsequently, pursuant to an agreement dated January 20, 1954, Mr. Schnetz and Old Home Bakers, Inc., sold and transferred all of the physical assets of its bakeries located in Sacramento and Chico, California, to Home Bakers, Inc., a Delaware corporation formed by respondent. The agreed purchase price was $1,112,839, plus the cost of

inventories on hand. Of the total purchase price, $350,000 was paid in cash, and the remainder represented by promissory notes, payable in annual installments, and guaranteed by respondent (CX 108).

59. In the acquisition of the Sacramento and Chico plants, Campbell Taggart Associated Bakeries, Inc., acquired a 64.70% interest in the new corporation, Home Bakers, Inc. Mr. Earl Schnetz became a minority stockholder and President of the new corporation, Home Bakers, Inc., and Manager of the Sacramento plant. Mr. Vernal L. DuFrene also became a minority stockholder and continued as Manager of the Chico plant. Later, the name of the new corporation, Home Bakers, Inc., was changed to Rainbo Baking Company of Sacramento Valley (Tr. 2639). Mr. DuFrene became Chairman of the Board of the new corporate subsidiary, Rainbo Baking Company of Sacramento Valley (CX 71G; Tr. 2578).

60. In 1953, the approximate net sales and net profits of the Sacramento and Chico plants of Old Home Bakers, Inc., were as follows:

	B. & B.T. rolls	Net profits
Old Home (Sacramento) (CX 288)	$3,674,007	$148,410
Golden Krust (Chico) (CX 288)	942,856	

a. *Area of Distribution of Sacramento Plant*

61. Mr. Harry D. Snyder, who became a stockholder, President, and General Manager of the Sacramento plant of Rainbo Baking Company of Sacramento Valley in June 1958, outlined on a California road map, CX 41, the area of distribution of the Sacramento plant. A considerable portion of the area outlined by Mr. Snyder is mountainous, and, consequently, the plant operates trucks along the highways in several directions from Sacramento, in some instances to depots, where driver-salesmen pick up the break in other trucks and distribute it to customers. For example, the plant operates along the highway north of Sacramento to Marysville, and as far north as Biggs. To the east of Biggs is a mountainous area, National Forests. Plant trucks operate along the mountain highway to Nevada City to the east, and continue up the mountain highway to Sierra City. Trucks also operate up mountain Highway 80 to Truckee, California, and, during the

summer season when the resorts are open, along the north, west, and south edges of Lake Tahoe, located partly in California and Nevada. South from Sacramento, the plant distributes to Lodi; and southwest from Sacramento to Fairfield and Napa.

b. *Area of Distribution of Chico Plant*

62. The distribution area of the Chico plant is north of the distribution area of the Sacramento plant. A good part of the Chico plant's area of distribution is also in a mountainous area. Being mountainous, the distribution area of the Chico plant is limited to areas accessible by highways. The distribution area to the south of Chico extends to the town of Oroville; to the north, it extends along the highway as far north as Yreka; to the east through Quincy and Portola to Hallelujah Junction; and to the southwest to Willows. Depots are located in Oroville, Quincy, Red Bluff, Redding, and Mount Shasta (Tr. 680, 683–84, 1385–89, 1391–92).

B. *Concentration in the Distribution Area of Baking Plants Acquired by Subsidiary Corporations of Campbell Taggart in Northern California*

63. It will be seen that the distribution area of the baking plants acquired by subsidiary corporations of Campbell Taggart Associated Bakeries, Inc., in Northern California covers a good part of the populated area in a north and south direction between Los Angeles County, California, on the south, to the town of Yreka, California, in the north. Yreka is located approximately 25 miles south of the Oregon border. Northern California is a heavily growing area, and its population is increasing each year (CX 19, 27, 41, 43, 55, 57). Beginning in the year 1953, the earliest year for which sales data of particular bakeries is shown by the record, to and including the year 1960, the latest year in which sales data is available in the record, the sales of bread and bread-type rolls by the overwhelming number of bakeries from whom complaint counsel obtained sales data and offered it in the record, have steadily increased (see the Tabulation on pp. 561–566 herein). For example, Athens Baking Company, an independent baker with a plant in Oakland, California, reported its sales from 1953 through 1960 as follows: 1953—$142,521; 1954—$255,743; 1955—$321,305; 1956—$346,014; 1957—$349,-939; 1958—$457,393; 1959—$380,820; and 1960—$443,945 (CX

52A–C). It will be noted that the sales of this small bakery showed a steady increase during each of the years 1953 through 1960, as well as sales of most of the 35 baking companies which reported their sales (Tabulation, pp. 561–566 herein).

64. The only evidence in the record from which market shares of baking companies competing with those baking companies acquired by subsidiaries of Campbell Taggart may be computed is sales data contained in the responses by approximately 35 baking plants to a questionnaire (*e.g.,* CX 39B–D) attached to a subpoena duces tecum issued at the instance of complaint counsel. The questionnaire requested various sales and production data for the years 1956 through 1960. These responses were received in evidence at hearings held in California in 1961. At hearings held in Washington, D.C., in May 1965, complaint counsel supplemented the original subpoena responses with data for the years 1953 through 1955 (*e.g.,* CX 10C–D). The questionnaire requested each of the 35 California baking companies to segregate its sales of bread and rolls for the following areas: (1) "San Francisco, California within the confines of the city limits"; (2) the "San Francisco-Oakland Standard Metropolitan Area, which includes Alameda, Contra Costa, Marin, San Francisco, San Mateo and Solano Counties, California"; (3) "Sacramento, California which is coextensive with Sacramento County, California"; (4) "Modesto, California"; (5) "Fresno, California"; (6) "Visalia, California"; and (7) "Bakersfield, California" (*e.g.,* CX 39C). Complaint counsel stated that the 35 baking companies surveyed distributed in the distribution areas of the baking companies acquired by Campbell Taggart affiliates in California.

65. For various reasons, many of the responding baking plants did not segregate their sales of bread by the "areas" designated in the questionnaire. Some companies did not keep their records in such a manner as to accurately reflect their sales in limited areas of their entire distribution areas. For example, the questionnaire designated the City of Sacramento, California, as being coextensive with Sacramento County. In reporting their sales, some companies reported sales only within the city limits, while other firms also reported sales in their surrounding environs (Tr. 872, 1308, 1540, 1781). Some firms were not able to segregate sales within the San Francisco City limits, as instructed in the questionnaire (CX 39B–D; Tr. 901, 980, 1308). Most competitor baking companies considered Santa Clara County as part of the Greater San Francisco Marketing area, although the questionnaire

did not include Santa Clara County within the San Francisco-Oakland Metropolitan Area (Tr. 981, 1169–1171, 1222, 1268).

66. There was also confusion among reporting baking companies with respect to "stale recoveries." Some baking firms included "stale recoveries" in their responses (Oroweat Baking Co., CX 48H; Modern Baking Co., Tr. 1219) while other firms excluded "stale recoveries" (Continental Baking Co., CX 31H; Homekraft Baking Co.,Tr. 1262). Some reporting firms included sales to other bakers and interplant transfers (Oroweat Baking Co., CX 48H; Gravem-Inglis Baking Co., Tr. 1844), while others excluded this item (Langendorf United Bakeries, Inc., Tr. 1043; Continental Baking Co., CX 31H). Some included discounts and allowances (Sunlight Baking Co., Tr. 1020; Oroweat Baking Co., Tr. 1503), while others excluded discounts and allowances (Continental Baking Co., Tr. 1172; Homekraft Baking Co., Tr. 1266).

67. Most of the California baking companies sold freely across the boundaries of the "areas" designated in the questionnaire, and were unable to accurately segregate sales in accordance with the "areas" designated in the questionnaire (Tr. 901, 980, 1308). Some of the California baking companies distributed throughout the Northern California area. For example, the distribution area of the San Francisco plant of the Continental Baking Co. extended, as of the date of the hearing in 1961, north from San Francisco as far as Ukiah, where one of its depots was located (Tr. 726). Ukiah is located approximately 125 miles north of San Francisco. South from San Francisco, the plant's distribution area extended to Greenfield, which is located south of Salinas. East from San Francisco, the distribution area extended to Vallejo. Southeast from San Francisco, the distribution area extended to Fresno and Tulare (Tr. 746). Depots were located at Ukiah, Santa Rosa, San Rafael, Vallejo, Redwood City, Santa Clara, Salinas, and Fresno. The distribution area extended well beyond the towns where the depots were located (Tr. 726). The Sacramento plant of Continental Baking Co. served the entire Sacramento Valley. The furthermost point north from Sacramento was Redding. South from Sacramento, the distribution area extended as far as 25 miles south of Modesto. West from Sacramento, the distribution area extended as far as Cordelia, which is located about 10 miles east of Vallejo (Tr. 793). As of 1961, Gravem-Inglis Baking Co. of Stockton, California, transported its products as far north as Sacramento, and as far south as Bakersfield (CX 64; Tr. 1838–39). Oroweat Baking Co. distributed from its San Francisco plant to Sacramento, and as far

north as the Lake Tahoe area, and as far south as Fresno (CX 47). Renon-Parisian Fontana Bakery distributed bread from its San Francisco plant as far north as Ukiah and Marysville (Tr. 169–170). Bread baked in Fresno was sold in Marysville to the north and Los Angeles to the south, and bread sold in Fresno was baked in San Francisco to the north and Los Angeles to the south (Tr. 475–76). Valley Queen of Watsonville distributed its bread from Sacramento in the north to Delano in the south, and Langendorf United Bakeries, Inc., distributed bread from its San Francisco plant as far north as Mount Shasta, almost to the Oregon line (Tr. 845).

C. *The Relevant Sections of the Country*

68. For these reasons, it is impossible to determine reliable market shares for some of the baking plants in the "areas" originally specified in complant counsel's questionnaire. It is significant that complaint counsel, in supplementing the original subpoena responses with data for the years 1953 through 1955, abandoned their attempt to secure sales data for any limited geographic area within the distributing area of the particular bakery, but, instead, requested the baking plant to submit data for its total sales throughout its entire distribution area in Northern California, irrespective of any particular city or county within its distribution area (CX 12D, E; RX 61A, B). Upon the basis of the evidence, it is found that the relevant geographic market areas in which to measure the competitive effect of the acquisitions in California by subsidiaries of respondent are the areas of distribution of each acquired baking plant in Northern California, their combined areas of distribution, and the areas of distribution of competitive baking plants to whom customer purchasers of bread and bread-type rolls may practically turn for alternative sources of supply.

69. Aside from the inaccuracies and inconsistencies in the sales data reported by the 35 baking companies subpoenaed by complaint counsel, above referred to, respondent contends that the sales data contained in the responses from the 35 reporting companies do not provide any reliable foundation for any findings of fact of any market shares in any properly defined geographic area for still another important reason. Respondent contends that complaint counsel's purported survey of only 35 baking plants selling bread and bread-type rolls in Northern California is obviously incomplete for the reason that the testimony at hearings in California from baking company officials identified an addi-

tional 33 competing baking companies which distributed bread and bread-type rolls in Northern California from whom complaint counsel did not request or obtain any sales statistics. These 33 companies were in addition to the 35 companies subpoenaed by complaint counsel. In other words, complaint counsel did not obtain market share data from any of those 33 companies. Some of these competing companies were substantial bakers, including General Baking Company's Van de Kamp Division (Tr. 531, 1665); Helm's Baking Co. (Tr. 530, 1668); and Catherine Clark (Tr. 914–15). Other bakers included: Frederick's (Tr. 92); Larraburu (Tr. 113); Italian French Baking Co. (Tr. 113); Royal Baking Co. (Tr. 184); Roma (Tr. 217); Oakland Roll Co. (Tr. 381); Weber Baking Co. of Los Angeles (Tr. 530, 555); Perinis French Bread (Tr. 555); Hamburger Schwarzbrot (Tr. 914); Ukraine Baking Co. (Tr. 914); Brenners (Tr. 915); Welch (Tr. 916); Prosser Baking Co. (Tr. 952); Madera Baking Co. (Tr. 953); Pisano French Bread Co. (Tr. 1211); Purity Baking Co. (Tr. 1222); PV (Tr. 1223); Barones French Baking Co. (Tr. 1285); Fluers Baking Co. (Tr. 1392); Morning Fresh (Tr. 1392); Masters Baking Co. (Tr. 1393); Mom's Bread (Tr. 1394); Fresno Baking Co. (Tr. 1631); Our Own, Pyranees, Farm House (Tr. 1659); Deluxe (Tr. 1660); Spencer (Tr. 1678); Cow Wow (Tr. 1678); Frank's Bakery (Tr. 1078); and Palermo Bakery (Tr. 1078). For these reasons, respondent says that, even overlooking the errors and inconsistencies in the sales data reported by the 35 baking companies subpoenaed by complaint counsel, a reliable market share universe cannot be determined from sales statistics of only these 35 baking plants when the testimony identified an additional 33 baking plants selling bread in Northern California, from whom complaint counsel did not obtain sales statistics.

70. Passing over, for the present, respondent's objections to the reliability of the sales data submitted by the 35 baking companies subpoenaed by complaint counsel, a tabulation of the sales data contained in the responses from these 35 baking plants, and also sales data furnished by the subsidiary baking plants controlled by respondent, is as follows:

Company and plant	1953		1954		1955		1956		CX Nos.
	All	B & BT rolls	All	B & BT rolls	All	B & BT rolls	All	B & BT rolls	
Athens Baking Co., Oakland	142,521	142,521	255,743	255,743	321,305	321,305	346,014	346,014	52 A, C
Channel Bakers, Sacramento	1,527,854	229,178	1,595,315	319,063	1,901,734	475,433	2,590,650	777,195	49 A, B
Colonial Bakeries, Inc., San Francisco	1,024,802	512,401	1,551,374	775,667	2,127,858	1,063,929	3,230,956	1,671,452	54 A, B
Continental Baking Co.:									
San Francisco	4,429,003	2,436,395	4,655,709	2,561,106	5,410,230	2,976,168	6,075,811	3,342,303	23, 31D
Berkeley	1,590,859	1,507,180	1,570,423	1,487,819	1,947,738	1,845,287	2,128,736	2,016,764	24A, 31D
Sacramento	2,792,686	2,209,853	3,353,519	2,653,640	3,780,331	2,991,376	6,052,381	4,789,248	25, 31D
Total	8,812,548	6,153,428	9,579,651	6,702,565	11,138,292	7,812,830	14,256,928	10,148,315	
Cottage Baking Co. Inc., Hayward	1,239,079	743,445	973,616	584,170	1,889,350	1,133,610	2,313,184	1,533,459	46 A, D
Golden Crust Bakery, Bakersfield	1,790,667	1,726,203	1,746,450	1,683,578	1,912,648	1,843,710	2,036,595	1,961,896	16 A, B
Golden Crust Bakery, Sacramento	129,770	129,770	127,877	127,877	127,142	127,142	138,022	138,022	29 A, C
Golden State Baking Co., Fresno	1,320,890	1,320,890	1,424,446	1,424,446	1,552,472	1,552,472	1,491,709	1,116,946	15 A, C
Gravem Inglis Baking Co., Stockton	3,339,721	2,669,548	3,371,055	2,797,155	3,386,224	2,809,343	3,401,315	2,897,240	65 A, C, G
Homecraft Baking Co., Ltd., San Leandro	1,096,307	992,158	1,169,280	1,058,198	1,309,995	1,185,545	1,392,309	1,260,875	14 A, B
Interstate Bakeries, Corp.:									
Oakland (formerly Butter Cream Baking Co.).	3,051,579	2,029,758	2,941,566	2,706,241	3,743,968	3,450,815	4,067,598	3,749,105	51 A, B, G, I
Sacramento (formerly Remar Baking Co.)	3,186,414	2,988,856	3,087,067	2,901,843	2,765,805	2,594,325	2,804,117	2,630,262	51 D, E, G, I
Total	6,237,993	5,018,614	6,028,633	5,608,084	6,509,773	6,045,140	6,871,715	6,379,367	

Company and plant	1957 All	1957 B & BT rolls	1958 All	1958 B & BT rolls	1959 All	1959 B & BT rolls	1960 All	1960 B & BT rolls	CX Nos.
Athens Baking Co., Oakland	349,939	349,939	357,393	357,393	380,820	380,820	443,945	443,945	52 A, C
Channel Bakers, Sacramento	2,798,546	979,491	2,817,507	1,127,003	2,942,841	1,324,278	1,857,536	928,768	49 A, B
Colonial Bakeries, Inc., San Francisco	3,881,127	2,032,156	4,000,628	2,194,974	4,250,229	2,533,783	4,534,378	2,751,936	54 A, B
Continental Baking Co.:									
San Francisco	6,733,822	3,701,581	7,253,250	3,937,789	6,761,407	4,099,441	7,175,550	4,346,948	23, 31D
Berkeley	2,293,648	2,165,661	2,329,425	2,182,438	3,342,940	2,372,477	3,484,347	2,337,996	24A, 31D
Sacramento	6,737,250	5,220,695	7,256,797	5,388,897	7,795,721	5,757,139	8,551,339	6,192,024	25, 31D
Total	15,764,720	11,087,937	16,839,473	11,509,124	17,900,069	12,229,057	19,211,237	12,876,968	
Cottage Baking Co. Inc., Hayward	2,601,768	1,707,073	2,851,824	1,879,464	3,011,583	1,989,753	3,010,004	1,902,322	46 A, D
Golden Crust Bakery, Bakersfield	2,214,873	2,132,150	2,233,388	2,155,526	2,495,267	2,389,194	2,447,444	2,336,030	16 A, B
Golden Crust Bakery, Sacramento	136,612	136,612	139,925	139,925	145,162	145,162	153,290	153,290	29 A, C
Golden State Baking Co., Fresno	1,417,752	1,063,514	1,212,353	925,328	1,112,394	864,068	1,069,877	850,611	15 A, C
Gravem Inglis Baking Co., Stockton	3,189,589	2,860,423	3,178,552	2,890,257	3,703,036	3,371,244	4,368,257	4,076,021	65 A, C, G
Homecraft Baking Co., Ltd., San Leandro	1,263,522	1,144,246	1,319,215	1,194,681	1,556,322	1,405,670	1,732,415	1,573,033	14 A, B
Interstate Bakeries, Corp.:									
Oakland (formerly Butter Cream Baking Co.).	4,461,279	4,205,201	4,435,720	4,095,943	4,638,120	4,261,504	5,058,502	4,624,988	51 A, B, G, I
Sacramento (formerly Remar Baking Co.)	2,850,993	2,719,562	3,083,453	2,896,904	3,262,587	3,028,985	3,501,710	3,240,832	51 D, E, G, I
Total	7,312,272	6,924,763	7,519,173	6,992,847	7,900,707	7,290,489	8,560,212	7,865,820	

Company and plant	1953		1954		1955		1956		CX Nos.
	All	B & BT rolls	All	B & BT rolls	All	B & BT rolls	All	B & BT rolls	
Langendorf United Bakeries Inc.:									
1160 McAllister, S.F.	5,095,685	4,480,814	4,724,251	4,165,556	5,284,946	4,664,542	4,906,415	4,219,517	3, 4, 5, 9A
Berkeley	1,908,739	1,781,400	1,808,517	1,711,871	1,831,233	1,738,543	2,035,597	1,872,749	3, 4, 5, 9G
San Jose	3,324,100	3,007,946	4,224,148	3,898,606	5,295,691	4,879,633	4,819,238	4,192,737	3, 4, 5, 9C
Homestead, S.F.	7,760,849	6,273,074	7,131,582	5,944,409	7,454,022	6,275,060	6,865,018	5,629,315	3, 4, 5, 9E
Los Angeles (sales in Bakersfield only).[1]	583,835		649,519		694,792		545,000	417,000	3, 4, 5,
Total	18,673,208	15,543,234	18,538,017	15,720,442	20,560,684	17,557,778	19,171,268	16,331,318	
Modern Baking Co., Santa Cruz	699,889	629,900	786,436	707,792	735,672	662,105	740,384	666,345	33 A, B
Muzio Baking Co., Sacramento	331,569	331,569	400,613	400,613	474,875	474,875	512,814	512,814	39 A, E
Oroweat Baking Co., Los Angeles (Bakersfield only).							80,000	80,000	67B
Oroweat Baking Co., San Francisco	1,766,756	1,766,756	1,784,273	1,784,273	1,902,174	1,902,174	2,031,550	2,031,550	48 A, B, E
Renon-Parisian Fontana Bakeries, Inc., San Francisco	1,437,334	1,437,334	1,562,273	1,562,273	1,540,000	1,540,000	1,610,023	1,610,023	10 A, C
Safeway Stores, Inc.:									
Oakland	1,983,115	1,983,115	2,028,663	2,028,663	2,266,904	2,266,904	2,158,813	2,158,813	44A, 45D
Fresno	516,346	516,346	588,540	538,540	586,556	586,556	542,294	542,294	45 A, D
Total	2,499,461	2,499,461	2,617,203	2,617,203	2,853,460	2,853,460	2,701,107	2,701,107	

See footnote at end of table.

Company and plant	1957 All	1957 B & BT rolls	1958 All	1958 B & BT rolls	1959 All	1959 B & BT rolls	1960 All	1960 B & BT rolls	CX Nos.
Langendorf United Bakeries Inc.:									
1160 McAllister, S.F.	5,078,463	4,265,909	5,132,761	4,414,174	5,239,857	4,453,878	5,400,695	4,482,576	3, 4, 5, 9A
Berkeley	2,191,181	1,972,063	2,281,724	2,030,734	2,380,967	2,095,251	2,734,816	2,351,942	3, 4, 5, 9G
San Jose	5,300,527	4,611,458	5,450,561	4,850,999	5,780,200	5,144,378	6,043,241	5,378,484	3, 4, 5, 9C
Homestead, S.F.	7,612,362	6,394,384	7,556,615	6,423,123	7,575,643	6,742,322	7,790,676	6,855,795	3, 4, 5, 9E
Los Angeles (sales in Bakersfield only).[1]	544,000	414,000	582,000	470,000	620,000	521,000	596,000	507,000	3, 4, 5,
Total	20,726,533	17,657,814	21,003,661	18,189,030	21,596,667	18,956,829	22,565,428	19,575,797	
Modern Baking Co., Santa Cruz	812,428	731,185	780,488	702,403	808,167	727,350	881,591	793,432	33 A, B
Muzio Baking Co., Sacramento	520,686	520,686	586,401	585,401	627,578	627,578	648,980	648,980	39 A, E
Oroweat Baking Co., Los Angeles (Bakersfield only).	90,000	90,000	62,400	62,400	67,600	67,600	57,200	57,200	67B
Oroweat Baking Co., San Francisco	2,371,573	2,371,573	2,661,077	2,688,077	3,065,776	2,065,776	3,470,594	3,470,594	48 A, B, E
Renon-Parisian Fontana Bakeries, Inc., San Francisco	1,819,209	1,819,209	1,926,109	1,926,109	1,984,447	1,984,447	2,152,525	2,152,525	10 A, C
Safeway Stores, Inc.:									
Oakland	2,563,623	2,563,623	2,879,831	2,879,831	3,329,598	3,329,598	3,791,400	3,791,400	44A, 45D
Fresno	558,980	558,980	642,981	642,981	688,740	688,740	791,074	791,074	45 A, D
Total	3,122,603	3,122,603	3,522,812	3,522,812	4,017,812	4,017,812	4,582,474	4,582,474	

See footnote at end of table.

Company and plant	1953 All	1953 B & BT rolls	1954 All	1954 B & BT rolls	1955 All	1955 B & BT rolls	1956 All	1956 B & BT rolls	CX Nos.
Sunlite Bakery, Inc., San Jose	2,542,941	2,479,297	2,633,064	2,580,070	2,827,436	2,811,030	3,057,655	2,996,502	12 A, B, D
Valley Queen Bakery, Watsonville	455,737	387,376	496,058	421,649	490,773	417,157	633,230	582,572	13A, N-2
Kilpatrick's Bakeries, Inc.:									
San Francisco	3,315,263	3,315,263	3,710,440	3,710,440	3,844,898	3,844,898	4,099,171	4,099,171	17A, 279C, 280C, 280I
Oakland	3,404,345	3,404,345	3,265,553	3,265,553	3,297,325	3,297,325	3,379,581	3,379,581	18A, 281C, 282C, 282I
Total	6,719,608	6,719,608	6,975,993	6,975,993	7,142,223	7,142,223	7,478,752	7,478,752	
Rainbo Baking Co.:									
Sacramento	3,908,518	3,674,007	3,836,239	3,603,190	3,380,728	3,303,880	3,550,264	3,315,947	20 A, B, 288, 289 C, I
Chico	942,856	942,856	840,835	654,761	1,242,748	1,242,748	1,249,259	1,249,259	21 A, B, 288, 290 C, I
Total	4,851,374	4,616,863	4,677,074	4,257,951	4,623,476	4,546,628	4,799,523	4,565,206	
San Joaquin Bakeries, Inc.	4,162,376	4,135,206							284C
Modesto			1,252,176	1,252,176	1,338,652	1,338,652	1,554,529	1,554,529	283 C, I, 22
Fresno			2,684,702	2,684,702	2,631,507	2,631,507	1,215,885	1,215,885	285 C, I, 56A
Visalia	1,065,228	1,063,006	1,127,938	1,127,938	1,103,794	1,103,794	1,514,754	1,514,754	286C, 287 C, I, 58A
Total	5,227,604	5,198,212	5,064,816	5,064,816	5,073,953	5,073,953	4,285,168	4,285,168	
Campbell Taggart Subsidiaries total			16,717,883	16,298,760	16,839,652	16,762,804	16,563,443	16,329,126	
Total all companies	71,867,633	61,247,766	73,359,260	63,429,621	80,401,519	69,351,848	85,170,870	72,072,145	

Company and plant	1957 All	1957 B & BT rolls	1958 All	1958 B & BT rolls	1959 All	1959 B & BT rolls	1960 All	1960 B & BT rolls	CX Nos.
Sunlite Bakery, Inc., San Jose	3,544,678	3,473,784	3,536,568	3,501,202	3,771,432	3,696,003	4,026,800	3,946,264	12 A, B, D
Valley Queen Bakery, Watsonville	695,817	640,152	930,343	744,274	2,160,763	1,642,180	2,766,038	2,046,868	13A, N-2
Kilpatrick's Bakeries, Inc.:									
San Francisco	4,230,497	4,230,497	4,584,532	4,584,532	4,821,545	4,821,545	5,265,896	5,265,896	17A, 279C, 280C, 280I
Oakland	3,647,353	3,647,353	3,913,893	3,913,893	3,871,558	3,871,558	4,219,792	4,219,792	18A, 281C, 282C, 282I
Total	7,877,850	7,877,850	8,498,425	8,498,425	8,693,103	8,693,103	9,485,688	9,485,688	
Rainbo Baking Co.:									
Sacramento	3,623,841	3,432,502	3,611,418	3,529,078	3,937,771	3,865,710	4,381,131	4,312,347	20 A, B, 288, 289 C, I
Chico	1,334,011	1,334,011	1,478,813	1,478,813	1,635,162	1,635,162	1,750,766	1,750,766	21 A, B, 288, 290 C, I
Total	4,957,852	4,766,513	5,090,231	5,007,891	5,572,933	5,500,872	6,131,897	6,063,113	
San Joaquin Bakeries, Inc.									284C
Modesto	1,740,310	1,740,310	1,866,595	1,866,595	1,933,674	1,933,674	2,065,080	2,065,080	283 C, I, 22
Fresno	1,270,134	1,270,134	1,321,104	1,321,104	1,348,713	1,348,713	1,432,678	1,432,678	285 C, I, 56A
Visalia	1,534,570	1,534,570	1,644,685	1,644,685	1,671,218	1,671,218	1,728,211	1,728,211	286C, 287 C, I, 58A
Total	4,545,014	4,545,014	4,832,384	4,832,384	4,953,605	4,953,605	5,242,228	5,225,969	
Campbell Taggart Subsidiaries total	17,380,716	17,189,377	18,421,040	18,338,700	19,219,641	19,147,580	20,843,554	20,774,770	
Total all companies	92,014,962	78,034,687	95,907,330	81,607,929	102,718,313	87,856,673	109,383,778	93,807,648	

[1] Sales of bread and bread type rolls for 1953–1955 not available.

71. From the sales data submitted by the 35 baking companies in response to complaint counsel's subpoena questionnaire, and tabulated on pages 561–566 herein, it is seen that the largest seller of bread among the 35 baking companies in Northern California in 1953, the year preceding the California acquisitions complained about, was Langendorf United Bakeries, Inc., with net sales of $18,673,208 for all products manufactured and $15,543,234 for bread and bread-type rolls. This production amounted to 25.37% of the $61,247,766 total 1953 sales of bread and rolls reported by the 35 companies from whom complaint counsel obtained sales data. Other baking plants among the 35 companies who reported the next largest volume of bread and roll sales for 1953 were:

	1953, bread and bread-type rolls
Kilpatrick Bakeries (S. F. and Oakland plants) or 10.97% of the total $61,247,766 bread and roll sales reported by the 35 baking companies (CX 279C, 281C; Tabulation on pages 561–566 herein).	$6,719,608
Continental Baking Co. or 10.05% of the total bread and roll sales reported by the 35 baking companies (CX 31D; Tab., pp. 561–566 herein).	6,153,428
Interstate Bakeries Corp. or 8.19% of the total bread and roll sales reported by the 35 baking companies (CX 51I; Tab., pp. 561–566 herein, although Remar's 1953 bread and roll sales are not available, and the figures in the Tabulation are mere estimates).	5,018,614
Old Home Bakers, Inc. (Sacramento and Chico) or 7.53% of the total bread and roll sales reported by the 35 baking companies (CX 288; Tab., pp. 565–566 herein).	4,616,863
Gravem-Inglis Baking Co. (Stockton) or 4.36% of the total bread and roll sales reported by the 35 baking companies (CX 65G; Tab., pp. 561–562 herein).	2,669,548
Safeway Stores, Inc. (Oakland and Fresno) or 4.08% of the total bread and roll sales reported by the 35 baking companies (CX 45D; Tab., pp. 563–564 herein).	2,499,461
Sunlite Bakery, Inc. (San Jose) or 4.05% of the total bread and roll sales reported by the 35 baking companies (CX 12D; Tab., pp. 565–566 herein).	2,479,297
Oroweat Baking Co. (San Francisco) or 2.88% of the total bread and roll sales reported by the 35 baking companies (CX 48A,B,E,; Tab., pp. 563–564 herein).	1,766,756

72. If the bread and roll sales of all five baking plants formerly controlled by the Kilpatrick brothers in Northern California are lumped together, their total sales for 1953 would be:

	1953, bread and bread-type rolls
Kilpatrick, S.F., and Oakland (CX 279C and 281C)	$ 6,719,608
San Joaquin Bakeries, Inc., Modesto and Fresno (CX 284C)	4,135,206
Holsum Baking Co., Visalia (CX 286C)	1,063,006
Total	11,917,820

Thus, the total sales of the five baking plants formerly controlled by the Kilpatrick brothers in 1953 represent 19.45% of the total bread and roll sales reported by the 35 baking companies. Their sales, when combined with those of Langendorf, the largest seller among the 35 companies, amount to 44.82% of the total sales reported by the 35 companies.

73. What about the competitive situation after the acquisition of the five baking plants by the subsidiaries of Campbell Taggart? The net sales of bread and bread-type rolls reported by these five baking plants for 1954 were as follows:

	1954, bread and bread-type rolls
Kilpatrick, S. F., and Oakland (CX 280C, 282C; Tab., pp. 565–566)	$6,975,993
San Joaquin Bakeries, Inc., Modesto, Fresno, and Visalia (CX 283C, 285C, 287C; Tab., pp. 565–566)	5,064,816
Total	12,040,809

Thus, their net sales of bread and bread-type rolls in 1954 amounted to 18.93% of the total bread and roll sales of the 35 reporting baking plants for 1954, as against 19.45% for 1953, the year prior to the acquisitions. If the bread and roll sales of the Old Home Bakers plants in Sacramento and Chico are added to the sales of the Kilpatrick and San Joaquin plants, we see that the total net sales for 1954 of the seven plants acquired by the subsidiaries of Campbell Taggart are as follows:

Kilpatrick	$6,975,993
San Joaquin	5,064,816
Old Home Bakers, Inc. Sacramento and Chico (CX 289C, 290C; Tab., p. 565	4,257,951
Total	16,298,760

The total net sales of bread and bread-type rolls reported by the 35 companies in their responses to complaint counsel's subpoena questionnaire for the year 1954 were $63,429,621 (Tab., p. 565). On this basis, the reported net sales of bread and bread-type rolls by the seven baking plants acquired by subsidiaries of Campbell Taggart represent 25.69% of the total sales reported by the 35 baking companies for 1954. The Langendorf sales amounted to $15,720,442 in 1954 (Tab., p. 563), or 24.78% of the total sales reported by the 35 companies. Thus, the combined sales of the Campbell Taggart subsidiary and Langendorf plants constituted 50.47% of the total sales reported by the 35 companies in Northern California in 1954. However, their combined sales in 1960 had dropped to 43.02% of the total sales reported by the 35 companies (see Percentage Chart, p. 570).

74. As a further basis for comparison, the net sales of bread and bread-type rolls by these seven acquired baking plants and the total sales reported by the 35 baking companies (Tab., pp. 565–566 for the years 1955 through 1960 are as follows:

	Total net sales of the 7 acquired baking plants	Total net sales reported by the 35 companies	Percentage of sales by the 7 plants to total sales reported by the 35 companies
1955	$16,762,810	$69,351,848	24.17
1956	16,329,126	72,072,145	22.66
1957	17,189,377	78,034,687	22.03
1958	18,338,700	81,607,929	22.47
1959	19,147,580	87,856,673	21.79
1960	20,774,770	93,807,648	22.15

75. Meanwhile the net sales of Langendorf United Bakeries, Inc., kept pace with the steady growth in sales of most of the other 35 reporting baking plants during the succeeding years 1954 through 1960, the latest year for which sales figures are available. The net sales of bread and bread-type rolls of the Langendorf bakeries and the percentage of their total sales to the total sales of the 35 reporting companies for the years 1954 through 1960 (Tab., pp. 563–566) are as follows:

	Yearly net sales of Langendorf plants	Total net sales reported by the 35 companies	Percentage sales of Langendorf United Bakeries, Inc., to total net sales reported by the 35 companies
1954	$15,720,442	$63,429,621	24.78
1955	17,557,778	69,351,848	25.32
1956	16,331,318	72,072,145	22.66
1957	17,657,814	78,034,687	22.63
1958	18,189,030	81,607,929	22.29
1959	18,956,829	87,856,673	25.58
1960	19,575,797	93,807,648	20.87

76. Keeping in mind that Langendorf United Bakeries, Inc., reported the largest volume of bread and bread-type roll sales among the 35 reporting baking plants (see paragraph 71 above)

for the year 1953, the year immediately prior to the acquisitions complained about, it is interesting to compare the percentages of the total sales of the Langendorf bakeries and seven plants acquired by subsidiaries of Campbell Taggart, to the total sales reported by the 35 companies, for the succeeding years 1954 through 1960, which are as follows:

	Percentage of sales of 7 acquired plants to total net sales reported by 35 companies	Percentage of sales of Langendorf plants to total sales reported by 35 companies
1954	25.69	24.78
1955	24.17	25.32
1956	22.66	22.66
1957	22.03	22.63
1958	22.47	22.29
1959	21.79	25.58
1960	22.15	20.87

The percentages remain rather constant throughout the period, except for the year 1959, where the Langendorf percentage shows a gain of about four percentage points and a drop of more than four percentage points in 1960 (Tab., p. 564 herein).

77. The percentages of sales by the eight wholesale baking companies reporting the largest doll:r volume of bread and bread-type roll sales in the Northern California area among the 35 reporting companies during the years 1954 through 1960, the last year for which sales figures are shown in the record, are as follows:

	1954	1955	1956	1957	1958	1959	1960
Campbell Taggart Subsidiaries (Tab., pp. 565–566)	25.69	24.17	22.66	22.03	22.47	21.79	22.15
Langendorf (Tab., pp. 563–564)	24.78	25.32	22.66	22.63	22.29	25.58	20.87
Continental (Tab., pp. 561–562)	10.57	11.27	14.08	14.21	14.10	13.92	13.73
Interstate (Tab., pp. 561–562)	8.84	8.72	8.85	8.87	8.57	8.30	8.39
Gravem-Inglis (Tab., pp. 561–562)	4.41	4.05	4.02	3.67	3.54	3.84	4.35
Safeway (Tab., pp. 563–564)	4.13	4.11	3.75	4.00	4.32	4.57	4.88
Sunlite (Tab., pp. 565–566)	4.07	4.05	4.16	4.45	4.29	4.21	4.21
Oroweat Baking Co., S. F. (Tab., pp. 563–564)	2.81	2.74	2.82	3.04	3.29	2.35	3.70

78. As demonstrated by the sales reports of the 35 baking companies shown on pages 561–566 of the tabulation herein, most of the 35 companies have continued to prosper and grow since the acquisitions in 1954 of the Kilpatrick and Schnetz controlled bakeries by corporate subsidiaries of Campbell Taggart. The wholesale price of bread in Northern California varies from town to town, depending on local competitive conditions. For example, the price of the 1½ lb. loaf of white bread fluctuated between 26½¢ and 28¼¢ in San Francisco (Tr. 357, 731); was 28¢ in Sacramento (Tr. 650); 28¼¢ in Fresno (Tr. 731); 28¢ in Chico (Tr. 1386); and 28½¢ in Bakersfield (Tr. 1656). A glance at pages 561–562 of the tabulation shows that Athens Baking Co., an independent baker, increased its sales 140.6% between the years 1953 and 1960. Colonial Baking Co. increased its sales of bread and bread-type rolls from $512,401 in 1953, to $2,751,936 in 1960, an increase of 437.07% (Tab., pp. 561–562; CX 54, B). Safeway Stores, Inc. increased its sales between 1953 and 1960 from $2,499,461 to $4,582,474, or an increase of 83.34%. Many of the reporting companies have improved their plant facilities and extended their areas of distribution. In 1957, Colonial Baking Co. built a new plant in South San Francisco with a replacement cost in excess of $2 million (Tr. 1585–87). Also, in 1957, Gravem-Inglis Baking Co., a member of Quality Bakers of America cooperative, built a new, modern plant with a replacement value of $3½ million (Tr. 1853). In the two years following the construction of this plant in 1957, Gravem-Inglis increased its sales approximately 37%. Also, it was testified at hearings in 1961 that Safeway had announced plans to construct a new plant in Richmond for Safeway's 255 retail stores in Northern California (Tr. 1401, 1416–17).

79. Of course, not all of the baking plants in Northern California were successful. Valley Home Bakery, a house-to-house bakery, located in Santa Clara County, went out of business some time during 1960 (Tr. 1582–83). Channel Bakers of Sacramento went broke and out of business in August 1960, due to a strike in which the plant was picketed for nine months (Tr. 1509). Mr. Robert A. Pugh, formerly Secretary-Treasurer of Channel, testified that the plant had excessive transportation costs, was a hand operation (Tr. 1517–18), and that the acquisition in 1954 of the Old Home Bakers plants in Sacramento and Chico by subsidiaries of Campbell Taggart did not have any adverse effect on Channel's business, but actually gave Channel

"a little edge" because Rainbo concentrated on white bread sales (Tr. 1521).

80. During the period between 1952 and 1959, Sunlite Bakery operated bakeries in Porterville and Bakersfield, which sold bread under the "Sunbeam" label. The plant in Bakersfield was inadequate, and it was closed in 1959, and the Porterville plant was closed in 1961. "Sunbeam" bread has continued to be produced in Sunlite Bakery's Stockton plant, and distributed out of Bakersfield and Porterville (Tr. 491, 511, 514, 515, 536–37) as before. Another bakery, Valley Queen, filed bankruptcy proceedings in 1962 under Section 11 of the Bankruptcy Act (CX 13Q). Mr. Nicholas G. Lerek, of Valley Queen, who has been in business and in competition with Kilpatrick Bakeries since 1945, testified, among other things, that Kilpatrick's affiliation in 1954 with Campbell Taggart had no adverse effect on his business, and that the operations of the former Kilpatrick bakeries since their acquisition by subsidiaries of Campbell Taggart had been no different than before the affiliation in 1954 (Tr. 1245–46).

81. Prior to 1955, only three wholesale baking companies distributed bread in Bakersfield, California, and the immediate area, namely, Golden Crust, Sunbeam, and Langendorf (Tr. 1662). Safeway and a French bakery also sold bread in Bakersfield (Tr. 1690). In October 1955, Rainbo Baking Co. of Visalia entered the Bakersfield market (Tr. 1652), followed by Oroweat and also by Helm's, a home service bakery, both of Los Angeles, in about 1956 (Tr. 1665, 1900); by Interstate in 1956 or 1957 (Tr. 1665); by Van de Kamp in 1956 or 1957 (Tr. 1665); and by Valley King, a home service bakery, Our Own, Farm House, Harvest Queen, Smiths, Spencer's, Cow Wow, and Pyrenees at different times between 1951 and 1960 (Tr. 1659, 1678, 1684). In short, whereas three baking plants were distributing bread in Bakersfield in 1955, there were approximately 16 in 1961.

82. Langendorf, Gravem-Inglis, Golden Crust, Valley Queen, Oroweat, Madera, and Continental began selling in the Fresno area for the first time during the period between 1953 and 1961 (Tr. 431, 461–62, 1614–16, 1832). Seven baking companies were identified on the record as having entered Santa Clara County since 1952: Interstate, Bidou, Renon, Cottage, Colonial, Modern, and Valley Queen (Tr. 221–23, 1006).

83. Interstate Bakeries Corp. began distributing bread and bread-type rolls in the Stockton and Modesto areas, and its Oakland plant began distributing in Santa Clara, San Mateo, San Francisco, Marin, and Solano Counties after 1954 (Tr. 1555–56).

Continental Baking Co. also began distributing bread in the Modesto area in 1955 (Tr. 1091). Muzio Baking Co. added two routes in the Sacramento area after 1955 (Tr. 1295), and Catherine Clark, Interstate, and Colonial extended their areas of distribution in the San Franciso area (Tr. 1586).

84. Prior to the acquisition of the seven California baking plants by the new corporate subsidiaries of Campbell Taggart Associated Bakeries, Inc., in 1954, there was no competition between any baking plant affiliated with Campbell Taggart and any of the seven baking plants acquired by the Campbell Taggart subsidiaries in Northern California. In fact, no baking plant affiliated with or controlled by Campbell Taggart distributed bakery products anywhere in California in 1954 (CX 71A–H). The nearest baking plant affiliated with or controlled by Campbell Taggart was located in Phoenix, Arizona, which is about four hundred miles from the nearest California plant in Visalia (Tr. 1343). In 1954, there were no corporations affiliated with Campbell Taggart which operated bakeries in Oregon, Washington, Nevada, Idaho, or Utah (CX 71A–H). So, the acquisition by Campbell Taggart of the seven baking plants in Northern California is what is sometimes referred to as a "market extension."

85. Nor is there any evidence in the record to show that any competition between any bakery plant affiliated with or controlled by Campbell Taggart and any of the seven baking plants located in California would or would likely have occurred in 1954 or at any time in the future. There is no evidence in the record to show or to support any inference that any of the California plants or any affiliate of Campbell Taggart had any plans or intentions to expand its area of distribution across the four hundred miles of desert and mountains between the California plants and the Campbell Taggart affiliated bakery plant in Phoenix, Arizona. Nor is there any evidence in the record that Campbell Taggart or any of its subsidiary baking plants extended its area of distribution by the construction of any new baking plants anywhere at any time. Any finding that any Campbell Taggart subsidiary was a potential competitor of either of the former Kilpatrick controlled or Old Home bakeries in California would be based on pure speculation.

86. Prior to the acquisition of the seven baking plants in California by corporate subsidiaries of Campbell Taggart in 1954, there was some overlapping of the distribution area of the Kilpatrick San Francisco plant with one or more of the routes of

the Sacramento plant of Old Home Bakers in and around the towns of Napa and Lodi. However, the amount of business involved in the overlap was a very small percentage, "probably a little touching of routes on fringe areas" (Tr. 613). The record does not show that any baking companies operate baking plants in the towns of Napa or Lodi, but indicates that the Napa and Lodi areas are served by more than a dozen baking plants located in San Francisco, Oakland, Stockton, and Sacramento (CX 1B, 1C, 1D, 19, 30, 34, 41, 45T, 46C, 47, 50, 53, and 64). The record does not contain any sales data for any plant located in Napa or Lodi for any year either before or after the 1954 acquisitions complained about. Mr. Harold Kilpatrick testified that in 1953 the distribution area of Kilpatrick Bakeries "overlapped to some extent with the San Joaquin distribution areas" around Modesto (Tr. 613). However, at that time the San Joaquin Bakeries and the Kilpatrick Bakeries were then under common ownership and control by the Kilpatrick brothers (Tr. 1338–39). There is no specific testimony in the record as to any change in distribution areas after 1954, but, at the time of hearings in California in 1961, the Kilpatrick plants in San Francisco and Oakland and the Rainbo plant in Sacramento were still distributing bread in the Napa and Lodi areas, and the Kilpatrick plants still overlapped the distribution area of San Joaquin Bakeries near Modesto (CX 19, 41). So, evidently these overlaps continued after 1954.

D. Competitive Practices in California

87. In California, large retail grocery chains have had rapid growth since 1954 and have become the most important customers of wholesale bakeries. The number of retail grocery stores have decreased, and the large retail grocery chains have increased the number of their stores (Tr. 206–207, 371). This growth of the large retail grocery chains, the increase in population in Northern California, and the extension and enlargement of the distribution areas of baking plants have increased competition between baking plants and have increased pressure by grocery retailers on their suppliers of bread for better and more frequent service and other competitive concessions. This increased competition on both the selling and buying side of the market for bread and other bakery products caused many California baking companies to provide more frequent bread deliveries to grocery stores, make larger shelf displays, "overload" bread racks, grant discounts to customers, furnish free bread and racks to stores,

free tickets to ball games and other sporting events, free pencils and balloons, entertain customers, provide lady demonstrators in stores, and similar concessions (CX 70A–Z89; Tr. 1095–98, 1481, 1617–18, 1833, 1995).

88. Several representatives of baking companies who were in competition with subsidiary baking companies of Campbell Taggart testified that some of the Campbell Taggart subsidiary baking companies had "overloaded" bread racks, and granted discounts, trade concessions, and other so-called "giveaways" to some of their customers at various times since 1954, after these seven baking plants were acquired by subsidiary corporations of Campbell Taggart (Tr. 233–245, 435, 445–451, 497–500, 562–574). In fact, a considerable portion of the testimony during hearings in California related to these practices. An example of the testimony offered by complaint counsel to substantiate the charges set forth in Count II of the complaint that respondent initiated the practice by wholesale baking plants in Northern California of "overloading" grocery shelves, granting discounts and other discriminatory concessions to customers after its subsidiaries acquired control of the seven baking plants in California, was the testimony of the owner and president of an independent baking company, who had been operating in California for many years prior to 1954. This witness testified to the following: Prior to 1955, he had only a few competitors, Langendorf, Sunbeam, Safeway, a French Bakery, and Oroweat (Tr. 1682); then Helm's, Van de Kamp, and Weber came into the Bakersfield area as competitors (Tr. 1684); "Rainbo" came into the area in 1955 or 1956; in 1957 or 1958, an old grocery customer of his (witness') bakery demanded a five per cent discount on bread purchases and, when the witness refused to pay the discount, the grocer discontinued purchasing bread from the witness' bakery because Rainbo Bakery of Visalia allowed the grocer a discount (Tr. 1684–85); Weber was the first bakery to give the five per cent discount (Tr. 1686); his (the witness') stale returns increased in 1956 and 1957 (Tr. 1687–88).

89. On cross-examination, the witness testified that: his stale returns have increased with the new competition coming in (Tr. 1691); the witness' bakery gives discounts on bread sales (Tr. 1691); grants credit to some bread customers (Tr. 1692); when witness' bakery gave one store a discount, the store "threw Rainbo out" (Tr. 1695); witness' bakery gave another store a discount, and Rainbo "got thrown out" (Tr. 1698); witness' bakery gave another store a discount, and Rainbo and all the other bakers "got

thrown out," except Sunbeam and witness' bakery (Tr. 1697); Rainbo was "thrown out" of another store because witness' bakery gave it a discount (Tr. 1697); in the cases of the grocery stores, the witness testified that his bakery gave the stores a discount and Rainbo was "thrown out," the witness' bakery being the first before Rainbo to pay the discount (Tr. 1699); Rainbo was the first bakery in Bakersfield to give a discount (Tr. 1700); Langendorf United Bakeries (which was selling bread in Bakersfield before Rainbo came into the area) had been giving discounts to "three or four" customers prior to the time Rainbo came into the area (Tr. 1700); in 1956 or 1957, the witness' bakery in Bakersfield began selling bread in Fresno "because Rainbo moved over there. He took a lot of business and I tried to get some business back" (Tr. 1704); the witness advertised his entry into Fresno in newspapers and on television, and was still distributing bread in Fresno at the time of hearings in California in 1961 (Tr. 1704); witness employed some persons who had been working for Rainbo in Fresno (Tr. 1705); his (witness') bakery gave one loaf of bread free of charge as a sample to the owners of grocery stores in Fresno (Tr. 1705); witness began distributing bread in Fresno with four trucks and, at time of hearings in 1961, he had nine truck routes (Tr. 1705); witness' bakery granted a 25% discount to one customer of the Rainbo plant in Fresno, and that Rainbo plant lost the account to the witness' bakery in Bakersfield (Tr. 1706); the witness' bakery gave away magic tricks in grocery stores, instead of pencils and balloons (Tr. 1706); the witness employed and paid wrestlers, hired a hall and put on wrestling matches for the free entertainment of all grocerymen in the area whom he invited, and also served them free sandwiches and refreshments; one of the wrestling matches was before Rainbo came into the area (Tr. 1706–1707); his (witness') bakery built a lot of bread racks for customers "like everybody else do" (Tr. 1708); for 11 years prior to 1961, he has been loaning $125,000 to $150,000 to 35–40 customers each weekend as an accommodation for check-cashing purposes (Tr. 1709, 1723); his (witness') bakery has not given away pencils and balloons or souvenirs in the last four or five years (Tr. 1714); grocers are not always telling the truth when grocers state that a particular bakery is giving the grocer a discount (Tr. 1714); his (witness') bakery's sales of bread have gone up each year in the last few years (Tr. 1714).

90. On re-direct, complaint counsel asked the witness why the witness' bakery gave discounts to several grocery stores, and the

witness replied that he had to meet the competition of one of his competitors, Sunbeam, who was giving the stores a discount (Tr. 1716–18); one bakery gave a discount, then all bakeries gave a discount (Tr. 1729); some grocers demand a payment of $200 from a baker before allowing the baker to place his (the baker's) bread in the store (Tr. 1730); bakers, including the witness, have been furnishing their customers free bread racks for 30 years (Tr. 1731); all bakeries grant credit to their customers, and the witness has carried some of his customers for six months (Tr. 1734).

91. Most every bakery official who testified at the hearings admitted that these types of trade concessions were common in Northern California (Tr. 1187–88, 1229, 1274–75, 1502, 1558–1560, 1860–61). A substantial number of witnesses, upon whose testimony this hearing examiner places credence, testified that they had competed with some of the baking plants, had observed their operations and sales, both before and after their affiliation with Campbell Taggart in 1954, and had not observed that any of these plants had initiated any policies of giving discounts, free goods, or paying for space on bread racks in their areas of distribution. These witnesses further testified that there was no noticeable change in the manner of operation of the bakeries after their affiliation with Campbell Taggart than before the affiliation in 1954 (Tr. 920, 992, 1185, 1245–46). Upon the basis of the preponderance of the reliable evidence and testimony, it is found that these trade practices, hereinbefore discussed, were not instituted by subsidiary baking plants of Campbell Taggart, but were prevalent in the California area for some years prior to 1954.

92. One of the practices to which most attention was given at hearings concerned "overloading" of shelves, or placing more bread on the rack than can reasonably be expected to be sold before it becomes stale (Tr. 302, 962, 1682). Some bakers believe that the practice of "overloading" causes the rate of stale returns to rise (Tr. 499, 740). The idea seems to be prevalent that "overloading" increases sales, since some believe in so-called "pile psychology," that is, "people buy off of a bigger pile" (Tr. 2753). "Overloading" has been discussed in paragraph 23 hereof. There does not seeem to be agreement among bakers as to the exact percentage of stale returns which necessarily indicates "overloading." At least one witness testified that a 10% rate of stale returns was normal (Tr. 909), and another witness testified that he did not believe a 15% stale return rate necessarily indicated "overloading" (Tr. 962). Indeed, the evidence shows that a high

rate or percentage of stale returns is not necessarily due to "overloading," but may be attributable to the weather, seasonal factors, promotional activity, economic conditions, civic functions, union contracts restricting delivery days by driver-salesmen, the entry of a new competitor, or what has been characterized as a "bouncing market" (Tr. 95–97, 384–87, 521, 738–39, 802, 962, 1057, 1617).

93. It is not possible to eliminate stale returns entirely because of so many factors. Also, it must be remembered that it is the grocer who actually controls the size of the stack of bread on the rack. He does not want to run out of bread. Therefore, most grocers demand that the driver-salesman put more, rather than less, bread on the rack (Tr. 1959–1960). The actual rates or percentages of stale returns for the years 1954–1961 of the seven baking plants in Northern California acquired by Campbell Taggart subsidiaries were received in evidence during hearings. They are as follows:

Percentage ratio of stale returns to gross sales of bread and bread-type rolls

Campbell Taggart subsidiary baking plant	1954	1955	1956	1957	1958	1959	1960	1961
San Francisco (CX 280 C, I, O, U, Z7, Z13, Z19)	7.1	8.0	8.9	9.8	9.7	9.6	10.5	8.5
Oakland (CX 282 C, I, O, U, Z1, Z7, Z13, Z19)	6.4	7.4	8.7	9.0	8.9	9.9	9.6	8.4
Modesto (CX 283 C, I, O, U, Z1, Z7, Z13, Z19)	7.2	11.9	11.4	9.2	11.0	12.0	11.9	10.1
Fresno (CX 285 C, I, O, U, Z1, Z7, Z13, Z19)	4.8	6.7	9.2	8.6	8.5	8.1	7.9	8.2
Visalia (CX 287 C, I, O, U, Z1, Z7, Z13, Z19)	6.8	10.1	11.8	11.5	10.0	9.9	9.1	11.0
Sacramento (CX 289 C, I, O, U, Z1, Z7, Z13, Z19)	7.1	8.1	7.7	8.1	7.0	7.5	6.8	6.6
Chico (CX 290 C, I, O, U, Z1, Z7, Z13, Z19)	6.4	7.9	8.5	8.6	8.8	8.9	8.6	8.2

The rates of stale returns reported by these seven baking plants, as shown above, do not appear to be abnormal.

94. The other area, in addition to California, where hearings

were held and oral testimony received with respect to acquisitions of bakery plants located in that area, was Kentucky. The acquisitions of bakery plants located in the Kentucky area will now be considered.

IV

A. *The Acquisitions in Kentucky, Indiana, and Tennessee*

95. In May 1959, the assets of Grocers Baking Co. of Kentucky and its three wholly owned subsidiary corporations were purchased from Grocers Baking Co. by eight corporate subsidiaries of Campbell Taggart Associated Bakeries, Inc. (CX 115A–D). At the time of the purchase, Grocers Baking Co., a Kentucky corporation, with headquarters in Louisville, Kentucky, (CX 115A), operated bakeries in Louisville, Lexington, Bowling Green, Owensboro, and Paducah, Kentucky (Tr. 3053–54). In addition, Grocers Baking Co. of Kentucky had two wholly owned subsidiaries, Grocers Baking Co. of Johnson City, a Tennessee corporation, which operated a bakery in Johnson City, Tennessee, and Grocers Baking Co. of Indiana, an Indiana corporation, which operated bakery plants in New Albany and Bedford, Indiana. Grocers Baking Co. of Indiana, in turn, had a wholly-owned subsidiary, Hi-Class Baking Co., with a baking plant in Evansville, Indiana (Tr. 3053–54).

96. All of the nine plants owned by Grocers Baking Co. and its subsidiary corporations produced and distributed bread and bread-type rolls. Grocers Baking Co. of Kentucky shipped products produced in its Bowling Green plant into Tennessee, and products produced in its Paducah plant were shipped into Illinois and Missouri (Tr. 4582–84, 4241–42). Some bread produced in its Owensboro, Kentucky plant was distributed also in Indiana. The Johnson City, Tennessee plant of Grocers Baking Co. distributed its products in Tennessee, Virginia, Kentucky, and North Carolina (Tr. 3164, 4335–36). The New Albany plant of Grocers Baking Co. of Indiana sold and distributed its products in Indiana and Kentucky, and the Evansville plant of Hi-Class Baking Co. (a Grocers subsidiary) distributed and sold its products in Indiana and Illinois (Tr. 3875; CX 137).

97. A portion of the territory served by Grocers Baking Co. and its subsidiaries included coal mining regions and so-called depressed areas, which have been losing population and been declared areas of labor surplus by the United States Department of Commerce (Tr. 4288–89, 4719). As of June 28, 1958, the end of its

last full fiscal year, Grocers Baking Co. had assets of $6,084,006 (CX 168B). The consolidated total sales by Grocers Baking Co. of bread and bread-type rolls for the years 1956 through 1958, immediately prior to the sale of Grocers in May 1959, were as follows:

Year	Sales	Profit	Dividend
1956	$12,665,000	$306,963	$6
1957	12,950,000	386,425	6
1958	13,000,000	442,104	6

(Tr. 3167, 3170–71.)

98. The 1958 sales of bread and bread-type rolls, and profits for each plant of Grocers Baking Co., were as follows (CX 470I–L):

	Sales	Profits
Louisville	$2,682,308	$95,211
Lexington	2,208,778	130,975
Bowling Green	1,202,174	29,140
Owensboro	1,330,293	168,067
Paducah	1,367,075	52,214
Evansville	1,224,150	77,880
Bedford	940,670	7,131
New Albany	920,943	26,155
Johnson City	1,495,211	58,530
Total	[5] $13,371,602	[5] $645,303

B. *Background and Negotiations Leading to Acquisitions*

99. As to the events leading to the sale of Grocers' assets to subsidiaries of Campbell Taggart in May 1959, the officials of both companies maintain that the initiative for the sale originated with officials of Grocers Baking Co. According to Mr. I. E. Madsen, Chairman of the Board, and former President of Campbell Taggart Associated Bakeries, Inc., officials of Grocers Baking Co. told representatives of Campbell Taggart that they were anxious to affiliate with Campbell Taggart. Accordingly, Mr. Madsen told the Campbell Taggart representative to inform the Grocers officials that Campbell Taggart "has never gone after bakeries. We never approach the people who want to join us, and

[5] These total sales are unconsolidated and include interplant sales. If interplant sales are eliminated, total consolidated sales of the nine plants for the year 1958 would be approximately $13,000,000 and profit about $442,104, as shown in paragraph 97 above.

if they are interested they can contact me." Shortly thereafter, Mr. Madsen received a call from Mr. Kenneth Hikes, then President of Grocers Baking Co., who asked that they arrange a meeting to discuss "working out a deal." The following day, Mr. Hikes and Mr. William Gossadge, then Secretary-Treasurer of Grocers Baking Co., came to Dallas and conferred that evening with Mr. Madsen, President of Campbell Taggart. As a result of these preliminary discussions, according to Mr. Madsen's testimony, Campbell Taggart began an investigation of the feasibility of the matter, which culminated in the offer by Campbell Taggart to acquire the Grocers plants and assets (Tr. 2657–59).

100. From the standpoint of Grocers Baking Co., Mr. Kenneth Hikes, former President, testified among other things, that: "At the time I approached Campbell Taggart the future looked pretty dark to me for a number of reasons, and the reasons were, I would say, peculiar to our company" (Tr. 3157); the sales volume of the company in terms of production was "on a declining trend because of price increases" (Tr. 3154), and "we were losing ground in the market" (Tr. 3171), even though the company's sales and profits increased between 1956 and 1958, from sales of $12,665,000 and profits of $306,693 in 1956, to sales of $13,000,000 and profits of $442,104 in 1958 (Tr. 3153, 3171). Mr. William Gossadge, former Secretary-Treasurer of Grocers Baking Co., testified as follows:

> There were various reasons, and the one that had the greatest bearing on our decision to seek a purchaser was the fact that our company was bankrupt as far as personnel, as far qualified individuals who could carry on. We had top management of only four people. We had no replacement program. We also could see the industry, it appeared from our analysis of the industry to be very bleak. * * *
>
> Up to that time we were on decline volume-wise and we could anticipate a greater decline. We anticipated a reduction in profits due to increased costs, increased labor contracts, and we felt if we could find a buyer it would be for the best interest of our stockholders, therefore we sought Campbell Taggart (Tr. 3375–76).

101. At that time, Mr. Hikes testified, Grocers Baking Co. was considering the necessity for discontinuation of bread production in its Bedford and Bowling Green plants entirely, and the conversion of the Bowling Green plant to cake production (Tr. 3158, 3164). According to Mr. Hikes, both of these plants were earning minimal profits in 1958; the Bedford plant having profits of $7,131 on sales of $940,670, and the Bowling Green plant having profits of $29,140 on sales of $1,202,174, or profit/sales

ratios of 0.8 percent and 2.4 percent, respectively (CX 470J, L). Also, Mr. Hikes testified:

> Our plans were to build a plant [in Johnson City] that would cost between $650,000 and $700,000, and in addition to that we had installed in our Louisville and Lexington plants two pieces of machinery that cost us $125,000 each. They were bread making machinery. We had, also, plans for a similar piece of machinery in the Johnson City Plant, so that we had staring us in the face over a period of a little over a year expenditures of over $1,000,000 for a new plant and these pieces of machinery, that is, bread making machinery * * *.
>
> If we had gone ahead with the Johnson City plant our cash position would have been very much strained (Tr. 3170).

102. The agreement between Campbell Taggart Associated Bakeries, Inc., and Grocers Baking Co. for the transaction provided for the purchase of physical assets of Grocers Baking Co. by "subsidiary corporations of Campbell Taggart" for "a cash sum equal to their book value as of date of acquisition, plus $1,280,000" (CX 115B). Two existing corporate subsidiaries of Campbell Taggart Associated Bakeries, Inc., Colonial Baking Co. of Nashville and Colonial Baking Co. of Indianapolis, and six newly formed corporate subsidiaries purchased the assets of particular plants of Grocers Baking Co. (Tr. 2971; CX 113B, 115A–D).

C. *Acquiring Subsidiaries of Campbell Taggart*

103. Campbell Taggart formed the Rainbo Baking Co. of Louisville, Kentucky, a corporation, to acquire the assets of Grocers' Louisville, Kentucky, and New Albany, Indiana baking plants. The Rainbo Baking Co. of Lexington, Kentucky, a corporation, was formed to acquire the assets of Grocers' baking plant at Lexington, Kentucky. The Rainbo Baking Co. of Johnson City, a corporation, was formed to take over the assets of the Grocers' plant at Johnson City, Tennessee (Tr. 2644–48). The Paducah Colonial Baking Co., a corporation, was formed to acquire the assets of Grocers' plant at Paducah, Kentucky. The Colonial Baking Co. of Owensboro, a corporation, was formed to acquire the assets of Grocers' Owensboro, Kentucky plant. The Colonial Baking Co. of Evansville, a corporation, was formed to take over the assets of the Hi-Class Baking Co. subsidiary of Grocers at Evansville, Indiana. The assets of the Bedford, Indiana plant of Grocers were taken over by the Colonial Baking Co. of Indianapolis, Indiana, and the assets of the Bowling Green plant of Grocers were taken

over by the Campbell Taggart subsidiary, Colonial Baking Co. of Nashville, Tennessee (Tr. 2644–48).

104. Campbell Taggart Associated Bakeries' stock investment in each of the affiliated corporations which purchased plants of Grocers Baking Co. ranged from 50.5 percent in Colonial Baking Co. of Indianapolis to 95.8 percent in Rainbo Baking Co. of Louisville (CX 71C–F). Each of the former Grocers Baking Co. plant managers became a director in the new corporate subsidiary, and seven of the eight plant managers continued to operate his plant as President of a newly formed subsidiary or as Vice President of an existing subsidiary. Minority stock interests were held by plant managers and other local operators (CX 107A, 120B). Also, Mr. William D. Becker, counsel for Grocers Baking Co., became a Director of Rainbo Baking Co. of Louisville, together with a representative of Campbell Taggart Associated Bakeries, Inc., (CX 71E, 113C).

105. In the years following the transaction, some of the former Grocers Baking Co. plant managers retired from the baking business. Mr. Clyde Duncan retired as plant manager of the Bedford plant of Colonial Baking Co. of Indianapolis "because of health reasons" a year and a half after the transaction (CX 94E). In January 1962, Mr. William Rains retired as President of Rainbo Baking Co. of Lexington at the age of sixty-eight to become Chairman of the Board (Tr. 3619, 3651–52), and Mr. Dick Dodds became Chairman of the Board of Paducah Colonial Baking Co. shortly after the transaction (Tr. 2973, 2975; CX 118H–J).

D. *Actual Competition Between Grocers and Campbell Taggart Subsidiary Plants*

106. At the time of the purchase of the assets of Grocers Baking Co. by subsidiaries of Campbell Taggart in 1959, subsidiary baking plants of Campbell Taggart competed in a small portion of the total distribution area of the Grocers Baking Co. plants (CX 137). The only substantial competition by any Campbell Taggart subsidiary baking plant with any Grocers plant prior to May 1959 was that between Colonial Baking Company of Indianapolis, Indiana, and the Grocers plant in Bedford, Indiana (CX 134A, 137). Colonial of Indianapolis also competed in a small portion of the distribution area of the Grocers Evansville, Indiana plant (CX 133B, 137), and an insignificant portion of the distribution area of the Grocers New Albany, Indiana plant (CX 136, 137). The Rainbo Baking Company of Cincinnati, Ohio, another Campbell Taggart subsidiary, competed in an infinitesimal portion of

the distribution area of the Grocers Louisville, Kentucky plant (CX 128B, 137). Another Campbell Taggart subsidiary, Colonial Baking Company of Nashville, Tennessee, competed in small portions of the Bowling Green and Owensboro, Kentucky plants of Grocers (CX 130A, 131, 137). Two other subsidiary Campbell Taggart plants, Colonial Baking Company of Nashville, Tennessee, and the Jackson, Tennessee branch plant of Colonial Baking Company of Memphis, Tennessee, competed in a small way in the extreme southern distribution area of the Paducah, Kentucky Grocers plant (CX 132B, 137).

107. An examination of the map (CX 137), which purports to outline the general areas of distribution of the former Grocers plants, indicates that, although Campbell Taggart subsidiary baking plants competed with seven of the former Grocers plants, there was only competition in a substantial portion of the distribution area of the Bedford, Indiana Grocers plant. The competition with other Grocers plants was in fringe distribution areas (CX 137). Mr. Kenneth Hikes, former President of Grocers Baking Co., called as a witness by complaint counsel, identified the map, CX 137, and testified that the map, CX 137: "* * * is very general. * * * it depicts more or less the limits that we extended to. It does not show exactly where each truck went. * * * In other words, it covers the general area that we covered, yes, sir. * * * Yes, it depicts the extremities of each route" (Tr. 3158–59). To illustrate the comparatively small portion of the total distribution areas of the Grocers plants in which they competed with delivery routes operated by Campbell Taggart subsidiaries, consider the number of routes where they competed. At the time of the purchase of the assets of Grocers Baking Co. by subsidiaries of Campbell Taggart in May 1959, Grocers plants were operating about 254 routes (Tr. 3158). Of these 254 routes, only 15 to 17 of Grocers' trucks operated and competed in territories where subsidiary baking plants of Campbell Taggart also operated trucks (Tr. 3159–3160). So, it is seen that, although there was competition between Campbell Taggart subsidiary baking plants and Grocers plants prior to the acquisition of Grocers' assets by Campbell Taggart subsidiaries in May 1959, the only competition in a substantial portion of the distribution area of any Grocers plant was in the Grocers Bedford plant's area of distribution (CX 137). Since Campbell Taggart subsidiaries and Grocers plants were both engaged in the manufacture and sale of bread and bread-type rolls at the wholesale level, this acquisition may properly be characterized as "horizontal."

E. *Distribution Areas of Louisville, Kentucky, and New Albany, Indiana, Plants, Areas #1 and #8*

108. Prior to its acquisition, the Grocers Louisville plant was operated by its parent company, while the New Albany plant was operated as a part of the Grocers Baking Co. of Indiana, a wholly owned subsidiary (Tr. 3054). The Louisville plant distributed in Area #1, as designated by complaint counsel in the Special Survey Reports, and its routes extended approximately forty-odd miles from the plant in Louisville. It operated one depot at Lebanon, Kentucky, distributing in Marion and Tyler Counties, Kentucky, which extended the area of distribution approximately thirty-five miles at its furthermost point (CX 128A, 137; Tr. 3085–86, 3344–45). The New Albany, Indiana plant was located across the Ohio River from Louisville, in what complaint counsel designated in the Special Survey Reports as Area #8, and distributed within a radius of approximately fifty miles from its plant, solely within the State of Indiana (CX 137; Tr. 3346). Its parent, Grocers Baking Co. of Louisville, purchased all materials and ingredients for both the Louisville and New Albany plants, and directed the operations of each plant (Tr. 3061–63).

109. Subsequent to the acquisition of Grocers by subsidiaries of Campbell Taggart, the New Albany and Louisville plants were combined to make up the Rainbo Baking Company of Louisville (Tr. 2644–47).

1. *Area of Distribution, Lexington, Kentucky, Plant, Area No. 2*

110. Prior to the acquisition in May 1959, the Lexington plant was operated as a part of Grocers Baking Co. of Louisville. Subsequent to the acquisition, it became the Rainbo Baking Company of Lexington (CX 129A; Tr. 3053–54, 3619). Its principal area of distribution extended from Cynthiana, located in Nicholas County, Kentucky, and extended south to the Tennessee border. Depots were located at Richmond, Somerset, Corbin, and Morehead, Kentucky. Its area of distribution has not changed since the acquisition (Tr. 3639).

2. *Area of Distribution, Bowling Green, Kentucky, Plant, Area No. 3*

111. Prior to the acquisition, the Bowling Green, Kentucky, plant was operated as a part of Grocers Baking Co. of Louisville, the parent company. Depots were located at Hopkinsville, Kentucky, and Clarksville, Tennessee. The Bowling Green plant dis-

tributed bread in the South Central portion of Kentucky and some of the border towns in Northern Tennessee (CX 130A, 137). The Colonial Baking Company of Nashville, Tennessee, was one of its competitors (CX 130B, 137). Subsequent to the acquisition, the Bowling Green plant of Grocers became a branch plant of the Colonial Baking Company of Nashville, Tennessee. The Bowling Green plant took over distribution in a new area between Hopkinsville and Kentucky Lake, Kentucky, which was vacated by the Campbell Taggart subsidiary, Colonial Baking Company of Paducah, Kentucky. The Bowling Green plant gave up the Clarksville, Tennessee depot and distribution area to the Campbell Taggart subsidiary plant at Nashville, Tennessee (CX 137; Tr. 4259–4261, 4584). The Bowling Green plant does not now compete with any other Campbell Taggart subsidiary.

3. *Area of Distribution, Owensboro, Kentucky, Plant, Area No. 4*

112. Prior to the acquisition, the Owensboro plant was operated as a part of the Grocers Baking Co. of Louisville. It did not operate any depots, but distributed in Kentucky and a small area in the State of Indiana. The furthermost point of distribution from the plant was approximately sixty miles. The Colonial Baking Company plant of Nashville, Tennessee, served a small portion of its distribution area. Subsequent to the acquisition, the Owensboro plant surrendered Huntingburg, Indiana, to the Campbell Taggart subsidiary plant at Indianapolis; and Henderson, Sturgis, and Morganfield, Kentucky, to the subsidiary plant at Evansville, Indiana. The Owensboro plant no longer competes with either the Campbell Taggart subsidiary plant at Nashville, Tennessee, nor its branch plant at Bowling Green, Kentucky (Tr. 4193–94, 4196; CX 137). In exchange for the area which the Owensboro plant gave up, the Campbell Taggart subsidiary at Nashville, Tennessee, turned over to it a depot located at Madisonville, Kentucky, together with routes and trucks. The volume of sales of this depot was allegedly $5,000 per week (Tr. 4195–98).

4. *Area of Distribution, Paducah, Kentucky, Plant, Area No. 5*

113. Prior to the acquisition, the Paducah plant was operated by Grocers Baking Co. of Louisville. The Paducah plant, located within Area #5, as designated by complaint counsel in the Special Survey Reports, had depots located at Eldorado and Carterville, Illinois, and Cape Giradeau, Missouri, and distributed bread in Eastern Missouri, Southern Illinois, and the western edge of Kentucky (CX 132A, 137). Two Campbell Taggart subsidiaries, the

Tennessee branch plant of Colonial Baking Company of Memphis and the Colonial Baking Company of Nashville, sold bread along the southern edge of its distribution area. The area of distribution from the plant is approximately forty miles in radius and, with the three depots, is extended an additional fifty miles (CX 132B, 137; Tr. 4241–42). Subsequent to the acquisition, this plant's area of distribution was altered. It discontinued distribution in Fairfield, Illinois, located near the northeast corner of its distribution area. It surrendered Princeton, Eddyville, Dexter, and Cadiz, Kentucky, to the Bowling Green branch plant of Colonial Baking Company of Nashville. It surrendered Murray, Kentucky, on the south, to the Jackson, Tennessee branch plant of the Colonial Baking Company of Memphis, and it withdrew from a small area in Missouri on the west. It does not now compete with any Campbell Taggart subsidiary baking plant (CX 137; Tr. 4257–4262). The Carterville, Illinois depot, which had been previously used by the Grocers Paducah plant, was relocated in Carbondale, Illinois, and the Harrisburg, Illinois, depot was relocated in Eldorado, Illinois (Tr. 4262–63).

5. *Area of Distribution, Evansville, Indiana, Plant, Area No. 6*

114. Prior to the acquisition, the Evansville, Indiana plant, located in Area #6, as designated in the Special Survey Reports, operated under the name, Hi-Class Baking Company of Evansville, Indiana, an Indiana corporation, and as a subsidiary of Grocers Baking Co. of Louisville. The plant, with depots located at Vincennes, Oakland City, Winslow, Indiana, and Mt. Carmel, Illinois, distributed over an area within a radius of forty miles from the plant in Southern Indiana and Southeastern Illinois. Colonial Baking Company of Indiana, a Campbell Taggart subsidiary, sold some bread along the northeastern fringe of its distribution area (CX 133B, 137). After the acquisition, this plant became the Colonial Baking Company of Evansville, and some of its distribution area was changed. The Evansville plant discontinued distribution in the Vincennes area when Vincennes, Indiana, was placed in the distribution area of the Bedford, Indiana plant (Tr. 3482–83, 3877). When this area was transferred to the Bedford plant's distribution area, the entire route, including the driver-salesmen, also went along to the Bedford plant (Tr. 3894–95). The Evansville plant, which had not distributed in Kentucky under Grocers (CX 137), moved into Henderson and Sturgis, Kentucky, and opened a depot at Morganfield, Kentucky (Tr. 3875). Colonial of Owensboro, Kentucky, "couldn't

serve Henderson and this area," so Colonial of Evansville took over. The distribution area of this plant does not now overlap with that of any other Campbell Taggart subsidiary (Tr. 3878–79).

6. *Area of Distribution, Bedford, Indiana, Plant, Area No. 7*

115. The Bedford plant was formerly operated by Grocers as a subsidiary, under the name of Grocers Baking Co. of Bedford, Indiana. It distributed wholly within the State of Indiana within a forty-five mile radius of the plant, and operated depots in Columbus and Washington, Indiana. Colonial Baking Company of Indianapolis, a Campbell Taggart subsidiary, distributed in a substantial portion of its distribution area. After the acquisition, the Bedford plant was made a branch plant of the Colonial Baking Company of Indianapolis. After the acquisition, the Bedford plant discontinued serving Seymour, Indiana, located in the northeastern portion of the distribution area of the Grocers Bedford plant, and discontinued serving Bloomington and the area above it to the north, and Bloomfield to the west (Tr. 3450–51; CX 137). These areas are now covered by the Colonial Baking Company plant located at Indianapolis (CX 458Z). The Bedford plant began serving Vincennes and Bicknell, Indiana, on the west, which were formerly served by the Evansville plant (CX 137). After these changes, the Bedford plant did not compete with any Campbell Taggart subsidiary (Tr. 3455–56).

7. *Area of Distribution, Johnson City, Tennessee, Plant, Area No. 9*

116. Prior to the acquisition, the Johnson City baking plant was a wholly owned subsidiary of Grocers, operating as the Grocers Baking Co. of Johnson City, Tennessee. The plant distributed bread in the States of Virginia, Kentucky, Tennessee, and a small portion of North Carolina, with depots located at Big Stone Gap, Virginia, and Morristown, Tennessee (CX 135A–B, 137; Tr. 3164). Prior to the acquisition, Grocers had purchased property on which it planned to erect a new plant, which was estimated to cost between $650,000 and $700,000 (Tr. 3164, 3169–70). The area of distribution from the plant was approximately forty miles, which was extended an additional fifty miles through the use of depots (Tr. 4344). After the acquisition, the plant became the Rainbo Baking Company of Johnson City, Tennessee. After the acquisition, the Johnson City plant discontinued selling in North Carolina (Tr. 4335), and began selling in Richlands, Vir-

ginia (Tr. 4336). A new depot was established in Abingdon, Virginia (Tr. 4343–44).

117. After the acquisition of the Johnson City plant by Rainbo Baking Company, a Campbell Taggart subsidiary, approximately $400,000 was expended on the plant, together with additional sums for the overhaul of machinery used in the old plant (the rundown condition of this plant was given by Mr. Hikes as one of the reasons for selling the assets of Grocers to subsidiaries of Campbell Taggart; Tr. 3170, 4337–39). The Johnson City plant lost $6,840 on its operations for 1959 (CX 298B, 1. 70), and borrowed $550,000 from the First National Bank of Dallas (CX 298B, 1. 2). In 1960 an additional $175,000 was borrowed by this plant from the First National Bank in Dallas (CX 298H, 1. 2). No dividends were paid during 1959, 1960, and 1961 to Campbell Taggart, owner of the remaining 95% of the outstanding common stock of this company (CX 298B, H, N, 1. 73).

V

A. *Complaint Counsel's Original Survey Reports*

118. For the purpose of portraying the competitive situation in the distribution area of the former Grocers Baking Co. plants, both before and after their acquisition by subsidiaries of Campbell Taggart Associated Bakeries, Inc., in May 1959, and to show a universe and a market share for the acquisitions of Grocers Baking Co. of Louisville, Kentucky, and Mead's Fine Bread of Lubbock, Texas, Roswell and Clovis, New Mexico, by subsidiaries of Campbell Taggart, complaint counsel, in March 1962, mailed to approximately 75 baking companies an eighteen-page questionnaire, described as a "Special Report, Survey of Manufacturers of Bakery Products" (CX 331A–B). This original Survey Report requested sales and profit data from each of the 75 baking companies for the years 1958 to 1961 in certain geographic areas listed by county,[6] numbered 1 through 12. Two maps were included in the Survey Report forms. One map, purported to show the States of Kentucky and Tennessee, and parts of Arkansas, Missouri, Illinois, Indiana, Ohio, West Virginia, Virginia, and North Carolina, with the counties shown thereon, and heavy lines outlining nine numbered areas, 1 through 9 (CX 331B–F). Complaint counsel stated that each of those areas as outlined corre-

[6] Wholesale baking companies do not limit their bread distribution by county boundaries, nor do they keep records of their sales on a county basis (RX 30A–F through RX 59A–F; Tr. 4696).

sponded to the general distribution areas of each of the nine former Grocers Baking Co. plants (Tr. 3070, 3095). On the other map, heavy lines outlined counties embracing a small area in West Texas, marked Area 10, and two separate areas embracing certain counties in eastern New Mexico were outlined with heavy lines, and marked Areas 11 and 12, respectively. Complaint counsel stated that the maps were intended to be of assistance to the responding baking company in locating the area or areas from which it was to report its sales data (Tr. 3070).

119. After most of these Survey Reports were completed and returned to complaint counsel by most of the 75 baking companies to whom the report forms were mailed, several of the Survey Reports were offered in evidence through sponsoring witnesses at hearings held in Louisville and Paducah, Kentucky, in January 1963. Numerous errors in these reports were disclosed at the hearings, both on direct and cross-examination, aggregating some $30 million (CX 333M; Tr. 3185; CX 334Y; Tr. 3224–25; CX 335P; Tr. 3271–73; etc.). Some of the errors were apparent on the face of the Survey Reports. Some of the errors were due to misinterpretation of the instructions and definitions given in the Survey Report questionnaire. Other errors may have been due to the circumstances that some of the counties named in the separately numbered geographic areas did not coincide with the pictorial map which purported to indicate the same multi-county geographic numbered areas. The result was that some counties were included in different geographic areas, depending on whether the numbered areas or the map were followed by the reporting company (CX 331B, E).

120. On January 21, 1963, the hearing examiner sustained the objections raised by respondent's counsel to the receipt in evidence of these original Survey Reports on the ground that they were unlawfully obtained because the Survey Report forms had not been first approved by the Bureau of the Budget, as required by the Federal Reports Act of 1942 (Tr. 3817; 5 U.S.C. § 139 (c), 1956). Complaint counsel appealed from this ruling of the hearing examiner excluding the Survey Reports. By order dated July 8, 1963, the Commission sustained the ruling of the hearing examiner excluding the Special Reports. By order dated August 16, 1963, the hearing examiner struck much of the evidence taken at hearings in Kentucky relating to these Survey Reports. Complaint counsel then submitted the Survey Report questionnaire to the Bureau of the Budget for approval, as required by the Federal

Reports Act. Conditioned on specified revisions in the questionnaire report form, the Budget Bureau approved a revised form of the Survey Report on November 8, 1963. In its conditional approval, the Budget Bureau required that the conflict between the numbered county areas and the pictorial maps be eliminated by deletion of the maps, required that changes be made in five definitions, and required the addition of three new clarifying definitions in the Survey Report form. Finally, complaint counsel revised the questionnaire special Survey Report in accordance with the conditional approval by the Budget Bureau, and the revised questionnaire was then circulated in March 1964 to the 75 baking companies originally surveyed. Sixty-one of those 75 baking companies executed, completed, and returned the revised Survey Report questionnaire forms to complaint counsel. Fourteen companies did not return completed revised Survey Reports to complaint counsel for various reasons, such as not selling bread in any of the areas called for, having gone out of business, etc. So, the end result was that executed and completed revised special Survey Report forms were returned to complaint counsel from 61 of the 75 baking companies surveyed. Forty-five of the completed Reports were from baking companies selling bread in one or more of the areas designated 1 through 9 in the Special Reports (areas 1 through 9 purported to correspond to the general distribution areas of each of the nine former Grocers plants located in Kentucky, Indiana, and Johnson City, Tennessee; Tr. 3070, 3095), and 16 completed Reports were returned to complaint counsel by baking companies selling bread in one or more of the areas designated 10 through 12 in the Special Reports.

B. *Revised Survey Reports*

121. The revised and completed Special Survey Report questionnaires (CX 447–521) were again offered in evidence by complaint counsel on March 31, 1965. Respondent again objected to their receipt in evidence on various grounds. Many of respondent's objections to the revised Survey Reports related to substantial errors and inconsistencies which appeared upon the face of the revised Survey Reports. The revised Survey Reports produced changes in the survey data aggregating some $250 million (Tr. 4903–4905); see Memorandum of Objections by Respondent to Staff Counsel's Survey Questionnaire Reports, p. 28, filed March 31, 1965.

122. Respondent also objected to the receipt in evidence of the revised Survey Reports on the ground that the Survey Reports disclose on their face serious omissions which unfairly inflate the respondent's alleged "market share" in the so-called Kentucky area (the alleged distribution area of the former Grocers Baking Co. plants, designated as Areas 1 through 9 in the revised Special Survey Reports), as well as in the Texas-New Mexico geographic area, designated as Areas 10, 11, and 12 in the revised Special Survey Reports (CX 447–521). For example, respondent contends that complaint counsel's survey of baking companies selling bread and bread-type rolls in and around Kentucky is incomplete, for the reason that the 45 baking companies which responded to complaint counsel's Survey Report, covering areas 1 through 9, listed 13 competitors in the Kentucky area whom complaint counsel did not contact for data. That is, complaint counsel did not mail the Special Survey Report forms to these 13 companies for completion. Census data corroborate these omissions. According to the 1958 Census of Manufacturers, there were 39 wholesale bakeries producing bread and related products in Kentucky in 1958 (CX 167, Table 2, p. 20E–6). By contrast, complaint counsel collected 1958 data from only 13 wholesale bakeries producing in Kentucky. Also, complaint counsel failed to count sales in the State of Kentucky by baking firms who sold within Kentucky yet outside the numbered geographic Areas which cover only a part of Kentucky (CX 447I), and did not collect any data from retail bakeries anywhere in the Kentucky area, except those which made home service deliveries, such as Donaldson Baking Co. (CX 462), or were owned by a retail grocery chain, such as Kroger and A & P (CX 469, 481).

123. Respondent further argues that, in not counting these competitors, this inflates prejudiciously respondent's alleged market share by making it appear that a smaller universe exists, which is the denominator of the fraction upon which respondent's market share is to be computed. Respondent says that when there is a short count in selecting the universe, the inevitable result is to make the respondent's market share look bigger, to respondent's prejudice (Tr. 4789–90).

124. Respondent also says that the geographic Areas designated in the Survey questionnaire bear no resemblance to the actual or distribution pattern of the numerous competing baking companies marketing in the Kentucky region. That, of 67 baking plants reporting sales in these geographic Areas, only

seven distributed solely within any one of the Areas (CX 447A–Z1, 521A–R). In the 60 remaining instances, the company sold freely across the boundaries of the geographic Areas. Also, few companies maintained sales records by county, a fact conceded by complaint counsel (Tr. 4696), so that segregating sales by multi-county geographic Areas was "one of the biggest problems" posed by the Survey Report (Minutes, Advisory Council on Federal Reports, p. 4, September 19, 1963). Respondent also says that, even if the nine multi-county geographic Areas described in the Special Survey Reports were accurately drawn to conform with the actual distribution areas of the former Grocers Baking Co. plants, the relative size of each of the plants will be magnified and distorted in relation to their competitors. Such a procedure inevitably includes the entire sales of the particular Grocers plant, while competitors, which have different and overlapping distribution areas, report only part of their sales. This distortion is illustrated by geographic Area 5, says respondent, which was intentionally drawn by complaint counsel to include only the counties in which the Paducah plant of Grocers Baking Co. distributed (CX 447E). Yet, numerous substantial competitors, although not producing bread in geographic Area 5, distribute into the Area from every side: Ward from St. Louis, Continental from Memphis and St. Louis, and Lincoln from Evansville (CX 461P, 489I, 520K). Therefore, complaint counsel's Area 5 would include all the sales of respondent's subsidiary plant in Paducah, but only part of the sales of competitors who produce outside but ship their bread into geographic Area 5.

125. Respondent points out that the Special Survey Report lists 12 counties in more than one geographic Area. Where a company distributes bread in counties which are listed in more than one geographic Area, the Survey Report form instructs the reporting company to report its sales in these counties in both geographic Areas (CX 447F), thereby "double counting" those sales. This "double counting" instruction caused many errors which were corrected (CX 489Q, 497S, 504Q), but several reporting companies never did double count their sales (CX 474A–X, 497A–U), including Grocers Baking Co., whose market share is of prime importance in this proceeding (CX 470A–B).

126. Finally, respondent says that the failure of complaint counsel's revised Special Survey Report, issued in March 1964, to elicit sales data for years more recent than the period 1958–1961, accentuates its lack of trustworthiness and probative value

as a valid measurement of respondent's alleged monoply. Respondent points out that complaint counsel recirculated the revised Survey Reports in March 1964, and requested only sales data for the same years called for in the original Survey Reports, 1958–1961, although, at that time, 1964, sales information for at least the years 1962 and 1963 was then available. Respondent says that, inasmuch as the complaint's allegations of potentially monopolistic effects arising from the questioned acquisitions in 1959 are best judged in light of the actualities of the market place from 1959 to date, the resurvey's attempt to cut off any such information beyond 1961 deprives the survey data of reliability and probative value as of 1966.

127. After considering the detailed oral and written objections to the revised Special Survey Reports urged by respondent, some of which reports still contain errors apparent on their face, and, being of the opinion that respondent's objections to the revised Survey Reports relate more to the weight to be given the individual reports than to their basic admissibility, the hearing examiner overruled respondent's objections and received the revised Special Survey Reports in evidence on March 31, 1965 (Tr. 4912).

C. *Market Shares Shown by the Revised Special Survey Reports Filed by the Forty-Five Reporting Baking Companies*

128. The sales data contained in the Revised Special Survey Reports submitted by the forty-five baking companies is the only evidence in the record from which market shares for subsidiaries of Campbell Taggart, Grocers Baking Co., and the other reporting baking companies, as well as the total universe for the nine geographic areas specified in the Special Survey Reports, may be computed. The sales data submitted by Campbell Taggart in its Revised Special Survey Report on behalf of its subsidiary baking plants are contained in CX 458. The sales data for Grocers Baking Co. are contained in its Revised Special Survey Report, CX 470. The sales data for the remaining forty-three baking companies reporting sales in either or all of the nine geographic areas designated by complaint counsel as the former Grocers Baking Co. distribution area are contained in the following numbered record exhibits: CX 447, 448, 449; 452, 453, 454, 455; 457; 460, 461, 462; 467, 468, 469; 474; 476; 481; 483, 484, 485, 486, 487; 489, 490, 491, 492; 495, 496, 497, 498, 499; 501, 502; 504, 505, 506; 509, 510; 514, 515; 519, 520, and 521.

129. The total sales of bread and bread-type rolls in these nine geographic areas, as reported by the forty-five baking companies in their Special Survey Reports, above referred to, for 1958, the year prior to the acquisition, were $59,904,713. Of this total, Grocers Baking Co. accounted for $12,997,799, or 21.70% of the total sales of bread and bread-type rolls reported by the forty-five baking companies as having been made by them in one or more of the nine geographic areas in 1958. Of course, it should be kept in mind that Grocers Baking Co. sold and distributed bread and bread-type rolls in each of the nine separate geographic areas specified by complaint counsel in the Special Survey Reports, whereas, only two of the other forty-four baking companies surveyed reported sales in each of the nine geographic areas, namely, the Great A. & P. Tea Co. and The Kroger Co. The ten baking companies reporting the largest sales of bread and bread-type rolls in one or more of the nine geographic areas specified in the Special Survey Reports, and the percentage of each of their total sales to the total sales reported by the forty-five companies, for the years 1958, 1959, 1960, and 1961 are as follows:

Company	Sales of bread and B.T. rolls	Percentage to total sales reported by the 45 companies	CX
		1959	
Grocers Baking Co.	$12,997,799	21.70	470 I, J, K, L
Brown-Greer & Co., Inc.	4,562,073	7.62	453 N, Z6, Z40
The Kroger Co.	3,617,589	6.04	481 K, L, M, O, P, Q
Lincoln Bakery, Inc.	3,538,891	5.91	489L
Lewis Bros. Bakeries, Inc.	3,103,642	5.18	498O, P
Donaldson Baking Co.	2,634,000	4.40	462N
General Baking Co.	2,474,739	4.13	468N
The Great A. & P. Tea Co.	2,452,000	4.09	469 S, T, U, V, W, X
American Bakeries Co.	2,436,635	4.07	447O
Hecht's Bakery, Inc.	2,360,340	3.94	486N
Total, 10 companies	$40,177,708	67.08	
Total 1958 sales reported by the 45 companies in areas Nos. 1–9	$59,904,713	....	

Company	Sales of bread and B.T. rolls	Percentage to total sales reported by the 45 companies	CX
	1959		
Grocers Baking Co.	$4,895,804	....	470 I, J, K, L
Subsidiaries of Campbell Taggart	9,166,696	23.88	458 Z2, Z3, Z4, Z5, Z7, Z8, Z9, Z13, Z15, Z16, Z17, Z18
Total	[7] 14,062,500	....	
Brown-Greer & Co., Inc.	4,547,775	7.72	453N, Z6, Z40
The Kroger Co.	3,493,433	5.93	481 K, L, M, O, P, Q
Lincoln Bakery, Inc.	3,434,341	5.83	489L
Lewis Bros. Bakeries, Inc.	2,861,579	4.86	498O, P
The Great A. & P. Tea Co.	2,721,000	4.62	469 S, T, U, V, W, X
Donaldson Baking Co.	2,562,000	4.35	462N
General Baking Co.	2,537,577	4.31	468N
American Bakeries	2,414,808	4.10	447O
Hecht's Bakery, Inc.	2,408,022	4.09	486N
Total	$41,043,035	69.69	
Total 1959 sales reported by the 45 companies in areas Nos. 1–9	$58,893,082	....	
	1960		
Subsidiaries of Campbell Taggart	$15,031,141	24.97	458Z2, Z3, Z4, Z5, Z7, Z8, Z9, Z13, Z15, Z16, Z17, Z18
Brown-Greer & Co., Inc.	4,488,979	7.46	453N, Z6, Z40
Lincoln Bakery, Inc.	3,591,101	5.97	489L
The Kroger Co.	3,104,841	5.16	481 K, L, M, O, P, Q
The Great A. & P. Tea Co.	3,033,000	5.04	469 S, T, U, V, W, X
Lewis Bros. Bakeries, Inc.	2,608,459	4.33	498O, P
Hecht's Bakery, Inc.	2,519,903	4.19	486N
Donaldson Baking Co.	2,472,000	4.11	462N

[7] The figure $4,895,804 represents total 1959 sales of Grocers plants up to May 23, 1959, when Grocers sold its assets to subsidiaries of Campbell Taggart.

Company	Sales of bread and B.T. rolls	Percentage to total sales reported by the 45 companies	CX
American Bakeries	$2,452,992	4.07	447O
General Baking Co.	2,291,270	3.81	486N
Total	$41,593,686	69.10	
Total 1960 sales reported by the 45 companies in areas Nos. 1-9	$60,197,748	....	
		1961	
Subsidiaries of Campbell Taggart	$16,297,702	26.16	458Z2, Z3, Z4, Z5, Z7, Z8, Z9, Z13, Z15, Z16, Z17, Z18
Brown-Greer & Co., Inc.	4,512,035	7.24	453N, Z6, Z40
Lincoln Bakery, Inc.	3,631,326	5.83	489L
The Kroger Co.	3,334,980	5.35	481 K, L, M, O, P, Q
The Great A. & P. Tea Co.	3,142,000	5.04	469 S, T, U, V, W, X
Hecht's Bakery, Inc.	2,541,856	4.08	486N
American Bakeries	2,533,747	4.07	447O
Lewis Bros. Bakeries, Inc.	2,533,538	4.07	498O, P
Donaldson Baking Co.	2,466,000	3.96	462N
General Baking Co.	1,937,789	3.11	468N
Total	$42,930,973	68.92	
Total 1961 sales reported by the 45 companies in areas Nos. 1-9	$62,294,654	....	

130. From these figures, it is seen that Grocers' 1958 sales were more than double its nearest competitor, Brown-Greer & Co., Inc. Campbell Taggart subsidiaries sold very little bread in Areas #1 through #9, accounting for 3.52% of the $59,904,713 in total sales reported by the 45 baking companies in 1958 (CX 458Z 13, Z 15–Z 18). The ten companies reporting the largest volume of sales accounted for 67.08% of the total sales reported by the 45 companies in the nine areas. While Grocers accounted for 21.70%, the next nine reporting companies collectively accounted for 45.38% of the total sales reported by the 45 companies in 1958.

131. In May 1959, the assets of the Grocers plants were acquired by subsidiaries of Campbell Taggart. From the chart on page 596 herein, it is seen that the combined 1959 sales of the Grocers and Campbell Taggart subsidiary plants were $14,062-500, or 23.88% of the total sales reported by the 45 baking companies. The ten companies reporting the largest volume of sales in Areas #1 through #9 constituted 69.69% of the total sales reported by the 45 companies in 1959. The chart on pages 596–97 shows that in 1960 the sales of the Campbell Taggart subsidiary plants in Areas #1 through #9 amounted to 24.97% of the total sales reported by the 45 companies, or an increase of 1.09% over 1959 sales. The total sales of the ten companies reporting the largest volume of sales for 1960 amounted to 69.10% of the total sales reported by the 45 companies. The chart further shows that in 1961 the sales by Campbell Taggart subsidiaries amounted to 26.16% of the total sales reported by the 45 companies, or an increase of 1.19% over 1960. The total sales of the ten companies reporting the largest volume of sales for 1961 amounted to 68.92% of the total reported by the 45 companies. Brown-Greer & Co., Inc., d/b/a Kern's Bakery, Inc., ranked second to Grocers in 1958 and 1959, and second to Campbell Taggart subsidiaries in 1960 and 1961, in reported sales among the 45 reporting baking companies. Brown-Greer's reported 1958 sales of $4,562,073 amount to 7.62% of the total sales reported by the 45 companies, 7.72% in 1959, 7.46% in 1960, and 7.24% in 1961.

D. *Competitive Practices, Such As "Concentrated Service," Change of Label, Free Bread Racks, Payment for Shelf Space, Discounts to Customers, "Overloading" Shelves, etc.*

132. In their proposed findings, complaint counsel lay great stress on the circumstance that, after the acquisition of the Grocers plants by Campbell Taggart subsidiaries in 1959, Campbell Taggart began what it characterized as "concentrated service" to the former Grocers baking plants (CX 81C(7)), and, beginning in 1960, began to change the labels of bread formerly used by Grocers from "Honey Krust" to "Colonial" and "Rainbo." The "concentrated service" consisted of Campbell Taggart sales, production, and advertising personnel being dispatched from its headquarters to the subsidiary baking plants. These personnel assisted the regular plant personnel on a temporary basis at the different subsidiary plants in sales, production, advertising, etc. These are specialized services which Campbell Taggart makes

available to its subsidiary baking plants, similar to the cooperative organizations such as Quality Bakers of America, W. E. Long Co., and American Bakeries Cooperative which provide specialized services to their members (Tr. 1226–28; 1872; 4446). There was nothing unusual or illegal in changing the label from "Honey Krust" to "Colonial" or "Rainbo," which are the standard labels used by Campbell Taggart subsidiaries on their bread products.

133. At hearings held in Kentucky, as in California, considerable testimony was received concerning the practice of Campbell Taggart subsidiary baking plants providing free bread racks to their customers, free screens for doors bearing the "Honey Krust," "Colonial," or "Rainbo" label, granting discounts to customers, paying grocery store customers for shelf space in their stores, "overloading" bread racks, etc. The evidence demonstrates that these and similar practices are generally prevalent in Northern California and in the Kentucky, Indiana, and Tennessee areas, where testimony on trade practices in the baking industry was received. Grocers and its competitors indulged in some of these practices, and the subsidiary baking plants of Campbell Taggart have continued them, as have their competitors. These practices were not initiated by Campbell Taggart, nor by any of its subsidiary baking plants. The evidence shows, and it is found, that these practices have been prevalent in the Kentucky area, in varying degrees, for many years (Tr. 3359, 3499, 3976–77, 3567, 4108).

134. It is the contention of complaint counsel that Campbell Taggart subsidiaries "overloaded" bread racks in grocery stores, thereby causing competitor baking plants to also "overload" racks, resulting in an increase in the rate of "stale returns" for both the Campbell Taggart subsidiary baking plants and their competitors (see Paragraphs 87–92 herein). Most baking plants strive to keep their "stale returns" below 10% of their sales, although one witness testified that a 10% rate was normal (Tr. 909), and another testified that a 15% rate of return does not necessarily indicate "overloading" (Tr. 962). From the revised Special Survey Reports, the hearing examiner has computed the percentages of "stale returns" of bread and bread-type rolls of the Campbell Taggart subsidiary plants for the years 1960 and 1961, which are as follows:

	Percent		CX
	1960	1961	
Rainbo of Louisville and New Albany	7.29	5.95	CX 458I
Rainbo of Lexington	10.38	11.43	CX 458J
Colonial Baking Co. of Nashville, Bowling Green plant	10.57	9.43	CX 458K
Colonial Baking Co. of Owensboro	8.35	8.35	CX 458K
Paducah Colonial Baking Co.	9.41	8.88	CX 458L
Evansville Colonial Baking Co.	7.04	6.25	CX 458L
Colonial Baking Co. of Indianapolis, Ind., Bedford plant	8.58	9.49	CX 458M
Rainbo Baking Co. of Johnson City, Tenn.	11.59	9.08	CX 458J

It is seen that the highest percentage rate of "stale returns" for a Campbell Taggart subsidiary was that for the Johnson City, Tennessee plant in 1960, 11.59%. However, in 1961, the latest year for which evidence is in the record, the rate dropped to 9.08%.

135. For purposes of comparison, the hearing examiner has computed the rate of "stale returns" of the company reporting the second largest volume of sales in Areas #1 through #9, Brown-Greer & Co., Inc., d/b/a Kern's Bakery, Inc. It so happens that Mr. John L. Greer, President of Brown-Greer & Co., Inc., was one of the witnesses who testified at hearings in Louisville, Kentucky, concerning trade practices in that area. Mr. Greer testified that Campbell Taggart subsidiaries had "overloaded" grocery shelves, and Kern's plants were compelled to retaliate in order to keep their own bread on the racks in grocery stores (Tr. 3582, 3612). The rates of "stale returns" of the Brown-Greer & Co., Inc. plants in London, Kentucky, and Bristol, Virginia, in Areas #2 and #9, respectively, for the years 1958, 1959, 1960, and 1961, are as follows:

	Percent				CX
	1958	1959	1960	1961	
Kern's Bakery, Inc. London, Ky.	15.39	17.04	15.46	17.26	CX 453I
Kern's Bakery, Inc. Bristol, Va.	15.90	17.25	14.21	17.56	CX 453Z1

136. A comparison of the rate of "stale returns" shows that the rate for the Brown-Greer plants is higher than the rate for any of the Campbell Taggart subsidiary plants. Even the Camp-

bell Taggart subsidiary plant with the highest rate of "stale returns," 11.59% for the Rainbo Baking Co. of Johnson City, Tennessee, is considerably lower than the 15.90% rate for the Brown-Greer plant in Bristol, Virginia, also located in Area #9. These two plants are competitors in the same distribution area (#9), and the statistics in the record do not substantiate complaint counsel's contentions as to shelf "overloading" by Campbell Taggart subsidiary baking plants. If the maximum 11.59% rate for a Campbell Taggart subsidiary plant should be considered as shelf "overloading," it cannot be said with justification that Campbell Taggart subsidiaries originated the practice when at least two competing Brown-Greer baking plants had rates of "stale returns" of better than 15% in 1958 (prior to the acquisitions complained about), and better than 17% in 1959, an average of 14.83% in 1960, and an average of 17.41% in 1961.

VI

A. *The Acquisitions in Texas and New Mexico*

1. *Mead's Fine Bread Company, A Texas Corporation*

137. Mead's Fine Bread Company, a Texas corporation, operated a baking plant in Lubbock, Texas, where its headquarters were located, and single baking plants in Roswell and Clovis, New Mexico (CX 122). Each plant sold bread and bread-type rolls at wholesale to grocery stores, restaurants, and institutions in West Texas and Eastern New Mexico, within the distribution areas of the three plants. The distribution area of the former Mead's plant in Lubbock is indicated by blue crayon marks along the path of highways leading mostly north and south from Lubbock on part of a road map, CX 150K. The Lubbock plant operated loading warehouses in Plainview, Bluefield, Midland, and Odessa, Texas. The distribution area of the Mead's plant in Lubbock is located in what complaint counsel designated as Area #10 in the revised Special Survey Reports.

138. The distribution area of the Roswell plant is indicated by lines in red crayon on a portion of a road map, and received in evidence as CX 150J. The red crayon marks on CX 150J indicate that the distribution area of the Roswell plant included the town of Roswell, and extended south to towns located on Highway 285 as far as Loving, New Mexico, and west from Roswell along Highway 70–380 as far as Hondo, where the highway branched in two directions. From Hondo, a distribution route followed Highway 70 to Glencoe, then southwest to Ruidoso, Mescalero, Tularosa, and Alamogordo. From Hondo, another route extended

northwest along Highway 380 to Lincoln, Capitan, and Carrizozo. The Roswell plant operated loading warehouses in Ruidoso, Artesia, and Carlsbad, New Mexico.

139. The distribution area of the Clovis plant included the town of Clovis, and extended southwest along Highway 70 to Portales, then due south along Highway 18 through Lovington, Hobbs, and as far as Jal near the southeast corner of New Mexico. North from Clovis, the distribution area extended to towns located along Highway 18 and Highway 275 as far as Cameron, then north on Highway 39 to San Jon, thence northwest along Highway 66 to Tucumcari, and continuing along Highway 66 in a southwesterly direction to Santa Rosa. The route then extended in a southeasterly direction along Highway 84 to Fort Sumner. The Fort Sumner route extended due west along Highway 60 to Vaughn, New Mexico. From Clovis in a westerly direction, a route extended through towns located along Highway 60 to Fort Sumner, New Mexico. The Clovis plant operated loading warehouses in Tucumcari, Fort Sumner, Santa Rosa, and Hobbs, New Mexico.

140. The distribution area of the Roswell plant is designated as Area #11 in the revised Special Survey Reports, and the distribution area of the Clovis plant is designated as Area #12. The West Texas and Eastern New Mexico areas in which the three Mead's plants were located are sparsely populated, and, therefore, the distribution areas of the three plants were limited to grocery stores, restaurants, etc., located in towns along the designated highway routes. The combined sales of bread and bread-type rolls of the three plants for the year 1958 amounted to $2,911,848 (CX 493G, H).

a. *Background of Purchase*

141. Like the acquisitions in California and Kentucky, respondent claims that the purchase originated with the Mead families who owned Mead's bakeries. Mr. I. E. Madsen, Chairman of the Board, and former President of Campbell Taggart Associated Bakeries, Inc., testified that the Meads approached representatives of Campbell Taggart and suggested that arrangements be made so that Mead's bakeries could become associated with Campbell Taggart (Tr. 2671). Accordingly, several representatives of Campbell Taggart inspected Mead's plants. Several members of the Mead family owned and operated Mead's Fine Bread Company, with headquarters in Lubbock, and other Mead's, including "Doc" Mead, owned baking plants in Amarillo, Texas. Prior to September 3, 1959, several members of the Board of Directors

of Campbell Taggart had inspected Mead's plants. However, at a meeting of the Campbell Taggart Board of Directors on September 3, 1959, it was decided that no action at that time would be taken regarding the purchase of Mead's plants (CX 120D). Negotiations continued, and an agreement was reached with the Mead family, who owned Mead's Fine Bread Company, for the purchase of the assets of the plants in Lubbock, Texas, and Roswell and Clovis, New Mexico, for $1,200,000, plus inventories, accounts receivable, etc. Mr. Mack Mead, then Secretary-Treasurer of Mead's Fine Bread Company, agreed to become associated with the new corporations to be formed by Campbell Taggart to acquire the assets of the three plants. Mr. Mead was employed for a period of five years at a salary of $20,000 per year (CX 121). On October 15, 1959, an agreement was executed between Mead's Fine Bread Company and Campbell Taggart Associated Bakeries, Inc., for the purchase. Campbell Taggart caused three new subsidiary corporations to be formed for the acquisition of the three baking plants, namely, Rainbo Baking Co. of Lubbock, Rainbo Baking Co. of Roswell, and Rainbo Baking Co. of Clovis (CX 121B, 122A). Campbell Taggart purchased stock in the newly-formed subsidiaries varying from 90% to 97% (CX 71B, E, G; 121B). Mr. Mack Mead became a Director of each new subsidiary (CX 71B, E, G; 121C), and the Plant Manager of each former Mead's plant remained as President-Director and a stockholder of each new subsidiary (Tr. 2959, 2963; CX 71B, E, G; 81C).

142. Prior to the acquisition of Mead's Fine Bread Company by subsidiaries of Campbell Taggart in 1959, Campbell Taggart subsidiaries operated baking plants located in eight towns in Texas: Dallas, Waco, Houston, Beaumont, Corpus Christi, Harlingen, San Antonio, and El Paso. Prior to the acquisition, a Campbell Taggart subsidiary also operated a baking plant in Albuquerque, New Mexico. Albuquerque is located approximately 200 miles from Roswell, 217 miles from Clovis, and 324 miles from Lubbock. Lubbock is located approximately 327 miles from Dallas. Roswell is located approximately 204 miles from El Paso. Therefore, at the time of the acquisition in October 1959, the closest Mead's plant to a Campbell Taggart subsidiary plant was the Roswell plant, located approximately 200 miles from Albuquerque. Roswell is also approximately 204 miles from El Paso, Texas, where another Campbell Taggart subsidiary plant is located. Prior to, and at the time of, the acquisition of Mead's Fine Bread Company by Campbell Taggart subsidiaries in October 1959, the only competition between a Mead's plant and a Camp-

bell Taggart subsidiary plant was on two extension routes in Alamogordo and Tularosa, located in Otero County, New Mexico, where the Rainbo Baking Co. of El Paso, a Campbell Taggart subsidiary, and the Roswell plant of Mead's Fine Bread Company also distributed (CX 138A, 150J).

b. *Concentration Within the States of Texas and New Mexico*

143. No oral testimony was received with respect to the bread sales in Texas and New Mexico, Areas #10, #11, and #12. The only bread sales data for specific companies in the distribution area of the former Mead's Fine Bread Company in Texas and New Mexico, Areas #10, #11, and #12, are those contained in the revised Special Survey Reports submitted by the sixteen baking companies in response to complaint counsel's Section 6(b) Special Reports. These revised Special Survey Reports contain sales data for the years 1959, 1960, and 1961, and were received in evidence under exhibit numbers: CX 447, 450, 451, 458, 466, 471, 472, 473, 475, 478, 493, 494, 511, and 517.

144. According to the 1958 Census of Manufacturers, the total value of shipments of bread and bread-type rolls for the State of Texas amounted to $116,745,000 (CX 167, Table 6B, p. 20E–15). Of this total, subsidiary plants of Campbell Taggart in Texas sold $23,091,000 (CX 327), or 19.77%. However, it might be noted that none of the Campbell Taggart subsidiary plants located in Texas, including the Rainbo plant in El Paso, sold bread in Area #10, where the Mead's Lubbock plant was located (CX 458Z–14). The Mead's Fine Bread Company plant in Lubbock had sales of $1,631,583, or 1.3% of the State total (CX 493G).

145. The 1958 Census of Manufacturers reports that total shipments of bread and bread-type rolls for the State of New Mexico were $9,196,000 (CX 167, Table 6B, p. 20E–15). The Mead's Fine Bread Company plants in Roswell and Clovis accounted for $1,-280,265 of this total, or approximately 13.90% (CX 493H). The Rainbo Baking Co. plant in Albuquerque, a Campbell Taggart subsidiary, accounted for $2,502,000 of the New Mexico total, or approximately 27.2% (CX 327).

c. *Concentration Within Areas #10, #11, and #12, the Distribution Areas of Mead's Plants in Lubbock, Texas, Roswell and Clovis, New Mexico*

146. In 1958, 14 baking companies, which submitted revised Special Survey Reports, reported that they sold $10,015,498 in bread and bread-type rolls in Areas #10, #11, and #12 (CX

447, 450, 451, 458, 466, 471, 472, 473, 475, 478, 493, 494, 511, and 517). The Mead's plants in Lubbock, Texas, together with its plants at Roswell and Clovis, New Mexico, accounted for $2,911,-848, or 29.07%. Rainbo Baking Co. of El Paso, Texas, a Campbell Taggart subsidiary, accounted for .12%.

(1) *Sales Reported in Area #10*

147. Nine baking companies reported bread and bread-type roll sales in Area #10 of $6,698,880 in 1958. According to complaint counsel, Area #10 is located within the distribution area of the Mead's Fine Bread Company Lubbock plant. According to the revised Special Survey Reports submitted by the 14 baking companies selling bread in Area #10, the four companies reporting the largest volume of bread and bread-type roll sales in Area #10 in 1958, 1959, 1960 and 1961, and their respective percentages to total sales, were as follows:

	1958	Percent	1959	Percent	1960	Percent	1961	Percent	CX
Baldridge Baking, Inc., Lubbock, Texas	$2,409,000	35.96	$2,316,000	33.76	$2,517,000	35.22	$2,782,000	36.84	451N
Mead's Fine Bread Co., Lubbock, Texas	1,631,583	24.36	1,843,664	26.88					493L
Rainbo Baking Co. of Lubbock			[8] 220,539	3.21	1,891,591	26.47	2,128,494	28.18	458Z10
Holsum Baking Co., Lubbock	1,082,855	16.16	[9] 821,705	11.98					
Mrs. Baird's Bakeries, Inc., Lubbock					1,076,820	15.07	1,204,141	15.94	450P
Frost Baking Co., Odessa	736,755	11.00	754,435	11.00	730,754	10.22	773,689	10.24	466N
Total sales, 4 companies	5,860,193	87.48	5,956,343	86.83	6,216,165	86.97	6,888,324	91.21	
Total 1958 sales, 9 companies	$6,698,880								
Total 1959 sales, 9 companies			$6,859,922						
Total 1960 sales, 9 companies					$7,147,304				
Total 1961 sales, 9 companies							$7,552,146		

[8] The assets of the Mead's Fine Bread Co. of Lubbock were acquired by Rainbo Baking Co. of Lubbock, a Campbell Taggart subsidiary in November 1959 (CX 458M, N).

[9] Plant sold to Mrs. Baird's Bakeries, Inc., on September 7, 1959 (CX 472I).

According to the above figures, which are taken from the revised Special Survey Reports submitted by each baking company, Baldridge Baking, Inc., of Lubbock, reported the largest sales of bread and bread-type rolls in Area #10 during 1958, accounting for 35.96% of the $6,698,880 sales reported for the nine companies. The Mead's Fine Bread Company Lubbock plant reported sales of $1,631,583, or 24.36% of total area sales. Holsum Baking Co. of Lubbock accounted for the third largest volume of sales, $1,-082,855, or 16.16% of the total. Frost Baking Co. of Odessa reported the fourth largest number of sales for Area #10 in 1958, $736,755, or 11.00% of the total. These four baking companies accounted for 87.48% of the total sales reported by the nine baking companies for 1958 in Area #10. In 1961, of $7,552,146 reported bread sales in Area #10, Rainbo Baking Co. of Lubbock, the Campbell Taggart subsidiary which purchased the Mead's Lubbock plant, had sales of $1,856,555, or 24.58% of the total sales of the nine companies. In 1961, the sales of the four baking companies reporting the largest volume amounted to 91.21% of the total sales reported for the area.

(2) *Roswell, New Mexico, Area #11*

148. Five baking companies reported sales of bread and bread-type rolls in Area #11 in 1958, 1959, 1960, and 1961. Their reported sales and respective percentages to total sales are as follows:

	1958	Percent	1959	Percent	1960	Percent	1961	Percent	CX
Holsum Baking Co., Roswell	$674,705	37.16	$671,435	34.10	$639,138	34.40	$683,132	35.15	473N
Mead's Fine Bread Co., Roswell	581,770	32.04	[10] 672,382	34.15					
Rainbo Baking Co. of Roswell			75,006	3.81	628,513	33.83	688,379	35.42	458Z11
Holsum Baking Co., Carlsbad, New Mexico	218,572	12.04	201,072	10.21	226,031	12.17	214,030	11.01	471I
Good Eats Bakery, Hobbs, New Mexico	216,000	11.90	224,800	11.42	244,800	13.18	238,000	12.25	475N
Rainbo Baking Co. of El Paso	124,614	6.86	124,138	6.31	119,372	6.42	119,965	6.17	458Z14
Total sales, all companies	1,815,661	100.00	1,968,833	100.00	1,857,854	100.00	1,943,506	100.00	

[10] Sold assets to Rainbo Baking Co. of Roswell, New Mexico, a Campbell Taggart subsidiary, in November 1959 (CX 458M, N).

From these revised Special Survey Reports it is seen that the five baking companies reported total sales of $1,815,661 in Area #11 of bread and bread-type rolls for 1958. Among these baking companies, the Holsum Baking Co. of Roswell reported the largest volume of sales in Area #11, 37.16%, and the Mead's Fine Bread Company plant in Roswell was second with 32.04% of the total in 1958. These two baking companies accounted for more than 69% of bread and bread-type roll sales reported for the area in 1958. The Rainbo Baking Co. of El Paso, a Campbell Taggart subsidiary, accounted for 6.86% of the total in 1958. In 1961, the Rainbo Baking Co. of Roswell, a Campbell Taggart subsidiary formerly a Mead's plant, reported bread sales amounting to 35.42% of total sales in that area, and the Rainbo Baking Co. of El Paso, a Campbell Taggart subsidiary, reported sales amounting to 6.17% of the area total reported sales.

(3) *Clovis, New Mexico, Area #12*

149. According to the revised Special Survey Reports, six baking companies reported sales of bread and bread-type rolls in Area #12 in 1958, 1959, 1960, and 1961. Their reported sales and respective percentages to total sales are as follows:

	1958	Percent	1959	Percent	1960	Percent	1961	Percent	CX
Mead's Fine Bread Company Clovis, New Mexico	$698,495	46.54	[11] $692,369	44.62	...	...	...	...	493L
Rainbo Baking Co. of Clovis, New Mexico	...	...	80,596	5.19	747,656	49.57	738,858	49.76	458Z12
Holsum Baking Co. Roswell, New Mexico	335,621	22.36	296,056	19.08	250,357	16.60	248,621	16.75	473N
Good Eats Bakery Hobbs, New Mexico	324,000	21.59	337,200	21.73	367,200	24.35	357,000	24.05	475N
Tri-State Baking Borger, Texas	101,689	6.77	96,215	6.20	92,337	6.12	89,411	6.02	517N
American Bakeries Co. Amarillo, Texas	41,153	2.74	49,253	3.17	50,602	3.36	50,813	3.42	447–O
Total sales, all companies	1,500,958	100.00	1,551,689	100.00	1,508,152	100.00	1,484,703	100.00	

[11] Mead's sold assets to Rainbo Baking Co. of Clovis, New Mexico, a Campbell Taggart subsidiary, in November 1959.

As will be seen from the revised Special Survey Reports, summarized above, a total of $1,500,958 in sales of bread and bread-type rolls was reported by five baking companies for 1958 in Area #12. Mead's Fine Bread Company of Clovis reported the largest volume of sales in Area #12, accounting for 46.54% of bread and bread-type roll sales in the area. Holsum Baking Co. of Roswell reported the second largest volume of sales, accounting for 22.36% of area sales. Together, Mead's and Holsum Baking Co. of Roswell accounted for 68.90% of all bread and bread-type roll sales reported for the area. By 1961, the market share of Rainbo Baking Co. of Clovis, a Campbell Taggart subsidiary, amounted to 49.76% of total sales reported for the area, and Holsum Baking Co. of Roswell sales dropped to 16.75%. Good Eats Bakery, Hobbs, New Mexico, increased its percentage of sales from 21.59% in 1958 to 24.05% in 1961, and replaced Holsum Baking Co. of Roswell as the second largest seller of bread and bread-type rolls in the area.

d. *The Relevant Geographic Market Areas*

150. The relevant geographic market areas in which to measure the competitive effects of the acquisitions by Campbell Taggart subsidiaries of Mead's Fine Bread Company are the areas of distribution of each acquired Mead's plant, their combined areas of distribution, areas which customers may turn for supplies in Areas #10, #11, and #12.

151. In 1959, the Rainbo Baking Co. of Lubbock borrowed $450,000 from the First National Bank in Dallas. This loan was guaranteed by Campbell Taggart (Tr. 2973–74). In 1959, the Rainbo Baking Co. of Roswell borrowed $200,000 from the First National Bank in Dallas, which loan was guaranteed by Campbell Taggart (CX 292B, 1. 2; Tr. 2973–74). In 1959, Rainbo Baking Co. of Clovis borrowed $150,000 from the First National Bank in Dallas, which loan was also guaranteed by Campbell Taggart (Tr. 2973–74). This plant reported a loss for the last period of 1960 (CX 293H, 1. 70), and an operating loss was reported for the entire year 1961 (CX 293–0, 1. 73).

B. *Acquisitions With No Sales Data Or Oral Testimony In Record*

1. *The Dan-Dee Bread Company Acquisition*

152. On January 14, 1950, Rainbo Bakers, Inc. of Pueblo, Colorado, a Campbell Taggart subsidiary, purchased the assets of Dan-Dee Bread Company of Colorado Springs, Colorado, also

known as Zim's Bakery (Tr. 2551; CX 101A–E). Rainbo Bakers, Inc. of Pueblo is a Delaware corporation (CX 101A), in which Campbell Taggart owns 58.50% of its capital stock, with the balance of 41.50% owned by other persons, including officers of Rainbo Bakers, Inc. (CX 71F).

a. *Background Leading To Acquisition*

153. The only oral testimony in the record concerning this purchase is that of Mr. I. E. Madsen, former President and Chairman of the Board of Campbell Taggart Associated Bakeries, Inc. Concerning the purchase by Rainbo Bakers, Inc. of Pueblo, Colorado, of Dan-Dee Bread Company of Colorado Springs, Colorado, Mr. Madsen testified that Dan-Dee Bread Company "was completely broke and was going to close up, and a lot of money was owed" (Tr. 2622). This testimony is corroborated by a Dan-Dee balance sheet, dated December 3, 1949 (CX 305A through E), which showed fixed assets of $47,452.21, which included land, buildings, machinery, trucks, accounts receivable, inventories, current liabilities of $29,910.68, plus long term debt of $16,036.87, and reporting 1949 net loss from operations of $2,856.85 on total bread sales of $7,201.36. According to CX 100A–C, a meeting was held on January 5, 1950, in the First National Bank of Colorado Springs, Colorado, at which the following were present: Messrs. H. Chase Stone, representing the Bank; George Asterita, representing Dan-Dee Bread Company; Kenneth McCabe, President of Rainbo Bakers, Inc. of Pueblo, Colorado; and R. S. McIlvaine, President of Rainbo Bread Company, Denver, Colorado. At this meeting, a discussion was held concerning a proposal on the part of Mr. Asterita to arrange for the sale of certain physical property and assets of Dan-Dee Bread Company. Subsequently, pursuant to a written Purchase and Sale Agreement, dated January 14, 1950, the assets of Dan-Dee Bread Company, including real estate, improvements, machinery, and motor vehicles, were purchased by Rainbo Bakers, Inc. of Pueblo for the sum of $47,452.21, paid in cash (CX 101A through E), being the amount shown in the balance sheet as the fixed assets of the company.

154. There is no evidence in the record to show the distribution area of Dan-Dee Bread Company, of Rainbo Bakers, Inc. of Pueblo, Colorado, or the identity of any of their competitors, if any, at the time of the purchase or subsequent thereto. There is no evidence in the record to show where other baking plants of bread and bread-type rolls in the Pueblo or Colorado Springs areas are located, or where purchasers of bread and

bread-type rolls in these areas could turn for alternate supplies at the time of the purchase in 1950 or subsequent thereto. There is no evidence in the record to show where Dan-Dee Bread Company purchased its ingredients and supplies; whether Dan-Dee distributed bread and bread-type rolls in more than one state; or any evidence to establish that Dan-Dee Bread Company was engaged in commerce at the time of the purchase in 1950. At the time of the purchase of the assets of Dan-Dee Bread Company by Rainbo Bakers, Inc. of Pueblo, Colorado, on January 14, 1950 (CX 101A–C), Section 7 of the Clayton Act did not apply to the purchase of the assets of a corporation, but only to the purchase of stock.

155. There is no evidence in the record to show the total sales of bread and bread-type rolls of Dan-Dee Bread Company of Colorado Springs, Colorado, or Rainbo Bakers, Inc. of Pueblo, Colorado, for 1950, or any other year, from which market shares held by either of these baking companies may be computed. There is no evidence in the record to support any finding that any substantial competition was eliminated or lessened between Dan-Dee Bread Company and any subsidiary of Campbell Taggart Associated Bakeries, Inc., as a result of the purchase in 1950. Nor is there any evidence to support a finding that any Campbell Taggart subsidiary was a probable or potential competitor of Dan-Dee Bread Company in any substantial area of geographic competition at any time prior to 1950 or subsequent thereto.

156. Upon the basis of the entire record, it is found that the evidence fails to establish that the effect of the Dan-Dee Bread Company purchase in 1950 by a Campbell Taggart subsidiary may substantially lessen competition or tend to create a monopoly in the sale of bread and bread-type rolls. On the other hand, the meager evidence in the record concerning this transaction shows, that, at the time of the purchase, Dan-Dee Bread Company was in a serious financial condition, and the baking plant likely would have gone out of business except for the purchase of its assets by Rainbo Bakers, Inc. of Pueblo, Colorado (CX 305A–E). The evidence does not show that there was any other available purchaser. It is further found that Campbell Taggart Associated Bakeries, Inc. did not use its stock investment of 58.50% in Rainbo Bakers, Inc. of Pueblo to bring about or cause a substantial lessening of competition in any geographic area.

2. *The Purity Baking Company, El Paso, Texas*

157. In April 1951, Rainbo Baking Co. of El Paso, Texas, a

Campbell Taggart subsidiary, purchased the physical assets of a baking plant from the former stockholders of Purity Baking Company, El Paso, Texas, which had been dissolved (Tr. 2624; CX 102A–F). Prior to April 1951, Purity Baking Company was engaged in the wholesale baking business in El Paso, Texas, and distributed its products in "El Paso and surrounding territory," and into New Mexico by way of a substation (Tr. 2624). Purity's Balance Sheet at the close of business on April 7, 1951 showed assets of $239,563.92 (CX 303B).

a. *Background of Purchase*

158. The only evidence in the record concerning this acquisition consists of a Memorandum of Agreement dated March 29, 1951, between the former holders of all the outstanding stock of Purity Baking Company, a Texas corporation, and Campbell Taggart (CX 102A–F). This agreement recites, among other things, that: the individual stockholders of Purity had previously offered to sell their stock to Campbell Taggart but Campbell Taggart had refused to purchase the stock; Purity Baking Company was to be dissolved and its assets distributed among its stockholders, who would then sell and transfer the assets of the former Purity Baking Company to a new corporate subsidiary to be formed by Campbell Taggart, Rainbo Baking Co. of El Paso. The purchase price was $365,000 plus liabilities at date of closing.

159. There is no evidence in the record to show the distribution area of the former Purity Baking Company at the time of its dissolution in 1951, or at any time thereafter, other than that Purity Baking Company distributed in El Paso, Texas, and the surrounding territory within 50 or 60 miles, including New Mexico (Tr. 2624). There is no evidence in the record to show where the bread and bread-type rolls distributed in the El Paso area were baked, or where purchasers of bread and bread-type rolls in the El Paso area could turn for supplies in 1951. Complaint counsel have failed to establish the relevant area of geographic competition with respect to this purchase. Complaint counsel did not offer any evidence with respect to the annual sales of Purity Baking Company, or any other baking company, from which market shares before or after 1951 could be computed, or on which "concentration" among baking companies in the appropriate area of geographic competition could be determined.

160. In their proposed findings, complaint counsel state that the Rainbo Baking Co. of Albuquerque, New Mexico, distributed its bakery products immediately to the north of Purity, while the

Rainbo Baking Co. of Phoenix and the Rainbo Baking Co. of Tucson, Arizona, distributed to the west and northwest of Purity's area of distribution; and that, to the east, in the remainder of the State of Texas, Campbell Taggart, through subsidiaries, operated seven other baking plants. Complaint counsel do not mention the great distances between these plants, it being approximately 271 miles from El Paso to Albuquerque; 400 miles from El Paso to Phoenix; and 317 miles from El Paso to Tucson, Arizona. The nearest Campbell Taggart subsidiary to the east of El Paso was located in Dallas, a distance of 630 miles. There is no evidence in the record to show that they were competitors or that any substantial competition was eliminated or lessened between any Campbell Taggart subsidiary baking plant and Purity Baking Company as a result of the 1951 transaction. There is no evidence in the record to support a finding that there was a reasonable probability of potential competition between any Campbell Taggart subsidiary and Purity Baking Company in any substantial area of geographic competition in 1951 or the foreseeable future. It is found, therefore, that complaint counsel have failed to establish that the effect of the purchase of the assets of Purity Baking Company by Rainbo Baking Co. of El Paso may be substantially to lessen competition or tend to create a monopoly in the sale of bread and bread-type rolls; that respondent did not use its stock investment in Rainbo Baking Co. of El Paso to bring about a substantial lessening of competition; and that its formation and ownership of 95% of the stock of Rainbo Baking Co. of El Paso did not have the effect of lessening competition.

3. *Jessee Baking Company of Grand Island, Grand Island, Nebraska*

161. On and prior to May 7, 1955, Jessee Baking Company of Grand Island, a Nebraska corporation, operated a baking plant in Grand Island, and Jessee Baking Company of Colorado, a Colorado corporation, operated a baking plant in Sterling, Colorado. At some time subsequent to May 7, 1955, the exact date not being clear in the record, Campbell Taggart Associated Bakeries, Inc., purchased 60% of the capital stock of Jessee Baking Company of Grand Island, Nebraska, and all of the capital stock of Jessee Baking company of Sterling, Colorado (Complaint, Par. 8; Answer, Par. 8; Tr. 2641).

a. *Background of Purchase*

162. This purchase originated under the terms of an Option

Agreement, dated May 7, 1955, wherein the owners granted to Campbell Taggart the option to purchase (for a period of 90 days) 60% of the outstanding capital stock in Jessee Baking Company of Grand Island and all of the capital stock of Jessee Baking Company of Colorado at the nominal price of $1 per share for the 546 shares, or a total of $546 (CX 110A–C), "since at the time Campbell Taggart became a stockholder the company was deeply in debt and the stock had little if any value" (CX 107B). Also, Campbell Taggart advanced $5,000 to Jessee Baking Company so as to enable it to continue in business while Campbell Taggart made an investigation to determine whether to exercise its option. If Campbell Taggart should decide to exercise the option, Campbell Taggart further agreed to furnish Jessee Baking Company with "sufficient money to pay off all their indebtedness as well as working capital and furnish them service and help to make the operations profitable" (CX 74A, 110C).

163. Mr. I. E. Madsen, former President and Board Chairman of Campbell Taggart Associated Bakeries, Inc., testified, among other things, that Jessee Baking Company was "completely broke"; had a "terrible reputation"; and "was on the point of closing" its Colorado bakery (Tr. 2640–41). A Balance Sheet of Jessee Baking Company of Grand Island, dated April 2, 1955 (CX 307) tends to corroborate Mr. Madsen's testimony concerning the financial condition of Jessee Baking Company. This balance sheet shows total assets of $136,082.47, and total liabilities of $189,482.19, or a negative capital account of $53,399.72. The balance sheet also showed a deficit of $71,196.66 at the beginning of the year, and a deficit of $44,900.06 for the prior year.

164. Campbell Taggart Associated Bakeries, Inc., eventually exercised its option. The Sterling, Colorado plant was closed, and the Nebraska corporation, Jessee Baking Company of Grand Island, was continued, but the corporate name was changed to Rainbo Baking Co. of Grand Island, according to Mr. Madsen, because Jessee Baking Company had "such a terrible reputation" (Tr. 2640–41). Campbell Taggart increased its investment in the Grand Island corporation by providing it with "working capital" and sufficient money "to pay off all their indebtedness" (CX 74A). The prior stockholders and operators of Jessee Baking Company, Mr. C. C. and Clara Jessee and their son-in-law, Mr. William Miller, retained 40% of the capital stock (CX 107B). Mr. Miller and the Jessee's daughter, Charlene, became Directors, President and Vice President, respectively, of Rainbo Baking Co. of Grand Island, and continued to operate the plant (CX 71D).

165. Financial statements of Rainbo Baking Co. of Grand Island show that by the end of 1956 the Grand Island baking plant had reversed its financial decline and the total assets had increased to $321,000, with a profit of $28,000 on total 1956 net sales of $473,000 (CX 308G–I). Mr. Madsen testified that the transaction

> never meant anything to Campbell Taggart except a small fee we get for our services, but it has meant something to the Jessee family. They are the only ones that reap from the benefits, because the daughter and son-in-law [have] been operating that plant ever since and [have] made a very fine living (Tr. 2641).

166. Complaint counsel did not offer any evidence as to the distribution area of either Jessee Baking Company plant or any competitors at the time of the purchase of controlling interest by Campbell Taggart, or at any time thereafter. No evidence was offered to show where the bread and bread-type rolls distributed in the Grand Island and Sterling areas were produced, or where purchasers of bread and bread-type rolls in the Grand Island and Sterling areas could turn for supplies at the time of the purchase by Campbell Taggart of controlling interest in the former Jessee Baking Company. Due to the absence in the record of evidence concerning bread distribution and sales in the Grand Island, Nebraska, and Sterling, Colorado, areas, it is not possible to determine the relevant area of geographic competition with regard to the purchase by Campbell Taggart of controlling interest in Jessee Baking Company.

167. There is no evidence in the record to show whether either of the Jessee Baking Companies distributed bread in more than one state at the time of the purchase of control by Campbell Taggart. The evidence does show that Jessee Baking Company of Grand Island purchased ingredients from some suppliers located outside the State of Nebraska (CX 111A–B), but there is no evidence to show how these orders were placed or how delivery was made.

168. Complaint counsel offered no evidence concerning annual bread and bread-type roll sales of either Jessee Baking Company plant or any competitors for 1955 or any other year, and offered no sales data from which market shares of any baking company might be computed for any year before or after the purchase of controlling interest in Jessee Baking Company by Campbell Taggart. There is no record evidence to support a finding that any Campbell Taggart subsidiary was a potential substantial competitor of Jessee Baking Company in any substantial area of

geographic competition at any time in 1955, 1956, or the foreseeable future. There is no evidence in the record to support a finding that any substantial competition was eliminated or lessened between any Campbell Taggart subsidiary and Jessee Baking Company as a result of Campbell Taggart's purchase of stock control in Jessee Baking Company. Upon the basis of the entire record, it is found that complaint counsel have failed to establish that the effect of Campbell Taggart's purchase of stock control in Jessee Baking Company may substantially lessen competition or tend to create a monopoly in the sale of bread and bread-type rolls. It is further found, upon the basis of a preponderance of the evidence, that Campbell Taggart did not use its stock investment in Jessee Baking Company, by voting or otherwise, to bring about a substantial lessening of competition, and that its ownership of 60% of the capital stock of Jessee Baking Company did not have the effect of substantially lessening competition in the sale of bread and bread-type rolls.

4. *Noll's Baking Company, A Corporation, Alton, Illinois*

a. *Background of Purchase*

169. This transaction concerns the purchase by Colonial Baking Company of St. Louis, St. Louis, Missouri, a Campbell Taggart subsidiary, of the assets of Noll's Baking Company, a corporation of Alton, Illinois, in June 1960. Noll's was a wholesale baking plant selling bread, sweet rolls, and ice cream (Tr. 2535, 2538–39). Campbell Taggart Associated Bakeries, Inc., owns 58.09% of the capital stock of Colonial Baking Company of St. Louis, with the balance of 41.10% owned by others (CX 71G; Tr. 2956, 2963). Mr. I. E. Madsen, former President and Board Chairman of Campbell Taggart Associated Bakeries, Inc., called as a witness by complaint counsel, testified that

> the management of Noll's Baking Company asked the management of Colonial Baking Company of St. Louis if there was any chance at all for them to get associated with them. They were doing everything in their power to bring it about, because they were going broke and going downhill, and according to the way it was going it was only a question of time until they would be out of business (Tr. 2534–35).
>
> * * * * * * *
>
> They had family troubles and they had financial troubles (Tr. 2537).

170. Colonial Baking Company of St. Louis purchased the assets of Noll's Baking Company in June 1960, financing the purchase with its own funds and those borrowed from a St. Louis

bank (Tr. 2539). There was no sales contract offered in evidence concerning this purchase. There is in evidence a statement contained in the minutes of a regular meeting of the Campbell Taggart Board of Directors held on December 3, 1959 (CX 83C), to the effect that Mr. Walter Williams, President of Colonial Baking Company of St. Louis, was authorized "to acquire the Alton bakery for a price in the neighborhood of a half million dollars providing terms acceptable to the Committee could be agreed upon."

b. *Competition*

171. Mr. Madsen testified that "There was a very slight difference" between the distribution routes of Colonial Baking Company of St. Louis and Noll's Baking Company (Tr. 2538). This is the only testimony with respect to distribution routes in the Alton, Illinois, area. There is no evidence in the record to show the actual distribution area of Noll's Baking Company or Colonial Baking Company of St. Louis or any of their competitors in 1960, or at any time thereafter. There is no evidence in the record to show where bread and bread-type rolls distributed in the Alton, Illinois, area were baked, or where purchasers of bread and bread-type rolls in the Alton, Illinois, area could turn for an alternate source of supplies at the time of the purchase of the assets of Noll's Baking Company by Colonial Baking Company of St. Louis in June 1960. There is not sufficient evidence in the record upon which the relevant area of geographic competition for the Noll's Baking Company purchase can be determined.

172. Complaint counsel did not offer any evidence in the record to show the annual bread and bread-type roll sales of Noll's Baking Company or Colonial Baking Company of St. Louis, or of any of their competitors, upon which market shares of any baking company in any year before or subsequent to 1960 may be determined. From the evidence in the record, "concentration" among baking companies in the Alton, Illinois, distribution area cannot be determined.

173. There is not sufficient evidence in the record to support a finding that any substantial competition was eliminated or lessened between Noll's Baking Company and Colonial Baking Company of St. Louis, or any other Campbell Taggart subsidiary, as a result of the transaction in 1960. There is in the record evidence that the Executive Committee of Campbell Taggart, at a meeting on January 20 or January 21, 1959, authorized Mr. Walter Williams, President of Colonial Baking Company of St. Louis, to "look for suitable property of sufficient size, possibly 10 to 20

acres for the building of a distributing station and possibly eventually a second baking plant to augment the present production facilities which are rapidly becoming inadequate. Estimated cost of the necessary property, entirely on a guessing basis, $100,000" (CX 75B). The hearing examiner does not consider this evidence sufficient to support a finding that Colonial Baking Company of St. Louis was a potential competitor, or would likely become a substantial competitor, of Noll's Baking Company in any substantial area of geographic competition at any time or in the near or foreseeable future. Upon the basis of a preponderance of the evidence, it is found that complaint counsel have failed to establish that the effect of the purchase of the assets of Noll's Baking Company by Colonial Baking Company of St. Louis may substantially lessen competition or tend to create a monopoly in the sale of bread and bread-type rolls. It is further found that Campbell Taggart Associated Bakeries, Inc., did not use its stock ownership in Colonial Baking Company of St. Louis, by voting or otherwise, to bring about a substantial lessening of competition, and that its ownership of 58.90% of the stock of Colonial Baking Company of St. Louis did not have the effect of substantially lessening competition.

174. In Count II, the complaint alleges that, by virtue of respondent's "position in the baking industry and its continuous growth by acquisitions, respondent has acquired an actual or potential monopoly power to impede and prevent the growth and business opportunities of its competitors, as well as their ability to survive in the manufacture, sale and distribution of bread and bread-type rolls in the United States"; and that respondent has used its "increasingly dominant position and economic power" to engage in some of the various competitive practices which have been found to be prevalent in Northern California and the Kentucky area (Findings 82–88; 125–129). These practices are not unique to Campbell Taggart subsidiary baking plants. They are common practices in the baking industry in Northern California and Kentucky and have been for many years, long prior to the acquisition of the baking plants in California and Kentucky by subsidiaries of Campbell Taggart. These trade practices were indulged in without regard to the "size" of the baking company. The record shows that relatively small or "independent" baking companies as well as "large" baking companies engaged in many of these trade practices prior to the acquisitions in California and Kentucky. From the record evidence, it is clear that it was not respondent's "dominant position and economic power" that

enabled its subsidiary baking plants to engage in these competitive trade practices. No causal connection has been shown between these general trade practices and the acquisition of the baking plants in California and Kentucky by subsidiaries of Campbell Taggart.

175. Further, the record shows that Campbell Taggart did not finance any of the competitive trade practices which may have been indulged in by any of its subsidiary baking plants (Finding 14). Also, the record does not establish that the trade practices indulged in by Campbell Taggart subsidiary baking plants were different from those which are prevalent in the industry and indulged in by their competitors in Northern California and the Kentucky area. Nor does the record establish that these competitive trade practices engaged in by its subsidiary baking plants have enabled Campbell Taggart to "acquire the power and ability to achieve an actual or potential monopoly in the manufacture, sale and distribution of bread and bread-type rolls in the United States" as alleged in Count II. The market share of Campbell Taggart subsidiary baking plants in bread and bread-type roll sales is far short of an actual or potential monopoly in any "section of the country." Aside from monopoly aspects, the competitive trade practices shown by the record to have been indulged in by some Campbell Taggart subsidiary baking plants, such as cash payments to grocers for shelf space and granting discriminatory trade discounts to customers, constitute unfair methods of competition and unfair acts and practices, in violation of Section 5 of the Federal Trade Commission Act.

176. On January 10, 1966, counsel for respondent filed a motion to strike from complaint counsel's proposed findings all captions and statistics purporting to show rankings by market share, sales, and assets, in particular, contained in the following proposed findings by complaint counsel based on the tabulations attached as Appendices A to T to complaint counsel's proposed findings of fact, conclusions, and order and CX 522–524: Nos. 2, 128, 130, 131, 133, 182, 185, 186, 216, 218–220, 227, 234, 238, 242, 253, 269, 278, 290, 292, 296, 299, 345, 346, 348, 350, and 352. In the alternative, respondent moved that the hearing examiner reject and disregard such rankings, captions, statistics, and proposed findings in the preparation of his initial decision.

177. At hearings held in Washington, D.C., on March 31, 1965, upon objection by respondent's counsel, the hearing examiner ordered that the word "largest" be stricken from CX 522, 523, and 524 on the ground that this was complaint counsel's

characterization (Tr. 4926). In their motion to strike, counsel for respondent point out that complaint counsel's proposed findings cite these same exhibits as support for proposed findings that rank baking companies by sales and asset size, such as Commission's proposed findings Nos. 2, 128, 130, 131, and 133. Respondent's counsel contend that complaint counsel have taken the sales data for individual responding companies as contained in the subpoena questionnaires, or Section 6(b) Special Survey Reports, as the case may be, processed these sales figures by computer into tabular form, and then asserted their own conclusion that the sales so tabulated represent 100% of the total sales in a given area, and thereby constitute a reliable "universe" from which to obtain market share rankings. In order to satisfy the objections contained in the motion to strike, the hearing examiner has disregarded the tabulations designated Appendices A to T, which are attached to complaint counsel's proposed findings, and has computed market shares from the sales figures contained in the responses by the 35 California baking companies to the subpoena questionnaires and from the revised Special Survey Reports. To this extent, the hearing examiner rejects and disregards such rankings and captions which are objected to by counsel for respondent.

CONCLUSIONS

1. The respondent Campbell Taggart Associated Bakeries, Inc., a corporation, through its ownership of the majority stock in each of its subsidiary corporate baking plants, its selection of the officers thereof and their salaries, purchasing supplies and ingredients which are used in its corporate subsidiary baking plants, carrying on a steady flow of correspondence and contracts with its subsidiary baking plants and suppliers of bakery ingredients with whom it deals as purchasing agent on behalf of its corporate subsidiary baking plants, maintains a course of trade in commerce as "commerce" is defined in the amended Clayton Act and the Federal Trade Commission Act, and, in so doing, is engaged in commerce as "commerce" is defined in said Acts.

I

The Acquired Companies

A. *The Acquisitions in California*

2. The record establishes that each of the baking plants owned and controlled by the Kilpatricks and Old Home Bakers purchased

their major ingredients, such as flour, wrapping and packaging materials, from sources outside the State of California. Therefore, the baking plants acquired by Campbell Taggart subsidiaries in California were engaged in "commerce" within the meaning of the amended Clayton Act and the Federal Trade Commission Act. *Foremost Dairies, Inc.*, 60 F.T.C. 944, at 1069.

1. *The Grocers Baking Company*

3. Grocers Baking Company, a Kentucky corporation, with headquarters in Louisville, the parent company, directed and controlled the operations of its nine baking plants which manufactured, distributed and sold bread and bread-type rolls in Kentucky, Indiana, Tennessee, Virginia, North Carolina, and Illinois (Ans., Par. 5). Grocers also purchased the ingredients, wrapping and packaging materials from suppliers located in other states (CX 330B, C). Grocers Baking Company was, therefore, engaged in "commerce" as that term is defined in the amended Clayton Act and the Federal Trade Commission Act.

2. *Mead's Fine Bread Company*

4. Mead's Fine Bread Company was a Texas corporation, with headquarters in Lubbock, where it operated a baking plant, and separate plants in Roswell and Clovis, New Mexico. In 1954, Mead's Fine Bread Company, through its operation of the three plants, was found to be engaged in "commerce." *Moore* v. *Mead's Fine Bread Company*, 348 U.S. 115.

3. *Dan-Dee Bread Company*

5. Dan-Dee Bread Company, a Colorado corporation, operated a baking plant in Colorado Springs, Colorado. At the time of the purchase of its assets by Rainbo Bakers, Inc., of Pueblo, a Campbell Taggart subsidiary, on January 14, 1950, prior to the amendment of the Clayton Act, Dan-Dee was in financial difficulties and the baking plant likely would have gone out of business except for the purchase of its assets by a Campbell Taggart subsidiary. There is no evidence in the record to establish that Dan-Dee was engaged in "commerce."

4. *Purity Baking Company*

6. Purity Baking Company, a Texas corporation, operated a baking plant in El Paso, with distribution in "El Paso and surrounding territory" and into New Mexico by way of a substation (Finding 157). Therefore, Purity was engaged in "commerce."

5. *Jessee Baking Company*

7. Jessee Baking Company of Grand Island, a Nebraska corporation, operated a baking plant in Grand Island, and Jessee Baking Company of Colorado, a Colorado corporation, operated a baking plant in Sterling, Colorado. Jessee Baking Company of Grand Island purchased ingredients from suppliers located outside the State of Nebraska (CX 111A, B). Therefore, Jessee Baking Company of Grand Island was engaged in "commerce."

6. *Noll's Baking Company*

8. Noll's Baking Company, an Illinois corporation, operated a baking plant in Alton, Illinois. There is no evidence in the record to show that Noll's was engaged in "commerce."

B. *Sections of the Country*

9. The relevant geographic markets are the areas of distribution of each individual baking plant acquired by a Campbell Taggart subsidiary, the combined areas of distribution of baking plants acquired in Northern California, the combined areas of distribution of the Grocers Baking Company plants, the combined areas of distribution of the Mead's Fine Bread Company, and the combined areas of distribution of all baking plants acquired by Campbell Taggart subsidiaries in the entire United States.

C. *The Relevant Line of Commerce*

10. "Line of Commerce" refers to a "relevant product or services market." *U.S.* v. *Philadelphia National Bank, et al.,* 374 U.S. 321, 356. The record establishes that the relevant "Line of Commerce" by which the effects of the acquisitions should be measured is the manufacture, sale, and distribution of bread and bread-type rolls.

D. *Reasonable Probability of Lessening Competition or Tending to Create a Monopoly*

11. The Commission and the courts have looked to the industry setting in which the acquisition or acquisitions took place in determining the reasonable probability of the lessening of competition or tendency toward monopoly. The Commission has deemed the following criteria pertinent: the number of companies in the industry and their market share nationally; the decline, if any, in the number of firms selling the product; the degree of concentration which may exist in the different markets through-

out the country; and the over-all merger movement which may exist in the particular industry. *Foremost Dairies, Inc., supra,* pp. 1053–1058.

12. Considerable changes have been taking place in the baking industry in the United States for the past fifteen years or so. In 1954, there were 5,426 wholesale bakeries in the United States (CX 166, Table 1, p. 20E–3), while in 1958 there were only 5, 199 wholesale bakeries (CX 167, Table 1, p. 20E–3). Total value of shipments increased by $1,031,595,000.

13. The increase in concentration in the wholesale baking business in the United States in recent years is illustrated by the acquisitions made by some of the so-called national chain bakeries, as shown in CX 524A–G and the tabulation shown under Finding 37. During the period 1952–1961, Continental Baking Company, a national wholesale chain bakery, with $454,287,000 net sales in 1962 (CX 522A), acquired 17 baking plants located in twelve States; General Baking Company acquired 19 plants located in four States during the period 1953–1958; American Bakeries acquired 65 baking plants located in four States during the period 1953–1964; Interstate Bakery Corp. acquired 18 plants located in nine States during the period 1950–1964; Ward Foods, Inc., formerly Ward Baking Company, acquired 18 baking plants located in seven States during the period 1950–1964; Langendorf United Bakeries, Inc., acquired 8 bakeries located in three States during the period 1950–1958 (Langendorf, itself, being acquired by American Bakeries, Inc., in 1964); and during the period 1950–1960, respondent has created many corporate subsidiaries, and these subsidiaries of respondent have acquired the assets of the 24 baking plants located in California, Colorado, Illinois, Indiana, Kentucky, Nebraska, New Mexico, Tennessee, and Texas. In these acquisitions, respondent and its subsidaries increased their combined assets from $33,430,592 in 1951, to $74,249,805 in 1960, an increase of $40,819,213, or 122.10 percent. During the same period, their net sales increased from $100,-607,186 in 1951, to $197,576,870 in 1960, an increase of $96,969,-684, or 96.38 percent (CX 312–321).

14. The growth of respondent and its subsidiaries in sales volume during the years 1947 through 1962 as compared to that of the other national chain bakeries is illustrated by the tabulation contained in CX 522A and B. For example, in 1953, the year prior to the acquisition by Campbell Taggart subsidiaries of the seven California baking plants, the total sales reported by Campbell Taggart and its subsidiary baking plants were $108,276. In 1960,

their reported sales were $197,576. The sales reported by the other national chain bakeries for these years are as follows:

	Continental Baking Co.	American Bakeries, Inc.	General Baking Co.	Interstate Bakeries Corp.	Ward Baking Co.
1953	$198,845	$134,601	$120,496	$86,064	$96,132
1960	410,642	162,243	171,878	140,456	122,225

From these figures, it is seen that, on a national basis, Campbell Taggart and its subsidiaries ranked third in 1953 among these chain baking companies in total reported sales, and second in 1960.

15. The percentage of the market shares of bread and bread-type roll sales obtained by Campbell Taggart and its subsidiaries in the acquisitions in Northern California, Kentucky, Texas, and New Mexico is considerable. The tabulation in Finding 78 shows the sales percentages of the eight baking companies which reported the largest volume of sales in Northern California during the years 1954 through 1960. The Campbell Taggart subsidiary plants accounted for 25.69%, Langendorf United Bakeries, Inc. 24.78%, Continental Baking Co. 10.57%, and Interstate Bakeries accounted for 8.84% of the total sales reported by the 35 companies for 1954. The combined sales of these four campanies constituted 69.88% of the total sales reported by the 35 companies in Northern California in 1954. In 1960, their combined sales amounted to 65.14% of the total reported sales by the 35 companies.

16. In the Kentucky area, Campbell Taggart subsidiary plant sales accounted for 3.52% of bread and bread-type roll sales reported for this area in 1958, prior to the acquisition of the nine Grocers Baking Co. plants in 1959 (CX 458Z13, Z15, Z18). Tabulations from the reports of the ten baking companies reporting the largest volume of bread and bread-type roll sales in 1958, 1959, 1960, and 1961 are shown in Finding 129. In 1960, the year following the acquisition of the Grocers plants in 1959, Campbell Taggart subsidiary plant sales amounted to 24.97% of the total sales reported by the 45 baking companies in Areas #1 through #9. The baking company reporting the next largest volume of sales was Brown-Greer & Co., Inc., d/b/a Kern's Bakery, whose reported sales amounted to 7.46% of the total sales reported for the area in 1960. In 1961, Campbell Taggart subsidiary plant sales amounted to 26.16% and Brown-Greer sales amounted to 7.24% of the total sales reported for the area. Thus, the reported

sales of the Campbell Taggart subsidiary plants were more than three times those of their next competitor.

17. In West Texas and Eastern New Mexico, Areas #10, #11, and #12, Campbell Taggart subsidiaries obtained a substantial share of bread and bread-type roll sales when they acquired the Mead's Fine Bread Company, with plants in Lubbock, Texas, and Roswell and Clovis, New Mexico, Areas #10, #11, and #12, respectively. The tabulation in Finding 147 herein shows the total sales of the four companies reporting the largest volume of sales in Area #10 and their respective percentages to the total sales. At the time Rainbo Baking Co. of Lubbock acquired the Mead's plant in Lubbock in 1959, Baldridge Baking, Inc. of Lubbock reported the largest volume of sales reported for the area, 33.76% of the total. Mead's which was acquired that year by Rainbo Baking Co. of Lubbock, reported 26.88% of the total. In 1961, Baldridge sales were 36.84%, and Rainbo sales were 28.18% of the total reported for the area. The combined sales of the four companies amounted to 91.21% of the total sales reported for the area in 1961.

18. The tabulation in Finding 148 shows that only five companies reported sales in Area #11 in 1958 through 1961. Holsum Baking Co. of Roswell reported the largest volume of sales in 1958, 1959, and 1960, and Rainbo Baking Co. of Roswell, a Campbell Taggart subsidiary which acquired the Mead's plant in 1959, forged ahead in 1961 with 35.42% as against Holsum's 35.15% of the total sales reported for the area. Their combined sales constituted 70.57% of the total sales reported by the five companies for 1961.

19. In Area #12, the tabulation in Finding 149 shows that Mead's Fine Bread Company plant in Clovis, New Mexico, reported the largest volume of sales, with 46.54% of the total for the area. Holsum Baking Co. of Roswell was second, with 22.36%, and Good Eats Bakery of Hobbs, third with 21.59% of the total. After Rainbo Baking Co. of Clovis, a Campbell Taggart subsidiary, acquired the Mead's plant in Clovis in 1959, Rainbo reported the largest sales among the five reporting companies, 49.57% of the total in 1960, and 49.76% in 1961. In 1961, the combined sales of Rainbo and Good Eats amounted to 74.81% of the total bread and bread-type roll sales for Area #12.

20. In determining whether the effect of the acquisitions here involved "may be substantially to lessen competition, or tend to create a monopoly," it will be helpful to look at the legislative history of Section 7 of the Clayton Act, as amended, and the inter-

pretation of that Act as made by the Supreme Court. That Court in *Brown Shoe Company* v. *United States*, 370 U.S. 294, stated (at 315):

> The dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy * * *. Other considerations cited in support of the bill were the desirability of retaining "local control" over industry and the protection of small businesses.

And at 317, the Court said:

> Third, it is apparent that a keystone in the erection of a barrier to what Congress saw was the rising tide of economic concentration, was its provision of authority for arresting mergers at a time when the trend to a lessening of competition in a line of commerce was still in its incipiency. Congress saw the process of concentration in American business as a dynamic force; it sought to assure the Federal Trade Commission and the courts the power to brake this force at its outset and before it gathered momentum.

21. In *United States* v. *Philadelphia National Bank, et al.*, *supra*, the Supreme Court proposed a simplified test of merger illegality where, at 363, the Court stated:

> [W]e think that a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.

22. Two recent decisions of that Court, *United States* v. *Von's Grocery Company, et al.*, 34 L.W. 4425, decided May 31, 1966, and *United States* v. *Pabst Brewing Company, et al.*, 34 L.W. 4516, decided on June 13, 1966, seem to prescribe a still further simplified test of merger illegality. In *Von's*, Justice Black, writing for the majority, traced the history and purposes of Section 7 of the Clayton Act and stated on page 4426 the following:

> Like the Sherman Act in 1890 and the Clayton Act in 1914, the basic purpose of the 1950 Celler-Kefauver Bill was to prevent economic concentration in the American economy by keeping a large number of small competitors in business.

23. In *Von's, supra*, Von's, operating 27 retail grocery stores in the Los Angeles, California area, acquired its direct competitor, Shopping Bag Food Stores, which operated 34 retail stores in the Los Angeles area. For many years before the merger, which occurred on March 28, 1960, both companies had enjoyed great success as rapidly growing companies. In 1958, Von's retail sales

ranked third in the Los Angeles area, and Shopping Bag ranked sixth. In 1960, their combined sales constituted 7.5% of the total retail grocery sales in the Los Angeles market. Their merger created the second largest grocery chain in Los Angeles. Also, the number of owners operating a single store in the Los Angeles grocery market decreased from 5,365 in 1950 to 3,818 in 1961. By 1963, three years after the merger, the number of single-store owners had dropped still further to 3,590. During, roughly, the same period 1953–1962, the number of chains with two or more grocery stores increased from 96 to 150. During the period from 1949 to 1958, nine of the top 20 chains acquired 126 stores from their smaller competitors. Many acquisitions and mergers occurred in the Los Angeles grocery industry from 1953 through 1961, including acquisitions made by companies which ranked among the 10 leading chains in the area. Upon the basis of these facts, the majority were of the opinion that the grocery business was being concentrated into the hands of fewer and fewer owners and the small companies were continually being absorbed by the larger firms in the Los Angeles area, and held that the merger violated Section 7. The majority said (at page 4427):

> The facts of this case present exactly the threatening trend toward concentration which Congress wanted to halt. The number of small grocery companies in the Los Angeles retail grocery market had been declining rapidly before the merger and continued to decline rapidly afterwards. This rapid decline in the number of grocery store owners moved hand in hand with a large number of significant absorptions of the small companies by the larger ones * * *. If ever such a merger would not violate § 7, certainly it does when it takes place in a market characterized by a long and continuous trend toward fewer and fewer owner-competitors which is exactly the sort of trend which Congress, with power to do so, declared must be arrested.

In reply to Von's argument that the merger between Von's and Shopping Bag is not prohibited by Section 7 because the Los Angeles grocery market was competitive before the merger, has been since, and may continue to be in the future, the Court's majority, speaking through Justice Black, further stated (at 4427):

> It is enough for us that Congress feared that a market marked at the same time by both a continuous decline in the number of small businesses and a large number of mergers would, slowly but inevitably gravitate from a market of many small competitors to one dominated by one or a few giants, and competition would thereby be destroyed. Congress passed the Celler-Kefauver Bill to prevent such a destruction of competition.

In *Pabst, supra,* the Supreme Court majority, speaking through Justice Black, found that there had been a marked thirty-year decline in the number of brewers and a sharp drop in recent years in the percentage share of the market controlled by the leading brewers. If not stopped, the Court said (at 4518):

> * * * this decline in the number of separate competitors and this rise in the share of the market controlled by the larger beer manufacturers is bound to lead to greater and greater concentration of the beer industry into fewer and fewer hands. The merger of Pabst and Blatz brought together two very large brewers competing against each other in 40 States. In 1957 these two companies had combined sales which accounted for 23.95% of the beer sales in Wisconsin, 11.32% of the sales in the three-state area of Wisconsin, Illinois, and Michigan, and 4.49% of the sales throughout the country. In accord with our prior cases, we hold that the evidence as to the probable effect of the merger on competition in Wisconsin, in the three-state area, and in the entire country was amply sufficient to show a violation of § 7 in each and all of these three areas * * *. To put a halt to what it considered to be a "rising tide" of concentration in American business, Congress, with full power to do so, decided to do so, decided "to clamp down on mergers with vigor" [citing *United States* v. *Von's Grocery Co., supra*]. It passed and amended § 7 on the premise that mergers do tend to accelerate concentration in an industry. Many believe that this assumption of Congress is wrong, and that the disappearance of small businesses with a correlative concentration of business in the hands of a few is bound to occur whether mergers are prohibited or not. But it is not for the courts to review the policy decision of Congress that mergers which may substantially lessen competition are forbidden, which in effect the courts would be doing should they now require proof of the congressional premise that mergers are a major cause of concentration. We hold that a trend toward concentration in an industry, whatever its causes, is a highly relevant factor in deciding how substantial the anticompetitive effect of a merger may be.
>
> *Reversed and remanded.*

25. Certainly, in view of these interpretations of Section 7 of the amended Clayton Act by the Supreme Court, the effect of the acquisition by respondent through its corporate subsidiaries of the former Kilpatrick and Old Home baking companies in Northern California, the former Grocers Baking Co., with subsidiaries and plants located in Kentucky, Indiana, and Tennessee, and Mead's Fine Bread Company of Lubbock, with baking plants in Lubbock, Texas, Roswell and Clovis, New Mexico, may be substantially to lessen competition in the manufacture and sale of bread and bread-type rolls.

26. The evidence is not sufficient to establish the allegation that the effect of the acquisition of Zim's Bakery (Dan-Dee Bread Co.), Purity Baking Co., Jessee Baking Co., and Noll's Baking Co.

may be substantially to lessen competition, or tend to create a monopoly in the manufacture and sale of bread and bread-type rolls.

27. Complaint counsel request, in addition to an order of divestiture, a further order that "respondent for a period of five years shall not exercise the use of the trade names 'Colonial' or 'Rainbo' in any area of distribution now being vacated by respondent in compliance with this Order." Counsel say, among other things, that the trade names "Colonial" and "Rainbo" are now established in the distribution areas of each acquired baking plant and, even if respondent and its subsidiaries divest themselves of the acquired baking plants held to be violative of Section 7, unless restrained, respondent can build new baking plants in the vacated areas and continue to use the trade names "Colonial" and "Rainbo" therein, and "the war to maintain vigorous competition will have been lost." As pointed out by the Supreme Court in *Von's Grocery Co., supra,* it was "Congress' intent to protect competition against ever increasing concentration through mergers," and not to stifle competition by preventing respondent, if it so desires, to construct new baking plants in the vacated areas and use its own trade names as it has a lawful right to do. Section 7 of the amended Clayton Act is directed primarily against mergers which may restrain competition, and not against the construction by respondent of a new baking plant or plants. To accede to complaint counsel's request would impede rather than encourage competition, as all of our anti-trust laws are supposed to foster.

28. The discriminatory trade practices found to have been engaged in by some of respondent's subsidiaries, such as making cash payments to grocers for shelf space, granting discriminatory trade discounts to customers, etc. (Findings 174–175) constitute unfair methods of competition and unfair acts and practices, in violation of Section 5 of the Federal Trade Commission Act. Ordinarily, the acts of one corporation cannot be charged to a parent corporation. However, in unusual circumstances, where the subsidiary is a "mere tool" of the parent, or the corporate identity of the subsidiary is a mere "fiction," the corporate shield will be disregarded, *National Lead Co. et al.* v. *Federal Trade Commission,* 227 F. 2d 825. Here, as shown in Findings 6–14, respondent so directs and controls the affairs of its subsidiaries that respondent, as well as such subsidiary corporations, should be held responsible for the violations of the Federal Trade Commis-

sion Act, even though the discriminatory trade practices which constitute the violations were actually committed by respondent's subsidiaries. The order to cease and desist to be issued with respect to said trade practices will be issued against respondent, its subsidiaries and affiliates, and their respective officers, directors, representatives, employees, etc.

ORDER

I

It is ordered, That respondent Campbell Taggart Associated Bakeries, Inc., a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns within one year from the date this order becomes final shall divest absolutely and in good faith all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, equipment, trade names, trademarks and goodwill acquired by Campbell Taggart Associated Bakeries, Inc., as a result of its acquisition of the stock share capital or assets of the following named corporations: Kilpatrick's San Francisco Bakery, San Francisco, California; Kilpatrick's Marvel Bakery, Oakland, California; San Joaquin Baking Company, Fresno, California; Holsum Bread Company, Visalia, California; Old Home Bakers, Sacramento, California; Grocers Baking Company, Louisville, Kentucky, and its subsidiaries; Mead's Fine Bread Company, Lubbock, Texas, together with all plants, machinery, buildings, improvements, equipment and other property of whatever description which has been added to the property of any of the above named corporations by respondent, as may be necessary to restore each of them as an effective competitor in the lines of commerce in which each of the respective acquired corporations were engaged at the time of acquisition.

II

By such divestiture none of the assets, properties, rights or privileges described in Paragraph I of this Order shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee or agent of, or under the control or direction of respondent or any of the respondent's subsidiary or affiliated corporations, or to any purchaser who is not approved in advance by the Federal Trade Commission.

III

It is further ordered, That, pending divestiture, Campbell Taggart shall not make any changes in any of the plants, machinery, buildings, equipment, or other property of whatever description of the above listed companies, which shall impair their present rated capacity for the production of bread and bread-type rolls, or their market value.

IV

It is further ordered, That, for a period of twenty (20) years from the date this Order shall become final, respondent shall cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, any assets, stock, or other share capital, or any other interest, in any other business, corporate or otherwise, which is engaged in the manufacture, sale or distribution of bread and bread-type rolls in the United States, without prior approval of the Federal Trade Commission.

V

It is further ordered, That, respondent, Campbell Taggart Associated Bakeries, Inc., its subsidiaries and affiliates, and their respective officers, directors, agents, representatives and employees, directly or through any corporate or other device, in, or in connection with, the manufacture, sale or distribution of bread and bread-type rolls in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making cash payments to grocers or retail customers, furnishing, or offering to furnish, preclusive inducements such as bread racks of substantial value to obtain entry into such grocery stores, additional, or preferred shelf space, or to acquire new retail accounts.
2. Giving discriminatory reductions in prices or charges to some grocers or retail accounts without relation to any savings in respondent's costs in the manufacture, sale or distribution of bread and bread-type roll products for the purpose of gaining entry into such grocery stores, additional, or preferred shelf space, or to acquire new retail accounts.
3. Granting discriminatory rebates, discounts and allow-

ances to grocery stores or other retail customers for the purpose of gaining entry into such grocery stores, additional, or preferred shelf space, or to acquire new retail accounts.

VI

It is further ordered, That, respondent shall, within sixty (60) days after the date of service of this Order, and every sixty (60) days thereafter until respondent has fully complied with the provisions of this Order, submit in writing to the Federal Trade Commission a report setting forth in detail the manner and form in which respondent intends to comply, is complying or has complied with this Order. All compliance reports shall include, among other things that are from time to time required, a summary of all negotiations with possible purchasers, their identity, and copies of all written communications to and from such possible purchasers.

DISSENTING STATEMENT

APRIL 7, 1967

BY REILLY, *Commissioner*:

I disagree with the majority here. I do not believe this is an adequate settlement.

When considered in connection with the comprehensive record compiled herein, the divestitures, as ordered, will do little to remedy the harm caused by respondent's actions. The plants involved are only token representatives of group acquisitions. Since 1959, respondent has promoted its trade names within the relevant markets and has effectively submerged those of the acquired plants. After making the required divestitures, respondent will continue to use its trade names within the markets, servicing the areas via the facilities of plants acquired through transactions that should have been matters of concern to the Commission.

Today's action against baking industry acquisitions is in direct contrast with the Commission's actions in the dairy industry, an industry similarly structured and similarly plagued by anticompetitive moves toward concentration. Recently, I had cause to suggest that the Commission make known the "whys" and "wherefores" of its settlements, pointing out that the business community used such settlements as guides. I renew this suggestion today. Guide lines concerning what acquisitions the government will challenge are of little value if the issuing body is seemingly inconsistent in its remedies.

DISSENTING STATEMENT

APRIL 7, 1967

BY JONES, *Commissioner*:

Under this consent agreement Campbell Taggart is permitted to keep the most important of the acquisitions here found to have been illegal—that of Kilpatrick in California. Moreover, under the agreement Campbell Taggart is ordered to sell only certain physical facilities, together with the trademarks, acquired from Grocers and Mead. Shortly after Campbell Taggart made these acquisitions, it substituted its own labels for those acquired except for a few specialty items in the Mead operation. Therefore, any purchaser of these facilities will buy essentially dead labels which represent *no* share of the market and, because Campbell Taggart can continue to serve these markets from other plants, the purchaser will face the entrenched competition of Campbell Taggart whose labels will never leave the market. Under these circumstances it is unlikely in my view that divestiture can be effected to a viable, independent competitor.

Although I do not believe that divestiture is always necessary to effect relief in a merger case, by the same token I do not believe that a ban on future acquisitions can always be an acceptable substitute for divestiture particularly in industries which are not expected to show any appreciable rate of growth. However, in any case when divestiture is ordered it must be effective.

In order to ensure the effectiveness of the divestiture ordered here, Campbell Taggart should have been required, in addition to selling the physical facilities, either to sell its own labels or at a minimum to remove them from the divested areas for an effective period of time. Only such a divestiture, coupled with the fact that other Campbell Taggart operations will still surround the divested areas, will reestablish Campbell Taggart as a potential entrant and as the competitive force that such a position represents. Thus I agree with Commissioner Reilly that this settlement is inadequate and offers only token relief which in my judgment leaves the respondent in substantially the same market position as if these acquisitions had never been challenged or found illegal.

DECISION AND ORDER

The Commission having issued its complaint in this proceeding on June 14, 1960, charging the respondent named in the caption hereof with violation of Section 7 of the Clayton Act, as amended, and Section 5 of the Federal Trade Commission Act, and hearings having been subsequently held at the termination of which the hearing examiner issued his initial decision on July 11, 1966, from which initial decision cross appeals were filed by the parties under § 3.22 of the Commission's Published Rules; and

An agreement containing a consent order having been submitted by the respondent to the Commission for its consideration which agreement contains, *inter alia,* a consent order, an admission for the purpose of this proceeding of all the jurisdictional facts alleged in the complaint, as amended, statements that the record on which the decision of the Commission shall be based shall consist solely of such complaint and said agreement, and that said agreement is for settlement purposes and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and provisions as required by § 2.3 of the Commission's Rules; and

The Commission, having considered the said agreement containing consent order, which also provides for vacating the initial decision of the hearing examiner, and the Commission having determined that such agreement constitutes an adequate basis for appropriate disposition of this proceeding, the agreement is hereby accepted, the following jurisdictional findings are made and the following order is entered:

1. Respondent Campbell Taggart Associated Bakeries, Inc., 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 6211 Lemmon Avenue, Dallas, Texas.

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

ORDER

I

It is ordered, That respondent Campbell Taggart Associated Bakeries, Inc., a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successors and assigns within one year from service of this order shall divest absolutely and in good faith all assets, properties, rights and privileges, tangible and intangible, including but not limited to, all plants, buildings, machinery, equipment, routes, customers, loading stations, loading depots, trade names, trademarks and goodwill or other property of whatever description for the production of bakery products situated at, (1) Clovis and Roswell, New Mexico, and acquired as a result of its acquisition of Mead's Fine Bread Company, (2) situated at Bowling Green, Kentucky, and acquired as a result of its acquisition of Grocers Baking Company and, (3) situated at Bedford, Indiana and acquired as a result of its acquisition of Grocers Baking Company of Indiana, a subsidiary of Grocers Baking Company; together with all improvements, additions and other property of whatever description which have been added to any of the properties of the above-named plants.

II

It is further ordered, That respondent or its subsidiaries shall not sell or transfer the aforesaid assets, tangible or intangible, directly or indirectly, to anyone who at the time of divestiture is a stockholder, officer, director, employee, or agent of, or otherwise directly or indirectly connected with or under the control or influence of the respondent, or to any purchaser not approved by the Federal Trade Commission in advance.

III

It is further ordered, That, pending divestiture, respondent make no changes in any of the assets to be divested which would impair their capacity for the production and sale of bakery products, or their market value.

IV

It is further ordered, That for ten (10) years from the date of service of this order, respondent shall cease and desist from acquiring, directly or indirectly, without the prior approval of the Federal Trade Commission, any part of the share capital or assets of any firm, partnership or corporation which is then engaged in the production or sale of bakery products (United States Bureau of Census SIC Codes 2051 and 2052) in the United States: *Provided, however,* That this provision shall not be construed to prevent the purchase of used machinery or equipment.

V

It is further ordered, That, within sixty (60) days after the date of service of this order, and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs I, II and III of this order, respondent shall submit in writing to the

Federal Trade Commission a report setting forth in detail the manner and form in which it intends to comply, is complying, and/or has complied with this order. All compliance reports shall include, among other things that may be from time to time required, a summary of all contacts and negotiations with potential purchasers of the assets to be divested under this order, the identity of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

VI

It is further ordered, That Section IV of this order shall terminate if the Federal Trade Commission, through trade regulation rules or other like non-adjudicative industrywide proceedings, issues rules or guide lines covering the subject matter of this order.

VII

It is further ordered, That the Initial Decision of the hearing examiner be, and it hereby is, vacated.

VIII

The Federal Trade Commission may, from time to time and upon application by respondent, issue such further orders as it may deem appropriate or just.

Commissioners Reilly and Jones have dissented and have filed separate dissenting statements.

IN THE MATTER OF

ALLIED ENTERPRIZES, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 8722. Complaint, Dec. 8, 1966—Decision, Apr. 11, 1967

Order requiring a North Brentwood, Md., distributor of home intercom and fire detection or alarm systems to cease using deceptive referral and demonstration offers to obtain customer leads, misrepresenting that his prices are reduced or special or will result in savings to customer, neglecting to disclose that promissory notes will be sold to a finance company, and falsely representing that his products are new to the market.