

Syllabus

IN THE MATTER OF
ARROW-HART & HEGEMAN, INC., AND THE ARROW-
HART & HEGEMAN ELECTRIC COMPANY

COMPLAINTS, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 7 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914

Docket 1498. Complaint, Mar 3, 1928¹—Decision, July 6, 1932

Where a corporation, following its organization and pursuant to the purpose thereof, acquired all the common voting stock of two companies, which were (a) engaged in direct and substantial competition with each other in the manufacture, sale, and distribution in interstate commerce, under their respective trade marks, of a full line of electrical "shelf goods", i.e., those wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers, consisting of material of a standard type packed in suitable units for resale and described in catalogs under various schedule numbers, (b) had sales in the case of each of four million dollars a year or more, and together did a business in excess of 25 percent of the total sales of all manufacturers of electrical wiring devices of all descriptions, (c) were competitors as to the entire output of one of said companies and at least 59 percent of the sales volume of the other, selling said goods, of similar quality and for the same uses by the ultimate purchasers, to the same class of trade in the same territory and at approximately the same prices, and with 25 to 30 percent of their customers common to both, and (d) maintained sales offices, commission men, and branches in numerous large cities scattered across the country, from which they traveled salesmen or "missionary men", and thereafter authorized its president and vice president to vote for five years the stocks of said former competitors, subsequent operations of which recognized their community of interest;

With result that competition between said companies in the sale and distribution of electrical wiring devices in interstate commerce was substantially lessened, commerce therein in those sections and communities where the two were engaged in business was restrained, and said acquisition tended to create a monopoly in the electrical wiring devices industry; and

Where a second corporation brought into being as a result of said acquisition, by those responsible therefor, following its formation of two holding companies and a series of transactions which were planned to and did result in (a) said corporation's becoming possessed of the assets, stock, and businesses of said competing companies, and (b) said competitors' old stockholders becoming possessed of stock in it proportionately representing their former interests, made numerous changes in officer and employee personnel and arrangement of sales territories, etc., of said formerly competing organizations, whose plants it operated as a unit, and distributed their two former recognized competitive brands, under their old trade marks, through separate divisions under arrangements pursuant to which salesmen of said divisions, in some cases representing both, and in all instances under common district sales managers, continued to call upon the trade, but with no price, service, or credit inducements to obtain business from each other;

With result that total volume of sales of said new corporation exceeded volume of sales of parallel lines of electrical wiring devices of any one of its six

¹ Supplemental complaint, June 29, 1929.

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competitors selling full lines of such devices and it assumed a dominant position in the electrical wiring devices industry, said acquisition of the stock and assets of said two operating companies substantially lessened competition between them, commerce in distribution of electrical wiring devices in those sections and communities where the two were engaged in business was restrained, and said acquisitions tended to create a monopoly in the electrical wiring devices industry:

Held, That acquisition by said corporation first referred to of the outstanding common voting stocks of said two competing companies and its continued ownership and/or control and voting of said stocks leading to organization of said second corporation, and latter's acquisition through merger of aforesaid companies' stocks and assets, under the conditions and circumstances set forth, constituted a violation of section 7 of the Clayton Act.

Mr. Everett F. Haycraft for the Commission
Shipman & Goodwin and Gross, Hyde & Williams, of Hartford Conn., for respondent.

COMPLAINT

The Federal Trade Commission charges that Arrow-Hart & Hegeman, Inc., hereinafter called respondent, is violating and has violated the provisions of section 7 of an act of Congress approved October 15, 1914 (the Clayton Act), entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and the Federal Trade Commission states its charges in that respect as follows:

PARAGRAPH 1. Respondent is a corporation organized under the laws of the State of Connecticut and has its principal office in the city of Hartford, in said State. Respondent has an authorized capital stock of \$2,000,000 consisting of 200,000 shares of common stock all outstanding and at a par value of \$10 per share. Respondent was organized and incorporated on or about October 4, 1927, for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., both corporations under the laws of the State of Connecticut. On or about October 10, 1927, respondent acquired all of the common voting stock or share capital of said Hart & Hegeman Manufacturing Co. and Arrow Electric Co. and still holds, owns, and controls such stock or share capital.

PAR. 2. The Hart & Hegeman Manufacturing Co. is a corporation organized in 1891 under the laws of Connecticut and has its principal office in the city of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds and classes

were made. It also owned all of the common stock of the H. T. Paiste Co., a subsidiary corporation, located at Philadelphia, Pa., and engaged in manufacturing electrical wiring devices which it sold to the parent corporation and all of the common stock of The Electric Porcelain & Manufacturing Co., a subsidiary corporation, located at Trenton, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Hart & Hegeman Manufacturing Co. for the year 1926 were \$4,089,621.11, of which \$3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Co. has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with said Arrow Electric Co. and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Co. is and has been engaged in interstate commerce within the purview of said act of Congress approved October 15, 1914 (the Clayton Act).

PAR. 3. The Arrow Electric Co. is a corporation organized in 1905 under the laws of Connecticut, and has its principal office in the city of Hartford, in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds, and classes were made. It also owned all of the common stock of the Washington Porcelain Co., a subsidiary corporation, located at Washington, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric Co. for the year 1926 were \$4,125,191.97, of which \$3,869,715.96 were made in interstate commerce. For many years it has been engaged in selling such electrical wiring devices and is and has been causing such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Co. and with other persons and corporations similarly engaged and in so doing The Arrow Electric Co. is and has been engaged in interstate commerce within the purview of said act of Congress approved October 15, 1914 (the Clayton Act).

PAR. 4. The effect of such acquisition by the respondent Arrow-Hart & Hegeman, Inc., of the stock or share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. may be:

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(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

PAR. 5. The use by the voting or granting of proxies, or otherwise, by respondent, Arrow-Hart & Hegeman, Inc., of the stock or other share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. has been and is:

(a) To substantially lessen competition in electrical wiring devices between the Hart & Hegeman Manufacturing Co. and the Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

SUPPLEMENTAL COMPLAINT

Whereas the Federal Trade Commission heretofore, to wit on the 3d day of March, 1928, issued a complaint² against respondent Arrow-Hart & Hegeman, Inc., charging that, by its acquisition of the stocks of two other and formerly competing corporations, said respondent had violated and was then violating the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" and known as the Clayton Act; and

Whereas since the issuance of the said complaint said respondent has carried out certain steps, hereafter set forth, collectively designated by it as a course of "reorganization", whereby a corporation known as The Arrow-Hart & Hegeman Electric Co. has been formed by the merger and consolidation of the two said formerly competing

² See *ante*, p. 394.

corporations and of two certain holding corporations, hereinafter described, and

Whereas the said so-called reorganization by said respondent, Arrow-Hart & Hegeman, Inc., has vested all the stock, franchises, property, and assets of the said formerly competing companies and of the said holding companies in the said The Arrow-Hart & Hegeman Electric Co. without having restored competition between the two said originally competing companies in and for the benefit of the public as by the said Clayton Act required, but rather with the purpose, and, unless the instant proceeding prevail, with the result of perpetuating the destruction of competition between the two said originally competing corporations;

Wherefore the Federal Trade Commission brings this, its supplemental complaint, adding to the original corporate party respondent, the said merged and consolidated corporation, the said The Arrow-Hart & Hegeman Electric Co., and thereunto alleges and charges as follows, to wit:

PARAGRAPH 1. Respondent, Arrow-Hart & Hegeman, Inc., on or about October 4, 1927, was organized under the laws of the State of Connecticut, with its principal place of business in the city of Hartford in said State, remained a corporation with all its corporate rights and powers until its dissolution as described in paragraph 7 (j) hereof and still retains its corporate entity to such extent as may be necessary to effectuate the relief designed in the regulation of interstate and foreign commerce by the enactment of the federal antitrust laws. It had an authorized capital stock of \$2,000,000 consisting of 200,000 shares of common stock outstanding and of par value of \$10 per share. Said respondent's incorporation was for the purpose of acquiring the stock or share capital of The Hart & Hegeman Manufacturing Co. and of The Arrow Electric Co., both corporations under the laws of the State of Connecticut, and on or about October 10, 1927, it did so acquire all of the common voting stock or share capital of two last named companies and continued to hold, own, and control such stock or share capital until subsequent to the issuance of the original complaint herein, to wit, until the events averred in paragraph 7 (b) hereof.

PAR. 2. The Hart & Hegeman Manufacturing Co. was, and until the merger described in paragraph 7 (f) hereof, remained a corporation under the laws of Connecticut, organized in 1891 with its principal place of business in the city of Hartford in said State. On and prior to the acquisition of its common stock by Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electric wiring devices of various types, kinds,

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and classes were made. It also owned all of the common stock of the H. T. Paiste Co., a subsidiary corporation, located at Philadelphia, Pa., and engaged in manufacturing electrical wiring devices which it sold to the parent corporation and all of the common stock of The Electric Porcelain & Manufacturing Co., a subsidiary corporation, located at Trenton, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Hart & Hegeman Manufacturing Co. for the year 1926 were \$4,089,621.11, of which \$3,505,988.36 were made in interstate commerce. For many years Hart & Hegeman Manufacturing Co. was engaged in selling such electrical wiring devices and caused such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Arrow Electric Co. aforesaid and with other persons and corporations similarly engaged and in so doing The Hart & Hegeman Manufacturing Co. was engaged in interstate commerce within the purview of the aforesaid Clayton Act.

PAR. 3. The Arrow Electric Co. was, and until the merger and consolidation described in paragraph 7 (*f*), remained a corporation organized under the laws of the State of Connecticut, in 1905, having its principal place of business in the city of Hartford in said State. On and prior to the acquisition of its common stock by respondent Arrow-Hart & Hegeman, Inc., it owned and operated a plant located at Hartford, Conn., at which plant electrical wiring devices of various types, kinds, and classes were made. It also owned all of the common stock of the Washington Porcelain Co., a subsidiary corporation, located at Washington, N.J., and engaged in manufacturing porcelain parts for electrical wiring devices which it sold to the parent corporation. The total sales of The Arrow Electric Co. for the year 1926 were \$4,125,191.97 of which \$3,869,715.96 were made in interstate commerce. For many years it was engaged in selling such electrical wiring devices and caused such electrical wiring devices when sold to be shipped and transported to purchasers among the several States of the United States and the District of Columbia in competition with The Hart & Hegeman Manufacturing Co. and with other persons and corporations similarly engaged, and in so doing, The Arrow Electric Co. was engaged in interstate commerce within the purview of the aforesaid Clayton Act.

PAR. 4. The effect of such acquisition by respondent, Arrow-Hart & Hegeman, Inc., of the stock or share capital of The Hart & Hegeman Manufacturing Co., and The Arrow Electric Co. may be:

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some of such sections or communities; or

(c) Tend to create a monopoly of commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices.

PAR. 5. The use by the voting or granting of proxies or otherwise by respondent, Arrow-Hart & Hegeman, Inc., of the stock or other share capital of The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., has been and is:

(a) To substantially lessen competition in electrical wiring devices between The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. whose stock or share capital was so acquired; or

(b) To restrain commerce in electrical wiring devices of various types, kinds, and classes or in some of such electrical wiring devices in the sections or communities in which such corporations were severally engaged at the time of such acquisition or in some sections or communities; or

(c) Tending to create a monopoly of commerce in electrical wiring devices, of various types, kinds, and classes or in some such electrical wiring devices.

PAR. 6. Alleging facts substantially as in paragraphs 1 to 5 hereof, inclusive, the Commission on March 3, 1928, issued its complaint against respondent, Arrow-Hart & Hegeman, Inc., under section 7 of the said described Clayton Act. Respondent corporation appeared and filed its answer on September 7, 1928.

PAR. 7. On November 10, 1928, the president of respondent, Arrow-Hart & Hegeman, Inc., notified the stockholders thereof by circular letter that the dissolution of said corporation and the distribution of its assets among its stockholders had been recommended by counsel and that the directors had voted to recommend such plan to the stockholders. By the said circular letter, and by a circular letter also addressed to the stockholders of said Arrow-Hart & Hegeman, Inc., dated December 1, 1928, a plan of so-called "reorganization", was propounded to the said stockholders who controlled, as in paragraph 1 hereof described, through Arrow-Hart & Hegeman, Inc., as a holding company, the stock of the two formerly competing concerns, to wit, The Hart & Hegeman Manufacturing Co.

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and The Arrow Electric Co. The method of reorganization thus recommended was adopted, carried into effect and consisted of the following steps:

(a) Between December 1 and December 7, 1928, two new Connecticut incorporations, The Arrow Manufacturing Co. and The H. & H. Electric Co. were organized, solely by action of said respondent.

(b) Immediately thereafter the common stock of The Arrow Electric Co. was transferred by Arrow-Hart & Hegeman, Inc., to The Arrow Manufacturing Co. and at the same time the common stock of The Hart & Hegeman Manufacturing Co. was transferred by respondent, Arrow-Hart & Hegeman, Inc., to The H. & H. Electric Co.

(c) Simultaneously with and as the consideration to respondent, Arrow-Hart & Hegeman, Inc., for the transfers last described. The Arrow Manufacturing Co. and The H. & H. Electric Co. in pursuance of a vote taken by the Arrow-Hart & Hegeman, Inc., issued to the stockholders of respondent, Arrow-Hart & Hegeman, Inc., and in the respective name of each such stockholder all of their shares of capital stock. To this end a transfer agent acting for the reorganizing interests, delivered to the said respective stockholders non-negotiable receipts, advising that the certificates of such stock would be held for their account, unless they insisted upon a present delivery thereof.

(d) Accordingly by virtue of such exchange each recipient stockholder of respondent, Arrow-Hart & Hegeman, Inc., became the owner of the same number of shares of The Arrow Manufacturing Co. as each owned in said respondent and of the same number of shares of The H. & H. Electric Co., as each owned in said respondent. But the new shares were not delivered to the said stockholders unless by specific instruction.

(e) On December 10, 1928, the stockholders of respondent, Arrow-Hart & Hegeman, Inc., voted to dissolve said respondent corporation, in conformity with a recommendation of the directors favoring dissolution which had been voted November 10, 1928.

(f) On December 31, 1928, at successive hours the stockholders of The Arrow Electric Co., the Hart & Hegeman Manufacturing Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. acted favorably upon a merger and consolidation agreement under the laws of the State of Connecticut. And on the same day, immediately effective, the secretary of state of Connecticut approved the merger and consolidation of the said four incorporations.

(g) The consolidated corporation is respondent, The Arrow-Hart & Hegeman Electric Co. with an authorized capital stock of \$7,083,300, of which \$3,750,000 is common stock and \$3,333,300 is preferred

stock. The capital stock with which this company commenced business was \$5,228,300, divided into 200,000 shares of common stock of \$10 par value each, and 32,283 shares of preferred stock of \$100 par value each. Preferred stockholders have no power to vote "except as provided by statute" unless in case of default in payment of dividends on preferred stock for six quarters.

(h) The following is the manner in which the shares of the common stock in each of the consolidating companies were "converted" into shares of the common stock with which the consolidated corporation commenced business:

100,000 shares thereof were issued in lieu of the entire capital stock of The Arrow Manufacturing Co., the latter being 200,000 shares of common stock, at the rate of one half of one share in the consolidated company in exchange for one share in The Arrow Manufacturing Co.

Another 100,000 shares thereof were issued in lieu of the entire capital stock of The H. & H. Electric Co., the latter being 200,000 shares of stock, at the rate of one half of one share in the consolidated company in exchange for one share in The H. & H. Electric Co.

No shares of the consolidated company were issued in lieu of the outstanding common stock, 30,000 shares of \$25 par value each in The Arrow Electric Co., since all of the common stock of the latter company was, on such consolidation, owned by The Arrow Manufacturing Co. Similarly, no shares of the consolidated company were issued in lieu of the common stock, 20,000 shares of \$25 par value each, in The Hart & Hegeman Manufacturing Co., since all the common stock in the last named company was then owned by The H. & H. Electric Co.

(i) The following was the manner of converting the shares of preferred stock, in such of the consolidating companies as had preferred stock outstanding, into shares of preferred stock with which the respondent consolidated company commenced business, to wit:

18,950 shares were issued, share for share in lieu of the entire then outstanding preferred stock in The Arrow Electric Co., the shares exchanged being identical in number and in par value.

The balance of 13,333 shares were issued in lieu of the entire then outstanding preferred stock, identical in number of shares and in par value, of The Hart & Hegeman Manufacturing Co.

(j) On April 11, 1929, the final certificate of dissolution of the respondent Arrow-Hart & Hegeman, Inc., was executed.

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PAR. 8. The stocks of the two aforesaid formerly competing corporations, The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co. acquired unlawfully as charged in the original complaint in this proceeding, were used by respondent throughout the aforesaid reorganization, as in paragraph 7 hereof alleged, to effect the merger and consolidation alleged in paragraph 7, subparagraphs (f) to (i) inclusive hereof described. By such merger and consolidation, unless this proceeding prevail, the said stocks were so used as finally to vest the physical properties, franchises, and share capital of both the said formerly competing corporations in respondent The Arrow-Hart & Hegeman Electric Co. and thereby to perpetuate the elimination of competition between the said formerly competing corporations, in the following manner:

(a) The transfer of the stock of The Arrow Electric Co. to The Arrow Manufacturing Co. and also the transfer of the stock of The Hart & Hegeman Manufacturing Co. to The H. & H. Electric Co. by respondent Arrow-Hart & Hegeman, Inc., were not preceded by the restoration of the independent and competitive character of the said two formerly competing corporations nor of the diverse interests which they had represented. The said transfers were accomplished solely by the direct use of the voting franchise of the stockholders of respondent Arrow-Hart & Hegeman, Inc., in the exercise of powers which resulted immediately from said respondent's acquisition of the stocks of the said two formerly competing companies contrary, as charged in the original complaint herein, to section 7 of the Clayton Act. In exercising their voting franchise to this end the stockholders of said respondent did not act as stockholders in either of the respective formerly competing corporations. They acted as stockholders in said respondent after all conflicting interests between the said originally competing corporations had been eliminated. The same voting body, to wit, the stockholders of respondent, Arrow-Hart & Hegeman, Inc., included the owners of both said formerly competing corporations and acted alike upon both transfers to the said new holding corporations, The Arrow Manufacturing Co. and The H. & H. Electric Co. Any moving consideration to act independently as regards the two formerly diverse and competing interests had been extinguished and was not restored prior to the said transfers.

(b) The consideration to the respondent Arrow-Hart & Hegeman, Inc., for the surrender by said respondent of the stocks in

the said formerly competing corporations was the promised transfer to said respondent of all the shares of the capital stock in the said newly formed holding companies, which shares were to be and actually were issued direct to said respondent's stockholders, in lieu of being issued to respondent, pursuant to a vote taken by the said respondent corporation. This consideration to the said respondent and its stockholders was made possible through the original unlawful acquisition of the share capital of the said originally competing corporations by the said respondent.

(c) When the aforesaid four corporations voted to consolidate, as in paragraph 7 (f) hereof described, the shareholders of respondent Arrow-Hart & Hegeman, Inc., as the direct result of the said unlawful acquisition of the share capital of the said formerly competing corporations, had control over the said formerly competing corporations through their ownership of the share capital of the said newly formed holding corporations. The four corporations when they voted to consolidate no longer comprised two respective, independent or distinct voting bodies, but their interests and ownerships had already consolidated and merged. Each stockholder of said respondent had an interest in the existence, franchises, property, and stocks of both the Arrow and the Hart & Hegeman interests. There was no stockholder in either so-called "Arrow" company who did not have the same interests in the corresponding "Hart & Hegeman" or "H. & H." corporation. No one of the said four corporations which voted to merge and consolidate voted under the same circumstances, with the same body of voters or prompted by the same consideration as would have existed if the alleged unlawful acquisition of the stocks of the said two originally competing corporations had not been made by respondent Arrow-Hart & Hegeman, Inc.

PAR. 9. The divestment by respondent Arrow-Hart & Hegeman, Inc., in favor of the two newly formed holding corporations, the Arrow Manufacturing Co. and the H. & H. Electric Co., was not such a divestment as to constitute a compliance with said section 7 of the Clayton Act. Competition was not restored. The said new holding corporations were created by said respondent and received the stocks of the said formerly competing corporations only on consideration of their transferring of their own share capital to the stockholders of the said respondent. A new and complete violation of said section 7 of the Clayton Act was brought about by respondent Arrow-Hart & Hegeman, Inc., by its acquisition, in the name of its

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stockholders direct of the stocks of the said two new holding corporations.

PAR. 10. The steps of reorganization described in paragraph 7 hereof were undertaken and were consummated, largely by the use of proxies, at the instance and through the leadership, aid, and instigation of respondent Arrow-Hart & Hegeman, Inc. These steps were but parts of a unified plan and, as set forth in paragraph 8 hereof, were all made possible by the original acquisition of the stocks of the formerly competing corporations, The Hart & Hegeman Manufacturing Co. and The Arrow Electric Co., by respondent Arrow-Hart & Hegeman, Inc. Against the said acquisition, the Federal Trade Commission, in order to restore competition between the said formerly competing corporations as required by the aforesaid section 7 of the Clayton Act, directed its original complaint in this proceeding, as in paragraph 6 hereof described. Said action was timely and prior to the securing of actual title and possession by either respondent corporation, to the physical property of said formerly competing corporations.

PAR. 11. The intent and purpose of respondent, Arrow-Hart & Hegeman, Inc., and its officers and stockholders in advocating, directing, and taking the steps described in paragraph 7 hereof, was to oust the Federal Trade Commission of its statutory powers and jurisdiction over the aforesaid acquisition of stock by said respondent, Arrow-Hart & Hegeman, Inc., and the same time to retain and to perpetuate the elimination of all competition, which had previously existed as in paragraph 3 hereof set forth, between the Arrow Electric Co. and The Hart & Hegeman Manufacturing Co. Said competition, respondent Arrow-Hart & Hegeman, Inc., through the steps described in paragraphs 1 and 4 to 7, inclusive, hereof has uniformly and constantly aimed to destroy. To this end the respondent corporations have employed certain statutory provisions made by the legislature of the State of Connecticut for the dissolution and for the merger and consolidation of its corporations, for purposes which were not within the contemplation of the legislature in enacting the said provisions and in such a manner and with such effect, unless this proceeding prevail, as to bring about an evasion of the commerce clause of the Federal Constitution, and a violation of section 7 of the said Clayton Act, enacted in order to carry into effect certain of the powers granted by the commerce clause. The course of action of respondent Arrow-Hart & Hegeman, Inc., and its aforesaid creature corporations and the formation by merger and consolidation of respondent, the Arrow-Hart & Hegeman Electric Co., as described in paragraph 7, are of no force and effect to accomplish a violation of the said section of the Clayton Act or to effect the

ousting of the Federal Trade Commission from its jurisdiction over the matters and things alleged in the original complaint or over those herein set forth.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act), the Federal Trade Commission issued and served its original complaint upon Arrow-Hart & Hegeman, Inc., and issued its supplemental complaint against the said Arrow-Hart & Hegeman, Inc., and The Arrow-Hart & Hegeman Electric Co., respondents herein, charging them with violating section 7 of said act.

The said respondent, Arrow-Hart & Hegeman, Inc., entered its appearance and filed its answer to the said original complaint and the said respondent, The Arrow-Hart & Hegeman Electric Co., entered its appearance and filed its answer to the said supplemental complaint, hearings were had before an examiner of the Commission theretofore duly appointed; testimony and evidence was offered and received in support of the charges of the said complaints, and testimony and evidence was offered and received in defense of the matters charged in the said complaints, all of which said testimony was reduced to writing and filed in the office of the Commission; and thereafter, the proceeding came on for final hearing on the record, briefs and oral arguments of counsel; and the Commission being fully advised in the premises, now makes this its report and states its findings as to the facts and its conclusion drawn therefrom, as follows:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Arrow-Hart & Hegeman, Inc., hereinafter referred to as the original respondent, was organized on or about October 6, 1927, under the laws of the State of Connecticut, with an authorized capital of \$2,000,000, consisting of 200,000 shares of common stock having a par value of \$10 per share, and with its principal business office in the city of Hartford and State of Connecticut.

On or about October 10, 1927, said original respondent acquired all of the outstanding common or voting stocks of the Hart & Hegeman Manufacturing Co., a Connecticut corporation, and of the Arrow Electric Co., also a Connecticut corporation, and continued to hold said common or voting stocks until on or about December 6, 1928, on or about which date said common or voting stocks were transferred to holding companies organized by said original respondent as hereinafter set forth in paragraph 5 hereof.

PAR. 2. The said Hart & Hegeman Manufacturing Co. was, at the time its common stock was acquired by the said original respondent, as set forth in paragraph 1 hereof, a corporation under the laws of the State of Connecticut, with its principal place of business located in the city of Hartford, in said State. Since its organization in 1891, the said Hart & Hegeman Manufacturing Co. had been engaged in the manufacture and sale of electrical wiring devices, including particularly electric snap switches and wall plates. In 1914 it began to sell as exclusive selling agent, the Paiste line of electrical wiring devices consisting of sockets, receptacles, and porcelain cut-outs attachment plugs and other similar devices, manufactured by H. T. Paiste Co., a Pennsylvania corporation located at Philadelphia, in said State. Between 1914 and 1927 the said Hart & Hegeman Manufacturing Co. acquired all the outstanding common stock of the said H. T. Paiste Co. and in October, 1927, operated the latter mentioned company as a subsidiary corporation in the manufacture of a part of its line of electrical wiring devices.

In 1926 the said Hart & Hegeman Manufacturing Co. acquired, and in October, 1927, owned all the capital stock of the Electric Porcelain & Manufacturing Co. of Trenton, N.J., which for a number of years prior thereto had been engaged in the manufacture of porcelain parts which it furnished to the said Hart & Hegeman Manufacturing Co. or its subsidiary, the said H. T. Paiste Co., for use as raw material in the manufacture of electrical wiring devices.

In October, 1927, the said Hart & Hegeman Manufacturing Co. was engaged in the sale and distribution of a full line of electrical wiring devices which it sold to electrical jobbers and other customers located in the various States of the United States, causing said products, when sold, to be transported from the State of manufacture to the purchasers thereof located in other States.

About the year 1909, one Shiras Morris acquired more than a majority of the common stock of the said Hart & Hegeman Manufacturing Co., because its president and treasurer, and continued as such until his death on February 2, 1927, when he was succeeded as president and treasurer by one Samuel P. Williams, who had been associated with the said Hart & Hegeman Manufacturing Co. since 1918, in various capacities, including sales manager, secretary, and assistant treasurer. At the time of the death of Shiras Morris, the outstanding capitalization of the said Hart & Hegeman Manufacturing Co. was \$200,000 in common stock and \$300,000 in preferred stock.

Although said Shiras Morris, during his lifetime had contemplated a merger between the said Hart & Hegeman Manufacturing

Co. and the said Arrow Electric Co., negotiations were not entered into until after his death, in June, 1927, discussions were had between the said Samuel P. Williams, representing the said Hart & Hegeman Manufacturing Co., and one Edward R. Grier, president of the said Arrow Electric Co., and on August 6, 1927, an agreement was entered into between the stockholders of the said Hart & Hegeman Manufacturing Co. and the stockholders of the said Arrow Electric Co. which provided for the readjustment of the capital structure of the two corporations involved as a preliminary step to the organization of the said original respondent. Pursuant to this agreement, the said Hart & Hegeman Manufacturing Co., prior to October 6, 1927, increased its outstanding common stock from \$200,000 to \$500,000, and the preferred stock was increased from \$300,000 to \$1,333,000, the par value of the common stock being \$25 per share and the preferred stock \$100 per share. The estimated value of the assets of the said Hart & Hegeman Manufacturing Co. on or about October 6, 1927, was \$3,500,000. The holders of the new preferred stock of the said Hart & Hegeman Manufacturing Co. had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were entitled to elect a majority of the board of directors. There is no evidence in the record that the said preferred dividends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said board of directors.

On October 10, 1927, the said original respondent acquired all of the outstanding common or voting stock of the Hart & Hegeman Manufacturing Co. (20,000 shares), by exchanging for the same 80,000 shares of the capital stock of the said original respondent.

PAR. 3. The said Arrow Electric Co. was organized under the laws of the State of Connecticut with its principal place of business located at Hartford, in said State, and at the time its common stock was acquired by the said original respondent, in October, 1927, as set forth in paragraph 1 herein, owned and operated a plant at Hartford where it manufactured a general line of electrical wiring devices, including sockets, receptacles, attachment plugs, heater plugs, switches, wall plates, rosette shade holders, and small accessories, and also owned all the common stock of the Washington Porcelain Co., a New Jersey corporation located at Washington, N.J., and engaged in the manufacture of porcelain parts for electrical wiring devices which it for a number of years had sold to the Arrow Electric Co. It sold said products to electrical jobbers and

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other customers located in the various States of the United States, causing said products, when sold, to be transported from the State of manufacture to the purchasers thereof located in other States.

At the time the original respondent acquired the common stock of the said Arrow Electric Co. in October, 1927, the latter mentioned company was capitalized at \$750,000 common stock, par value \$25 per share, and \$2,000,000 preferred stock at \$100 per share, the preferred stock having been issued during 1927. The holders of preferred stock had no voting power except in the event the preferred dividends were not paid for six successive quarters, in which event and so long as any default should continue, the holders of preferred shares issued and outstanding were entitled to elect a majority of the board of directors. There is no evidence in the record that the said preferred dividends were not paid or that the said preferred stockholders ever were entitled to elect a majority of the said board of directors.

Said original respondent, on October 10, 1927, acquired all of the outstanding common or voting stock of the said Arrow Electric Co. (30,000 shares), by exchanging 120,000 shares of the common stock of the said original respondent for the said 30,000 shares of common stock of the said Arrow Electric Co.

PAR. 4. At the time the said original respondent acquired the capital stocks of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., these said companies were in direct and substantial competition with each other in the manufacture, sale, and distribution in interstate commerce of a full line of electrical wiring devices usually described in the trade as "shelf goods", the same being wiring devices ordinarily stocked and distributed by electrical supply distributors or jobbers. Generally speaking, this material is of a standard type, packed in suitable units for resale, and described in catalogs under various schedule numbers. For instance, both companies listed in the catalogs which they distributed to the trade under schedule "B" all electrical sockets and socket bases and receptacles of all kinds which are threaded for the reception of a lamp. Under schedule "S" they both listed all the "quick" make-and-break switches. Under schedule "H" they listed all plates and miscellaneous flush receptacles, signal devices, warning lights, radio receptacles, shade holders, knife switches, and rosettes. Under schedule "P" they listed such standard items as convenient outlets, attachment plugs and caps, service bases, cord connectors, etc., and under schedule "Y" they listed miscellaneous devices not included in the other schedules.

During and prior to the year 1926 and that portion of 1927 prior to October, both the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. sold their said products to the same class of trade, that is, electrical and hardware jobbers and large users, such as manufacturing plants, throughout the United States and in foreign countries, both companies maintaining branches, sales offices, or commission men, located for convenience in making distribution, as follows: Boston, Mass., for the New England territory, including the New England States; New York City, N.Y., for the New York territory, including the States of New York, New Jersey, Pennsylvania, Delaware, and the northern part of West Virginia; Baltimore, Md., for the territory including Maryland, District of Columbia, Virginia, North Carolina, South Carolina, Georgia, and Florida; Chicago, Ill., including the territory from the Rocky and Sierra Nevada Mountains on the West, to the territory already described on the East; San Francisco, Calif., for the Pacific Coast territory, including the States of Washington, Oregon, and California. Both companies traveled salesmen from these branch offices who acted chiefly as "missionary men", calling upon the consumers or users of electrical wiring devices, seeking to interest them in the respective Arrow and Hart & Hegeman products. A comparison of the sales of the two companies for the year 1926 through the branch offices named, is set forth below:

Cities	Arrow Electric Co.	Hart & Hegeman Mfg. Co.
Boston.....	\$483,933	\$315,911
New York.....	1,107,680	1,010,373
Baltimore.....	240,517	144,163
Chicago.....	1,524,220	1,368,941
San Francisco.....	462,989	169,254

The approximate total of domestic sales for the year 1926, for the Arrow Electric Co., was \$3,825,000 and for the Hart & Hegeman Manufacturing Co., \$3,145,000. The approximate total sales of the two companies for that year, including export and miscellaneous business, were: Arrow Electric Co., \$4,000,000; Hart & Hegeman Manufacturing Co., \$4,150,000.

At the time the said original respondent acquired the capital stocks of the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co., at least 59 percent of the volume of the sales of the said Hart & Hegeman Manufacturing Co. consisted of electrical wiring devices generally known in the trade as "shelf goods" heretofore described, of similar quality which were sold in direct and active competition, with the entire output of the said Arrow Elec-

tric Co. to the same class of trade in the same territory at approximately the same prices and were used for the same purposes by the ultimate purchasers thereof; the remaining 41 percent of the sales of the said Hart & Hegeman Manufacturing Co. consisted principally of electrical switches and other devices manufactured to the order of customers for use in appliances requiring such devices, such as vacuum cleaners, radios, electric irons, etc., a market where the said Arrow Electric Co. did not actively compete with the said Hart & Hegeman Manufacturing Co. except on a limited number of items such as heater switches. Approximately 25 to 30 percent of the customers of the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co. at that time, and for a number of years prior thereto, were joint or common customers, sales of similar items bearing their respective trade marks being made to such customers by both companies.

PAR. 5. The Federal Trade Commission, on March 3, 1928, issued its original complaint in this proceeding against Arrow-Hart & Hegeman, Inc., hereinbefore described as the original respondent, charging said original respondent with violation of section 7 of the Clayton Act in the acquisition of the capital stock of the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. On September 7, 1928, said original respondent filed its answer to the charges of the Commission's complaint. On November 10, 1928, the directors of the original respondent voted to recommend to the stockholders that the said original respondent be dissolved and its assets, consisting of shares of common stock of the said Arrow Electric Co. and of the Hart & Hegeman Manufacturing Co., be distributed to its stockholders; and on the same day issued a notice to the stockholders of the original respondent, reading in part as follows:

The dissolution of Arrow-Hart & Hegeman, Inc., and the distribution of its assets among its stockholders have been recommended by counsel to meet the recent criticism of the Federal Trade Commission of the organization of our company and its control of the two companies, The Arrow Electric Co. and The Hart & Hegeman Manufacturing Co., through stock ownership.

The directors of Arrow-Hart & Hegeman, Inc., have, therefore, voted to recommend its dissolution and the distribution of its assets among its stockholders in kind. Enclosed is formal notice of meeting of stockholders to confirm such action. The entire assets of the corporation are shares of the common stock of the Arrow Electric Co. and of The Hart & Hegeman Manufacturing Company. It is expected that distribution will be made of these shares in kind so that each stockholder shall receive shares of the common stock of either one or both of said companies.

Enclosed we hand you proxy and consent which concerns the dissolution of Arrow-Hart & Hegeman, Inc., and the distribution of its assets among you as stockholders.

* * * * *

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As a three-fourths vote of the stock of this company is required to carry out this plan, please sign and return this consent and proxy to the Phoenix State Bank & Trust Co., Trust Department, Hartford, Conn., as soon as possible, for which a reply envelope is enclosed.

We believe that upon distribution of this company's assets the directors of The Arrow Electric Co. and of The Hart & Hegeman Manufacturing Co. will propose to the stockholders of each company an agreement of consolidation of these two companies. Further details will be sent you upon the conclusion of the liquidation of Arrow-Hart & Hegeman, Inc., for your approval.

Much progress has been made in efficiency and economy through the organization of your company and more, we are confident, can be accomplished by actual merger and consolidation of the two companies, viz: The Arrow Electric Co. and the Hart & Hegeman Manufacturing Co.

On or about November 30, 1928, the board of directors of the said original respondent were advised by counsel that a distribution of its assets to the stockholders of the said original respondent might involve them in a claim by the United States Treasury Department of a profit taxable to them, and, upon advice of counsel, the original plan of dissolution as voted on November 10, 1928, by the said board of directors was amended. On or about November 30, 1928, at a special meeting, the board of directors of the said original respondent recommended to the stockholders of the said original respondent a general plan under which the said original respondent would transfer all its shares of the common stock of the said Hart & Hegeman Manufacturing Co. to a new corporation, organized under the laws of the State of Connecticut, known as the H. & H. Electric Co., and said original respondent would transfer all its shares of the common stock of the said Arrow Electric Co. to a new corporation organized under the laws of the State of Connecticut, to be known as The Arrow Manufacturing Co., in exchange for the issue by each of these new companies of all their shares of common stock to the stockholders of the original respondent, with the further recommendation that after such steps had been taken the said original respondent would be dissolved and the four remaining corporations named would merge under the laws of the State of Connecticut.

On November 30, 1928, pursuant to said plan, the said original respondent caused said The H. & H. Electric Co. and The Arrow Manufacturing Co. to be organized under the laws of the State of Connecticut.

Notice was given to the stockholders of the said original respondent on December 1, 1928, containing the said recommendation of the said board of directors and calling for a special meeting of the stockholders of said original respondent for December 6, 1928. Said letter was as follows:

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ARROW-HART & HEGEMAN, INCORPORATED

Hartford, December 1, 1928

TO THE STOCKHOLDERS OF ARROW-HART & HEGEMAN, INCORPORATED:

OUTLINE OF PLAN OF REORGANIZATION

Supplementing our circular letter to you, dated November 10, 1928, we now outline to you more fully the steps in the plan of reorganization involving this company, The Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., indicating, subject to change, the various steps which shall be taken to consummate such plan of reorganization.

It is proposed that—

(a) By vote of its stockholders Arrow-Hart & Hegeman, Inc., will transfer to a new Arrow company all the shares of the common stock of The Arrow Electric Co. in exchange for all the shares of the new Arrow company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. Likewise, Arrow-Hart & Hegeman, Inc., will transfer to a new Hart & Hegeman company all the shares of the common stock of The Hart & Hegeman Manufacturing Co. in exchange for all the shares of the new Hart & Hegeman company which will be issued either to this company or directly to you as its stockholders in proportion to your present holdings of the stock of this company. When this stock of the new companies has been issued, the entire value of your present holdings will be represented by the new stock. There will, therefore, be no necessity for you to surrender the certificates of stock which you now hold in Arrow-Hart & Hegeman, Inc.

To authorize this first step in the plan of reorganization a special stockholders' meeting of Arrow-Hart & Hegeman, Inc., will be held on December 6, 1928, of which a formal notice is enclosed herewith, with a form of proxy running to the same six gentlemen who are your proxies for the meeting called for December 10th, which you will kindly execute and return promptly in the enclosed envelope.

(b) That when such exchange of shares in conformity to the plan or reorganization, made necessary to meet the criticism of the Federal Trade Commission, as indicated in our former letter and notice, has been consummated there will be no further reason for the continued corporate existence of Arrow-Hart & Hegeman, Incorporated, and therefore, at a meeting called for December 10, 1928, or at an adjournment thereof, it is anticipated that that corporation will be dissolved.

(c) That immediately thereafter a merger or consolidation of the four corporations then in existence, namely, The Arrow Electric Company, The Hart & Hegeman Manufacturing Company, the new Arrow company and the new Hart & Hegeman company, will be submitted to the stockholders for approval. It is hoped that if adopted this merger or consolidation will be effective at the close of business on December 31, 1928.

These separate steps, as a part of one plan of reorganization, in the opinion of counsel, are desirable not only to meet the criticism of the Federal Trade Commission but also to bring the reorganization unquestionably within the

provisions of the Revenue Act of 1928 in such a way that the exchange of shares will involve no tax to any stockholder. Your officers and counsel have conferred upon this point with Col. Robert H. Montgomery, of New York, the well-known authority on income-tax law and procedure, and it is his opinion that this plan of reorganization under the provisions of the revenue act involves no taxable gain to the stockholders.

As above stated, it is essential that we have your prompt cooperation to effect these corporate steps. A two-thirds vote of all the stock is necessary for the meeting called for December 6. A form of proxy is enclosed, which will authorize the gentlemen named therein to act for you in support of such a plan of reorganization above outlined and as the same may be modified with their approval. The proxy will also authorize those gentlemen to receive on your behalf the stock in the new Arrow company and in the new Hart & Hegeman company and to surrender that stock on your behalf in exchange for shares of the merged or consolidated corporation which it is expected will be organized before the close of the year. The proxy also gives them the right to execute any instruments and do any acts, sign any waivers, or take any other steps which may be necessary or advisable in their opinion to accomplish such reorganization in the best and most expeditious manner.

At a meeting of your directors, held November 30, 1928, it was voted to close the stock transfer books of this company from November 30, 1928, until after the adjournment of the meeting called for December 10, 1928.

Yours very truly,

EDWARD R. GRIER, *President.*

SAMUEL P. WILLIAMS, *Vice President.*

On December 6, 1928, at a special meeting, the stockholders of the said original respondent adopted the general plan described in the foregoing letter as recommended by the board of directors, and authorized the transfer of all the shares of stock held by it in the said Arrow Electric Co. to said The Arrow Manufacturing Co., and authorized the transfer of all of the shares of stock held by it in the said Hart & Hegeman Manufacturing Co. to said The H. & H. Electric Co., and also authorized the new corporation which should result from the proposed merger to take the name of "The Arrow-Hart & Hegeman Electric Co", or some similar name, said corporate action being taken as the result of a voting of proxies which had been signed by the stockholders of the said original respondent. Said The Arrow-Hart & Hegeman Electric Co. is hereinafter referred to as the new respondent.

On December 6, 1928, said original respondent, Arrow-Hart & Hegeman, Inc., transferred to the new holding company, said The Arrow Manufacturing Co., all the shares of the common stock of the said Arrow Electric Co., consisting of 30,000 shares of common stock, of the par value of \$25 per share, in exchange for all the shares of stock of said The Arrow Manufacturing Co., consisting of 200,000 shares of the par value of \$5 per share, and the said original respondent, on the same date, transferred to the new holding company, said

The H. & H. Electric Co., all the shares of the common stock of the said Hart & Hegeman Manufacturing Co., consisting of 20,000 shares of the par value of \$25 per share, in exchange for all the capital stock of said The H. & H. Electric Co., consisting of 200,000 shares of the par value of \$5 per share, and on the same date said The Arrow Manufacturing Co. and said The H. & H. Electric Co. issued all of their respective capital stocks to the stockholders of the said original respondent.

On December 10, 1928, at a special meeting, the stockholders of the said original respondent voted to confirm the action of the directors to terminate the corporate existence of the said original respondent, and, thereupon, a majority of the directors of the said original respondent signed a preliminary certificate of dissolution of the said original respondent, dated December 10, 1928, and filed said certificate in the office of the secretary of state of the State of Connecticut on said date, and caused notice of such dissolution to be advertised as required by law.

On April 11, 1929, a majority of the directors of the said original respondent executed and filed in the office of the secretary of state of the State of Connecticut, a certificate showing that they had completed their duties as trustees in liquidation, and said certificate was examined and approved by the said secretary of state on said date.

On December 31, 1928, the general plan approved by the stockholders of the said original respondent on December 6, 1928, was carried out, and at successive hours the stockholders of the two original operating companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., and the stockholders of the two new holding companies, The H. & H. Electric Co. and The Arrow Manufacturing Co., who were actually the stockholders of the original respondent, acted favorably upon the merger and consolidation agreement under the laws of the State of Connecticut, which had been approved by the stockholders of the said original respondent on December 6, 1928. On December 31, 1928, immediately effective, the secretary of state of the State of Connecticut approved the merger and consolidation of the four corporations and there came into being the said new respondent, The Arrow-Hart & Hegeman Electric Co.

The authorized capital stock of the said new respondent was \$5,228,300, divided into 200,000 shares common stock of the par value of \$10 each and 32,283 shares of preferred stock of the par value of \$100 each; and pursuant to the said consolidation agreement, said new respondent, on the date of its organization, issued 18,950 shares of its preferred stock in lieu of the preferred capital

stock of the said Arrow Electric Co. (18,950 shares); 13,333 shares of its preferred capital stock in lieu of the preferred capital stock of the said Hart & Hegeman Manufacturing Co. (13,333 shares); 100,000 shares of its common capital stock in lieu of the capital stock of said The Arrow Manufacturing Co. (the new company organized by the board of directors of said original respondent on November 30, 1928, to hold the capital stock of the Arrow Electric Co.), and 100,000 shares of its common capital stock of the H. & H. Electric Co. (the new company organized by the board of directors of said original respondent on November 30, 1928, to hold the capital stock of the said Hart & Hegeman Manufacturing Co.).

As the said consolidation agreement was actually carried out by the parties thereto, the common-stock holders of the original respondent never obtained possession of the shares of common stock of said The Arrow Manufacturing Co. and The H. & H. Electric Co., the two corporations organized by the board of directors of the original respondent to hold the stock of the said Arrow Electric Co. and Hart & Hegeman Manufacturing Co.; but the stockholders of the said original respondent were required to and did submit their certificates of common stock to the Phoenix State Bank & Trust Co., Hartford, Conn., transfer agent, which said certificates were stamped as follows:

THIS CERTIFIES

That the holder hereof has assented to the plan of reorganization adopted by the stockholders; and that under such plan Arrow-Hart & Hegeman, Inc., has distributed all its assets and voted to terminate its corporate existence, and there has been issued to the holder hereof a certificate for the same number of shares of The Arrow-Hart & Hegeman Electric Co., in full settlement of all his rights under such plan.

ARROW-HART & HEGEMAN, INC.
S. P. WILLIAMS, *Treasurer*.

and the holders of such certificates received certificates for a like number of shares in the new respondent.

As a result of the merger of the operating companies, said Arrow Electric Co. and Hart & Hegeman Manufacturing Co., and of the said two new holding companies, said The H. & H. Electric Co. and The Arrow Manufacturing Co., the new respondent became the owner of all the assets of the merging corporations, and particularly the assets of said The H. & H. Electric Co. and The Arrow Manufacturing Co., which consisted of the capital stock of the two said operating companies, the said Arrow Electric Co. and Hart & Hegeman Manufacturing Co.

On December 31, 1928, the holders of the common stock of the new respondent were identically the same as the holders of the

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common stock of the said original respondent on November 30, 1928.

On January 1, 1929, the first meeting of the board of directors of the new respondent, The Arrow-Hart & Hegeman Electric Co., was held. The said directors were the directors of the said original respondent before the merger, and were named in the said consolidation agreement as the directors of the new respondent upon its organization. The said meeting was called by Edward R. Grier and Samuel P. Williams, president and vice president, respectively, of the said original respondent. At this first meeting of the board of directors of the new respondent, Edward R. Grier and Samuel P. Williams were elected president and vice president, respectively, of the new respondent, and certain other business was transacted, including the declaration of a dividend paid out of the earnings of the said two operating companies, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., while subsidiaries of the said original respondent, and payable on or after January 15, 1929, to stockholders of the said new respondent when and as they converted their shares of stock of the consolidating corporations into common stock of the said new corporation and evidenced their consent to the plan under which said consolidation had been effected.

The first meeting of the stockholders of the said new respondent was held on January 28, 1929, it having been called by the newly chosen president, the said Edward R. Grier. At this meeting a set of bylaws was adopted and a financial report showing the condition of the new respondent as of January 1, 1929, was read and later submitted to the stockholders of the said new corporation. This report, which served as the basis for the future operations of the new respondent, contained a statement of the combined profit and loss and surplus accounts of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. for the year 1928, and disclosed a net income for the year of \$1,253,252.85, which was reduced as of January 1, 1929, by increase in outstanding common stock arising from recapitalization prior to the formation of the new respondent, to \$2,710,625.28.

The Federal Trade Commission, on June 29, 1929, issued its supplemental complaint including the new respondent as a joint respondent, and alleging that since the issuance of the original complaint the said original respondent had formed the said new respondent by the consolidation of the two formerly competing corporations with two holding companies which it had organized, and all of the stocks, franchises, property and assets of the former competing companies had been transferred to the said new respondent.

The said new respondent, in its answer to the Commission's supplemental complaint, filed October 14, 1928, denied the allegations in so far as they alleged that the original respondent organized the new respondent; affirmatively alleging in defense that the said original respondent was not in any way a party to the merger and consolidation resulting in the said new respondent.

PAR. 6. At a special meeting of the board of directors of the said original respondent held on January 5, 1928, Edward R. Grier and Samuel P. Williams, president and vice president, respectively, were authorized to vote all of the shares of stock of the two operating companies, namely, Hart & Hegeman Manufacturing Co. and Arrow Electric Co., respectively, for a period of five years. During the year 1928 there was an interchange of employees between the said two operating companies, and certain statistical production and engineering experts of one organization performed services for the other organization without additional compensation. Also, the Arrow Electric Co. purchased some of the assets of the H. T. Paiste Co. from the Hart & Hegeman Manufacturing Co. and took over the business of manufacturing porcelain parts for the said Hart & Hegeman Manufacturing Co., which said business was discontinued by the said H. T. Paiste Co. Also, the said Hart & Hegeman Manufacturing Co. manufactured plates for the said Arrow Electric Co., and the said Arrow Electric Co. manufactured certain screws and parts for the said Hart & Hegeman Manufacturing Co. The plant of the Electric Porcelain Manufacturing Co., which corporation was owned by the said Hart & Hegeman Manufacturing Co., was closed and its machinery and equipment were transferred to the Washington Porcelain Co., a subsidiary of the said Arrow Electric Co.

At the beginning of the year 1929 the said new respondent continued the business of the manufacture and sale of electrical wiring devices which had been theretofore conducted by the said operating companies, Hart & Hegeman Manufacturing Co. and Arrow Electric Co., operating the manufacturing plants of both companies as one unit, but maintaining separate sales divisions, through which it distributed its two recognized brands of electrical wiring devices, namely, "Arrow" and "H. & H."; thereafter the Arrow brand was sold under the "Arrow Electric Division" of the Arrow-Hart & Hegeman Electric Co., and the "H. & H." brand was sold under the "Hart & Hegeman Division" of The Arrow-Hart & Hegeman Electric Co.

The said Edward R. Grier, president of the said new respondent, was placed in full charge of all its operations, directing its various

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business policies, including the establishment of prices, terms, and discounts, etc. In the year 1930, under his direction and leadership, the following changes were made in the sales organizations of the said new respondent:

Harvey C. Pond, former sales manager of the Arrow Electric Co., became vice president and sales manager of the new respondent, still maintaining direct control over the sales of the Arrow Division, but assuming under his new position, control over the sales of the Hart & Hegeman Division, as well.

John R. Cooke, formerly in charge of the special appliance division of the Hart & Hegeman Manufacturing Co., was appointed general manager and vice president of the new respondent, in charge of special appliances, of both the Arrow and the Hart & Hegeman divisions.

J. W. Alexander, formerly Hart & Hegeman's district sales manager, Baltimore-Philadelphia territory, was placed in charge of the district sales of both divisions in that territory, with office at Philadelphia, certain changes having been made in the territory to be covered.

A. P. Deacon, former Arrow district manager in the Baltimore-Philadelphia territory, was made joint manager of both divisions in the Metropolitan New York area, with office in New York City.

G. S. Wentworth was made joint manager of both divisions in what was known as "Upper New York State" territory, with headquarters at Syracuse, N.Y.

A. C. Nelson, formerly Arrow district manager in the New England territory, was made joint manager of both divisions in that same territory, with office in Boston.

J. W. Saladine, former Hart & Hegeman manager in the New England territory, was transferred to the Hartford office of the new respondent and placed in charge of special promotional work of both divisions.

Paul Ramsey, former Arrow salesman at Atlanta, Ga., was made joint southern manager of both divisions over a new territory created in the South, with his district sales office in Atlanta.

R. E. Lubeck, former western manager of Hart & Hegeman Manufacturing Co., located in Chicago, was made joint manager of both divisions for a new territory with headquarters at Detroit, Mich.

R. L. Wildauer, former Arrow western manager at Chicago, was made joint manager of both divisions for a newly created western territory, with headquarters at Chicago.

During 1930 and 1931, the same salesmen, soliciting business in the State of Texas and the city of New Orleans, began to represent

both divisions. Also, in the States of New Hampshire, Vermont, and Maine, as well as the State of Connecticut, the same salesmen began to represent both divisions.

In the balance of the territory of the United States covered by the sales organizations of the new respondent, salesmen of both divisions continued to call upon the trade generally, as before, but offered no price inducement, service inducement or credit inducement to obtain business from each other, and were responsible in all instances to common district sales managers.

Separate catalogs have been published by the two sales divisions of the new respondent since January 1, 1929, but these catalogs carry practically the same printed matter, describing new items that are brought out by the new respondent under their respective trade marks, "Arrow" and "H. & H.", and some new items bear the combined trade mark, "Arrow-H. & H." While there is no competition between these two sales divisions of the new respondent, there still remains a form of rivalry in the promotion of sales.

PAR. 7. The sales of the Arrow Electric Co. during the time it was operated as a subsidiary of the said original respondent, were approximately as follows: 1927, \$3,849,000; 1928, \$3,537,000; and during the first year the Arrow business was conducted by the Arrow division of the new respondent, the sales were approximately \$3,584,000.

The sales of the Hart & Hegeman Manufacturing Co., during the time it was operated as a subsidiary of the original respondent, were approximately as follows: 1927, \$4,537,000; 1928, \$4,478,000; and during the first year the Hart & Hegeman Manufacturing Co. business was conducted by the Hart & Hegeman division of the new respondent, the sales were approximately \$4,599,000.

The total volume of sales of both the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. during 1927 was in excess of 25 percent of the total volume of sales of all manufacturers of electrical wiring devices of all descriptions during that year.

At the time the testimony was taken in this proceeding, the principal competitors of the new respondent were the General Electric Co., the Bryant division of the Westinghouse Electric Co., the Hubbell company, Pass & Seymour, Weber Electric, and Cutler & Hammer companies, all of which sell full line of electrical wiring devices similar to that sold by the said new respondent. In addition there are other competitors who sell limited or special lines. The total volume of sales of the said new respondent exceeds the volume of sales of parallel lines of electrical wiring devices of any one of its competitors and the said new respondent has assumed a dominant

position in the electrical wiring devices industry, it being the largest producer of electrical wiring devices in the United States.

PAR. 8. Since January 1, 1929, the said new respondent has combined a number of manufacturing departments, which has resulted in substantial saving in the cost of production of many of the electrical wiring devices manufactured and sold by the said new respondent. The manufacturing profit of the two operating companies, namely, the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., during 1927 was 31 percent, and in 1928 was 34 percent, and the manufacturing profit of the Arrow and the Hart & Hegeman divisions of the new respondent for the year 1929 was 35 percent. In addition, substantial economies in designing and manufacturing were realized by the new respondent as a result of the consolidation of the engineering departments of the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., and also there has been substantial development in the field of experimentation as a result of such consolidation. Price levels of electrical wiring devices have not increased since the year 1927, and on some items the prices have been reduced, with no corresponding reduction in quality.

The net profits realized by the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. for the years 1927 and 1928, were as follows:

Arrow—for 1927, \$500,000; 1928, \$600,000. Ratio to net sales for both years, 13 percent.

Hart & Hegeman for 1927, net profit, \$470,000. Ratio to net sales, 8 percent; 1928, net profit, \$639,000. Ratio to net sales, 14 percent.

In 1929, the Arrow Electric division of the new respondent made a net profit of \$585,000, which was 12 percent of the net sales, and the Hart & Hegeman division made a net profit of \$768,000, which was 16 percent of the net sales.

PAR. 9. The effect of the acquisition by the said original respondent of the common stocks of the Arrow Electric Co. and the Hart & Hegeman Manufacturing Co., on or about October 10, 1927, has been, is and may be:

(a) To substantially lessen competition between the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. in the sale and distribution of electrical wiring devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. were engaged in business;

(c) To tend to create a monopoly in the electrical wiring devices industry.

PAR. 10. The divestment by the said original respondent of the common stocks of the said Arrow Electric Co. and Hart & Hegeman

Manufacturing Co. to the holding companies organized by said original respondent in December, 1928, as set forth herein, was not such a divestment as to constitute a compliance with the said Clayton Act.

PAR. 11. The course of action of the said original respondent in organizing the said new respondent, as described in paragraph 5 hereof, was not taken to restore the competition which had previously existed between the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., but was in part to avoid a claim for income tax by the United States Treasury Department, and in part an artifice and subterfuge designed in an attempt to evade the provisions of sections 7 and 11 of the said Clayton Act and to perpetuate the elimination of all competition which had existed prior to October 10, 1927, between the said Hart & Hegeman Manufacturing Co. and the said Arrow Electric Co.

PAR. 12. The effect of the organization of the said new respondent and the acquisition by it, through merger, of the common or voting stocks of the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co., and of the assets of said two last named corporations, on December 31, 1928, as hereinbefore described in paragraph 5, has been, is and may be:

(a) To substantially lessen competition between the said Arrow Electric Co. and the Hart & Hegeman Manufacturing Co. in the sale and distribution of electrical wiring devices in interstate commerce;

(b) To restrain interstate commerce in electrical wiring devices in those sections and communities where the said Arrow Electric Co. and the said Hart & Hegeman Manufacturing Co. were engaged in business;

(c) To tend to create a monopoly in the said new respondent in the electrical wiring devices industry.

CONCLUSION

The acquisition by the said original respondent, Arrow-Hart & Hegeman, Inc., of all the outstanding common or voting stocks of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co., and the continued ownership and/or control, and the voting of said stocks by the said original respondent, which culminated in the organization of the said new respondent, The Arrow-Hart & Hegeman Electric Co., and the acquisition by the said new respondent, through merger, of the common or voting stocks of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co. and of the assets of the two last named corporations, under the conditions and circumstances described in the foregoing findings, constitute a violation of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act).

Order

16 F. T. C.

ORDER TO DIVEST

This proceeding having been heard by the Federal Trade Commission upon the complaint and supplemental complaint of the Commission, the answers of respondents, the testimony, briefs and oral argument, and the Commission having made its findings as to the facts and its conclusion that said respondents have violated the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes" (the Clayton Act):

Now, therefore, it is ordered, That the said respondent, The Arrow-Hart & Hegeman Electric Co., forthwith cease and desist from violation of the provisions of section 7 of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", and within 90 days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of all common stock of the Hart & Hegeman Manufacturing Co. acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Co. and Arrow Electric Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. on or about December 31, 1928, so as to include in such divestment the said Hart & Hegeman Manufacturing Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern and so as neither directly nor indirectly to retain any of the fruits of the acquisition of common stock of the said Hart & Hegeman Manufacturing Co.; or within 90 days from the date of the service upon it of a copy of this order divest itself absolutely, in good faith, of all the common stock of the said Arrow Electric Co. acquired by it as a result of the merger of the said Hart & Hegeman Manufacturing Co., Arrow Electric Co., The Arrow Manufacturing Co., and The H. & H. Electric Co. on or about December 31, 1928, so as to include in such divestment the said Arrow Electric Co.'s manufacturing plants and all other property necessary to the conduct and operation thereof as a complete going concern, and so as neither directly nor indirectly, to retain any of the fruits of the acquisition of the common stock of the said Arrow Electric Co.

It is hereby further ordered, That the said new respondent, The Arrow-Hart & Hegeman Electric Co., shall within 90 days from the date of service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Hart & Hegeman's Manufacturing plants and equipment and all other property necessary to

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Dissent

the conduct and operation thereof as a complete going concern; or within 90 days from the date of the service upon it of a copy of this order, divest itself absolutely, in good faith, of the said Arrow Electric Co.'s manufacturing plants and equipment and all other property necessary to the conduct and operation thereof as a complete going concern.

And it is further ordered, That such divestment of the common stock or assets of the said Arrow Electric Co. or Hart & Hegeman Manufacturing Co., as the case may be, shall not be made directly nor indirectly to the said The Arrow-Hart & Hegeman Electric Co. or to any stockholder, officer, director, employee or agent of, or anyone otherwise directly or indirectly connected with or under the control of the said The Arrow-Hart & Hegeman Electric Co.

And it is hereby further ordered, That the respondent The Arrow-Hart & Hegeman Electric Co., within four months from the day of the date of the 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 conformed to this order.

Commissioner Humphrey dissenting in memorandum attached.

Dissent of Chairman Humphrey

There is no injury to the public shown in the alleged transfer of stock in this case. There is no evidence to show any injury, except the mere blotting out of whatever competition there existed between the two corporations.

It seems the majority of the Commission has consistently held in all these section 7 cases, that the mere acquisition of stock of one corporation by a competing corporation is in itself a violation of the statute, regardless of the effect of such acquisition on the public.

Paragraph II of the order directs that the respondent divest itself absolutely of all the common stock it acquired as a result of the merger, so as to include in such divestment manufacturing plants and all other property necessary to conduct and operate a complete, going concern.

Did the respondent acquire stock "by merger?" If so, what was the value of such stock? What does it now represent? If the respondent divests itself of such stock, what is the effect of such divestment?

It appears so plain that none will dispute it, that even granted that the respondent did acquire stock by this merger, it is utterly valueless, and to compel the respondent to divest itself of such stock would be an idle gesture.

I do not think that the Commission ought to spend its time and money in so futile a performance.

The third paragraph of the order directs the respondent absolutely to transfer assets, without in any way directing the transfer of the stock. I do not believe that the courts will ever hold that the Commission has the power to make an order of the character stated either in the first or second paragraph.

The section 7 cases have always been regarded by the Commission as especially reprehensible. The acquisition of stock has been the one unpardonable sin.

From the beginning, the Commission has had employees assigned the duty of reading the papers to see if there were any violations of section 7 of the Clayton Act. No such method has been followed in regard to any other class of cases. These employees immediately report any item that appears in the press involving stock acquisition. Then, on the merest *ex parte* showing, without any preliminary hearing as in other cases, complaint is issued and served upon the respondent. The supposed justification for such action was that the respondent might acquire the assets and oust our jurisdiction. Even if true, it did not in any way relieve the respondent from being prosecuted by the Department of Justice if the law had been violated. The anxiety of the Commission to exercise its jurisdiction in these cases, in view of its "successes" is hard to understand.

The record shows that we have had about 800 preliminary inquiries and investigations of section 7 cases. Complaints have been issued in 59 cases. 41 of these cases were afterwards dismissed by the Commission. Order of divestiture was issued in 9 cases. One of these was sustained by the circuit court, but it is the almost universal opinion of the bar of the country that if this case could have been reviewed by the Supreme Court of the United States it would have been reversed. One order was sustained in part by the Supreme Court. All the others have been reversed by the Supreme Court. This is the sum of what has been accomplished in over fifteen years of vigorous prosecution under section 7 of the Clayton Act. Has the result justified the action of the Commission?

It seems to me, in view of this record of accomplishment, that the Commission is not justified any longer in expending large sums of money in trying these cases—and, in refusing to follow the decision of the Supreme Court in the *International Shoe Co.* case, when, speaking of the Clayton Act, they said:

the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree * * * that is to say, to such a degree as will injuriously affect the public,

Complaint

IN THE MATTER OF

LIMOGES CHINA COMPANY

COMPLAINT (SYNOPSIS), FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 1912. Complaint, Feb. 5, 1931—Decision, July 7, 1932

Where chinaware made at Limoges, France, had long been imported into the United States and increasingly sold therein, and had come to acquire a favorable reputation in the United States as china of beauty, quality, and utility made at Limoges, and to be in great popular demand and the leading china in the markets of the United States, and was sold in the United States with the word "Limoges" prominently displayed thereon, and was generally so known to and described by the trade and public; and thereafter a domestic corporation engaged in the manufacture of earthenware and pottery and sale thereof to wholesalers, department stores, and other retailers, adopted the word "Limoges" as part of its corporate name and featured said word in its advertising and in brands employed by it, with words, if any, suggestive of domestic manufacture or origin either blurred or illegible or in such small and inconspicuous letters as to fail to give effective notice of said fact;

With capacity and tendency to mislead public into believing aforesaid ware to be that produced at Limoges and imported therefrom and to divert trade from competitors dealing in fact in genuine Limoges china, and competitors dealing in comparable domestic products, without claiming falsely foreign origin therefor, and with effect of placing in the hands of retailers the means of similarly deceiving their customers and purchasers as to the origin of its aforesaid Limoges marked products:

Held, That such acts and practices, under the circumstances set forth, were all to the prejudice of the public and competitors and constituted unfair methods of competition.

Mr. James M. Brinson for the Commission.

Byrnes, Stebbens, Parmelee & Blenko, of Pittsburgh, Pa., *Metzger, McCarthy & McCorkhill*, of Salem, Ohio, and *Barnum, Hammond, Stephens & Hoyt*, of Youngstown, Ohio, for respondent.

SYNOPSIS OF COMPLAINT

Reciting its action in the public interest, pursuant to the provisions of the Federal Trade Commission Act, the Commission charged respondent, an Ohio corporation, engaged in the manufacture of earthenware and pottery, and in the sale thereof to wholesale and retail dealers and department stores, and with principal office and place of business at Sebring, Ohio, with using misleading trade or corporate name, advertising falsely or misleadingly and mis-