

IN THE MATTER OF
VANADIUM-ALLOYS STEEL COMPANY

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

Docket 1694. Complaint, Sept. 19, 1929—Decision, Feb. 3, 1934

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—WHAT CONSTITUTES SUBSTANTIAL—CRITERIA—QUANTITATIVE, QUALITATIVE, PRICE, AND FUNCTIONAL.

In a proceeding by the Federal Trade Commission, challenging the acquisition by a corporation of stock in another corporation, as a violation of said section, prohibiting such acquisitions in the case of corporations engaged in interstate commerce "where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce", a showing that, (1) at least 22.5 percent of the acquiring company's sales of "comparable and competitive" brands of tool steels, and nearly 54 percent of the acquired company's sales of similar products were competitive in certain fields, (2) both companies' tool steels were characterized by marked similarity as to type, determining elements, and price, and, (3) that, founding competition on two of said products' practically equal desirability for at least one use, percentages of 82.5 and 77.7 were respectively reached, *held* to disclose substantial competition in tool steel production between the two companies, in full accord with the analyses of competitive products made in *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, and to give a true concept to the term "competition."

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—POTENTIAL AND FUTURE—"COMPARABLE" AND/OR "COMPETITIVE" BRANDS.

Section 7 looks to the lessening of future competition as well as to the suppression of such competition as there may have been in the past, and where substantial proportions of the two companies' sales were concerned with "comparable" and/or "competitive" tool steels, sold in common markets and to common customers, there was no question that such companies were and might be in substantial competition with one another as to said products, since "though there may be at the moment no willingness on the part of customers to take one brand instead of another because of a multitude of differences, such as minor variations in quality, prior business relations involving more than the one product, and even the inertia that so often finds high capitalization under the term 'good-will', products that at the beginning may only be 'comparable' quickly become 'competitive' as salesmen become active, markets limited, and manufacturers mould quality and price to meet variant desires."

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—UNIFICATION OF SALES AND PRODUCTION POLICIES—SUBSTANTIAL LESSENING OF COMPETITION—INCREASE IN YEAR'S RESPECTIVE CORPORATE SALES.

Where a company, in substantial competition with a second concern in the manufacture and sale of tool steel, following its acquisition of all the outstanding capital stock of the other and as a result thereof, closed, or combined, certain warehouses of the acquired company, with its own, arranged for certain common directors, sales officers and managers, and empowered the salesmen of the two companies, who displayed the names of both concerns on their cards, to take orders for either company's products, the substantial lessening of competition resulting from such unification of sales and production policies and that might result, was not denied either as to the fact or likelihood thereof by the increase in the sales of each concern for the following year.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—RESTRAINT OF COMMERCE CONCERNED "IN ANY SECTION OR COMMUNITY" OR TENDENCY "TO CREATE A MONOPOLY IN ANY LINE OF COMMERCE."

In a proceeding under Section 7 challenging the acquisition by a corporation engaged in interstate commerce, of the stock of another corporation similarly engaged, "where the effect of such acquisition may be to substantially lessen competition" between the two, or "to restrain such commerce in any section or community, or tend to create a monopoly in any line of commerce", a showing that the combined business of the two concerns, following the acquisition and merger, increased from percentages of 6.88 and 4.52, respectively, of the bulk of the business in tool steel done by the country's 15 manufacturers of significance therein, to 12.5 percent, did not disclose so substantial a resulting increase in the acquiring company's production in its relation to the whole, as to enable it "to restrain" "in any section or community" the line of commerce in which the two companies had been engaged, or "tend to create a monopoly" therein.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"WHERE EFFECT OF SUCH ACQUISITION MAY BE TO SUBSTANTIALLY LESSEN COMPETITION" BETWEEN CORPORATIONS CONCERNED—REDUCTION OF SMALL NUMBER OF LEADING MANUFACTURERS.

Even though resultant increases in production of two companies, between which there was substantial competition prior to challenged stock acquisition, did not so substantially increase the acquiring company's production in its relation to the whole as to enable it to restrain in any section or community the line of commerce in which the two companies were engaged, or tend to create a monopoly in such line, in which the preponderant part of the business was done by 15 manufacturers, nevertheless the lessening of such competition between the two, following said acquisition and steps taken by the acquiring company towards unification of sales and production policies, was to that extent substantial, and involved a matter of concern to the consuming public in the competition eliminated, since "the reduction in the number of leading manufacturers in a product, especially where the number of such manufacturers is comparatively small, may have consequences the import of which is so subtle that it is only fully determinable after the passage of such time as will allow for the new industrial unit to occupy its place in the changed industrial competitive structure thus created."

Complaint

18 F.T.C.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—PRE-REQUISITES TO SUSTAIN ORDER—SUBSTANTIAL LESSENING OF COMPETITION—PUBLIC INJURY AND SHERMAN LAW TEST AS PROPER LIMITATIONS.

In a proceeding by the Commission challenging the acquisition by a corporation engaged in interstate commerce of the stock of another corporation similarly engaged, as in violation of Section 7 prohibiting such transactions "where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce", and in which it develops that the effect thereof "may be to substantially lessen competition", between the two, but not "to restrain commerce" or "tend to create a monopoly" as aforesaid, the facts nevertheless demand an order requiring the offending corporation to divest itself of the stock so acquired, since the political and legislative history of the section, and the language and judicial interpretation thereof, and its preventive and supplementary purpose as thus disclosed, unite in rejecting the view that the lessening of competition referred to must be such as to prejudice the public interest through actual threat of monopoly or restraint.

CLAYTON ACT, SECTION 7—CORPORATE STOCK ACQUISITION IN COMPETITOR—"COMPETITION"—SALE OF "COMPARABLE AND COMPETITIVE" PRODUCTS—UNIFICATION OF SALES AND POLICIES—REDUCTION OF SMALL NUMBER OF LEADING MANUFACTURERS.

Where a corporation engaged in the sale of tool steel, in which the large preponderance of the business was done by 15 manufacturers, (1) acquired the outstanding capital stock of a second corporation, similarly engaged, with whom it had theretofore been in competition as to at least 22.5 percent of its sales of "comparable and competitive" products, and nearly 54 percent of the latter's sales, and, on the basis of at least one common use for two of their products, as to very much larger proportions, (2) put into effect various steps directed to unification of sales and production policies through common directors, officers, joint sales, warehouse facilities and other steps, following such acquisition and merger, and (3) increased its proportion of the business done by the aforesaid manufacturers, from 6.88 percent and 4.52 percent for the respective separate concerns, to 12.5 percent for the merged businesses, *held*, that such acquisition had the effect that the substantial competition theretofore existing between the two companies was, and might be, substantially lessened, and constituted a violation of Section 7, requiring an order to compel said corporation to divest itself of the stock thus unlawfully acquired.

Mr. Everett F. Haycraft for the Commission.

Mathews & Trimble, of Washington, D. C., for respondent.

COMPLAINT

The Federal Trade Commission charges that respondent Vanadium-Alloys Steel Co., hereinafter called respondent, has violated and is violating 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 states its charges in that respect as follows:

PARAGRAPH 1. Respondent Vanadium-Alloys Steel Co. is a corporation organized June 2, 1910, under the laws of the State of Pennsylvania and has its principal office in the city of Latrobe in said State. Respondent owns and operates steel works located at Latrobe, Pa., in which works it manufactures alloy and other forms of steels. Respondent is now and for many years last past has been engaged in the manufacture of alloy and other forms of steels at its said steel works and in selling said products and causing same when sold to be transported from the place of manufacture above described to purchasers thereof located throughout States other than the State where such products are manufactured, and in so doing respondent is and has been engaged in interstate commerce within the purview of said act of Congress (the Clayton Act) in competition with other persons, firms, and corporations. Among such competitors was the Colonial Steel Co. until October 30, 1928, or thereabouts as hereinafter set out.

PAR. 2. The Colonial Steel Co. is a corporation organized June 3, 1901, under the laws of the State of Pennsylvania and has its principal office in the city of Pittsburgh in said State. The Colonial Steel Co. owns and operates steel works located in Beaver County, Pa., in which works it manufactures alloy and other forms of steels. The Colonial Steel Co. is now and for many years last past has been engaged in the manufacture of alloy and other forms of steels at its said steel works and in selling said products and causing same when sold to be transported from the place of manufacture above described to purchasers thereof located throughout States other than the State where such products are manufactured.

PAR. 3. On or about October 30, 1928, respondent Vanadium-Alloys Steel Co. acquired and now owns the entire authorized and outstanding common (voting) capital stock of the Colonial Steel Co., which then consisted of 32,000 shares of common stock of the par value of \$100 each. At and prior to the time of the acquisition by respondent Vanadium-Alloys Steel Co. of the stock or share capital in Colonial Steel Co., each corporation was separately engaged in the manufacture and sale of alloy and other forms of steels in interstate commerce within the purview of said act of Congress in competition with each other and with other persons, firms, and corporations.

PAR. 4. The acquisition by the respondent Vanadium-Alloys Steel Co. of the stock or share capital of the Colonial Steel Co., as hereinbefore set out, was contrary to law and in violation of Section 7 of said act of Congress (the Clayton Act). The effect of such acquisition of said stock or share capital has been and is:

(a) To substantially lessen competition between the Colonial Steel Co., the corporation whose stock was so acquired, and the respondent Vanadium-Alloys Steel Co., the corporation making the acquisition.

(b) To restrain commerce in the sale of alloy and other forms of steels in certain sections or communities of the United States, namely, in those sections or communities among the several States in which respondent Vanadium-Alloys Steel Co. and Colonial Steel Co. were respectively engaged in commerce at the time of such acquisition.

(c) To tend to create a monopoly in respondent Vanadium-Alloys Steel Co. in alloy and other forms of steels.

FINDINGS AND OPINION OF THE COMMISSION

The issues raised by this proceeding for violation of Section 7 of the Clayton Act require an examination of the competitive character of the business of the respondent, Vanadium-Alloys Steel Co., and the Colonial Steel Co. The respondent, a corporation organized under the laws of Pennsylvania in 1910, has since that time been engaged in the manufacture and sale of tools and other high grade steels. It sells its products throughout the United States, concededly in interstate commerce. About October 30, 1928, the respondent acquired all the outstanding stock of the Colonial Steel Co., by increasing its 120,000 no par value shares of common stock to 210,000 and exchanging these 90,000 additional shares for the outstanding 32,500 shares of the Colonial company. This stock acquisition is being challenged by the Federal Trade Commission, by means of a complaint filed on September 19, 1929, as a violation of Section 7 of the Clayton Act.

The Colonial company is also a Pennsylvania corporation, organized in 1901, and engaged in the manufacture of various types of steel, including tool steel. It sells its products in interstate commerce throughout the United States.

Hearings in this case have been held before an examiner of the Commission in Pittsburgh, Chicago, Detroit, Cleveland, Boston, and New York. A voluminous record resulted. The relevant facts it sets forth can, however, be fairly briefly summarized.

The alleged field of competition between the two companies is limited to tool steel. This type of steel, made from carbon or from alloys, is a high grade type of steel designed for use primarily in the manufacture of tools. Much evidence in the record concerns itself with the types of tool steel, the methods of their manufacture, and the equipment of the two companies to produce tool steels of different types, but these details need no elaboration in order to focus for decision the issues presented by this proceeding.

Prior to the acquisition of the Colonial company's stock, the Vanadium company's production was practically confined to tool steels, and its principal output consisted of extra fine and high speed steels, though it also manufactured and sold nondeforming, special alloy and straight carbon tool steels.¹ The Colonial company, on the other hand, manufactured other steels besides tool steels, its output being divided between tool steels and other steels.²

Difficulties are presented by the effort to determine with mathematical accuracy the extent to which the two companies were in competition with reference to the sale of tool steels. One of these arises from the fact that certain consumers of tool steels buy only from manufacturers who are also equipped to furnish tonnage steels, and the Vanadium company, not having this equipment, could not effectively compute for such customers. Another springs from the fact—not, however, peculiar to this industry alone—that customers become wedded to a tool steel of their choice and refuse to use or even experiment with a competitive brand of the same quality.

The greatest difficulty, however, arises from the variety of tool steels and the particular qualities assumed to be attributable to each individual brand of such steel. The record abounds with descriptions of "comparable and competitive" brands of tool steels produced by the two companies rather than purely "competitive" brands.³ A table showing the production of such "comparable and competitive" brands of tool steel by the two companies for the year ending June 30, 1928,⁴ follows [at top of next page]:

The distinction between "comparable" brands and "competitive" brands has evoked considerable dispute. Counsel for the Commission contends, in substance, that these brands are in competition in the sense in which that term is used in Section 7 of the Clayton Act.

¹ The distinguishing characteristics of these types of tool steel are set forth in the record, but elaboration in that respect is not necessary for the purposes of this proceeding.

² The following figures illustrate the nature of the Colonial company's production in this respect:

Output for year ending June 30, 1928

Tool steels.....	\$1, 283, 336. 96
Other steels.....	838, 668. 42

³ The tabular comparisons of "comparable and competitive" brands, found in the record, and in accordance with which the tabular comparison in the opinion has been devised, were prepared upon a basis similar to a classification devised by the American Society for Steel Treathers. Vanadium-Alloys Steel Co. also distributed a book to the trade (Comm. Exhibit 57), entitled "Comparative Brands of Tool Steel", which regarded the above brands as "comparative".

⁴ The chemical symbols in parentheses following the trade name indicate the determining elements. The letters preceding the trade name show: C—Plain Carbon; S—Special Alloy; H—High Speed; N—Non-Deforming. The classifications are according to the Handbook of the American Society for Steel Treathers. In a tabulation, prepared by Edwin F. Cone in the Iron Age for June 16, 1932, the determining elements of the following Vanadium brands are given differently than by the American Society for Steel Treathers Handbook: Marvel (W); Crocar (Cr); Par-Exc (W, Cr); Non-Shrinkable (Mn).

Findings and Opinion

18 F.T.C.

Vanadium brands	List price per pound	Total value	Colonial brands	List price per pound	Total value
H Red Cut Superior (W, Cr, V)-----	\$0.70	\$1,171,808.98	H Beaver High Speed (W, Cr, V)-----	\$0.65	\$301,802.91
H Red Cut Cobalt (W, Cr, V)-----	1.00	79,367.91	H CoCo (Cr)-----	1.00	32,052.42
S Marvel (W, Cr, V)-----	.60	83,372.69	S Hot Header No. 3 (W)-----	.65	28,321.70
S Crocar (C, Cr)-----	.65	80,179.45	S O-Hi-O Die (Cr)-----	.60	20,625.96
S Choice (Cr)-----	.25	177,800.25	S Header Die, Nos. 35 and 36 (Cr, V)-----	.25	14,164.26
S Vanadium (Cr, V)-----	.30	33,585.70	S Tungo (W)-----	.25	3,093.14
S Par-Exo (W, Cr, V)-----	.30	137,776.66	N No. 6 (Mn)-----	.30	146,310.85
N Non-Shrinkable (Mn, Cr, V)-----	.25	3,585.62	R. S. Tungsten-----	.30	9,182.14
S Valutap (W, Cr, V)-----	.22	2,197.81	S No. 7 (V)-----	.27	287,231.69
S Colhad (V)-----	.16	63,851.34	C Red Star-----	.15	203,285.99
S Special-----		71,666.22	Total-----		1,046,051.06
C Latrobe-----			Other brands of tool steel-----		237,285.99
Total-----		1,905,190.63	Total-----		1,283,336.96
Other brands of tool steel-----		43,990.97			
Total-----		1,954,181.60			

In behalf of that contention, they rely not so much upon evidence as to trade significance attached to the concept of "comparability", as upon the fact that these brands come into actual competition in the market. Thus they introduced evidence that salesmen of both companies solicited the same class of trade and even the same customers, that warehouses were maintained in comparable consuming regions, and that these comparable brands were used by customers for the same purposes.

Respondent contends, on the other hand, that so-called comparability is in itself no evidence of true competition between the brands. Comparability, it says,⁵ refers primarily to steels having the same composition or like physical properties. To be competitive the brands must be usable for the same purposes, possess a like quality and sell at about the same price.

Taking for the moment respondent's contentions, nevertheless competition between certain of Vanadium's brands and Colonial's brands is established beyond peradventure of doubt. James P. Gill, metallurgist for the Vanadium company, conceded that Vanadium's Choice and Colonial's Header Die No. 35 were "both comparable and competitive." In the above tabulation, the value of the sales of these two brands is not separately stated nor is there any evidence in the record from which it can be accurately deduced. But as to several other brands the same witness conceded that the products of the two companies were partially competitive, or competitive in certain fields. These partially competitive Vanadium and Colonial brands were: Marvel and Hot Header No. 3, Crocar and O-Hi-O Die, Non-

⁵This distinction is based upon that adopted by James P. Gill, metallurgist of the Vanadium company, and that urged in respondent's brief.

Shrinkable and No. 6, Valutap and R. S. Tungsten, Special and No. 7, Latrobe and Red Star. Taking the sales of these steels for the year ending June 30, 1928, it will be found, as indicated in the above tabulation, that over 22.5 percent of Vanadium's sales and nearly 54 percent of Colonial's tool steel sales were competitive in certain fields. Furthermore, despite Gill's testimony to the contrary, evidence in the record indicates that Vanadium's Red Cut Superior and Colonial's Beaver High Speed were of practically equal desirability for at least one use.⁶ If this should be deemed to make them "competitive", about 82.5 percent of Vanadium's sales and about 77.7 percent of Colonial's tool steel sales were of competitive products.⁷ Nor can we close our eyes to the fact that similarity with reference to (1) type of tool steel, (2) determining elements, and (3) price, characterizes all these brands of tool steel, as will be seen from the tabulation above. Thus taking a viewpoint of competition, fully in accord with the analyses of competitive products made in *International Shoe Company v. Federal Trade Commission*, 280 U.S. 291, we find that there was substantial competition in tool steel production between the Vanadium company and the Colonial company.

These percentage values give a true concept to the term "competition". Though there may be at the moment no willingness on the part of customers to take one brand instead of another because of a multitude of difference, such as minor variations in quality, prior business relations involving more than the one product, and even the inertia that so often finds high capitalization under the term "good-will", products that at the beginning may only be "comparable" quickly become "competitive" as salesmen become active, markets limited, and manufacturers mould quality and price to meet variant desires. Section 7 of the Clayton Act in terms looks to the lessening of future competition as well as to the suppression of such competition as there may have been in the past. Thus, so far as tool steel production is concerned, the record leaves no room for doubt that Vanadium and Colonial were and might be in substantial competition with each other.

The respondent did not dissolve the Colonial company as a corporation but continued it in existence as a separate corporation with separate offices, board of directors, sales organization, and in the

⁶ Testimony in the record, later alluded to, establishes that since the merger, salesmen of both companies urged customers in instances to take Vanadium's Red Cut Superior in place of Colonial's Beaver High Speed.

⁷ In the calculation of these percentages, the sales of Vanadium's Choice and Colonial's Header Die No. 35 are omitted, since separate figures for them do not appear. Choice together with Vanadium represented about 9 percent of Vanadium's sales and Header Die No. 35 together with Header Die No. 36 accounted for approximately 1.1 percent of Colonial's tool steel sales.

main separate employees. Three directors of the Colonial company were also made directors of the Vanadium company. Some changes were made in the warehouse facilities maintained by the Colonial company prior to the acquisition of its stock by the respondent. The Colonial warehouse at Boston was closed and the warehouse facilities for the New England territory were combined in the Vanadium-Alloys company's warehouse at Springfield, Massachusetts; and the Colonial warehouse at Philadelphia, New York, and Los Angeles were closed and other arrangements made to take care of the business at those points. Some of these changes were made for the purpose of effecting economies, other were brought about by the business depression which gradually grew worse from the beginning of 1930.

Unification to some extent of the sales policies of the two companies has been effected. The vice president of the Vanadium company in charge of sales now occupies a similar position in the Colonial company. The sales forces of the two companies at Detroit and Cleveland have been put in charge of joint sales managers. Salesmen of both companies carry the names of both companies on their cards and can take orders for the other company's products. In some instances customers have been asked to take Vanadium's Red Cut Superior high speed steel in place of Colonial's Beaver high speed. True, the sales of each company were larger for the year ending June 30, 1929—the year after the merger—than they had been for the preceding year, but this denies neither the fact of the lessening of competition nor the likelihood of such lessening occurring in the future. Thus we find that the stock acquisition resulted in a unification of sales and production policies that might result and has to some degree already resulted in a substantial lessening of competition between the two companies concerned.

There are approximately 24 domestic manufacturers of tool steel in the United States, and 7 foreign manufacturers of tool steel sell their products in this country. Of the 24 domestic manufacturers, 15 of these are the significant factors in this industry and manufacture, according to informed opinion, about 90 percent of the domestic tool steel in this country. These fifteen are:

Bethlehem Steel Company.	Halcomb Steel Company.
Braeburn Alloys Steel Corp.	Jessop Steel Company.
Carpenter Steel Company.	Latrobe Electric Steel Co.
Cyclops Steel Company.	Ludlum Steel Company.
Colonial Steel Company.	Midvale Company.
Columbia Tool Steel Company.	Vanadium-Alloys Steel Company.
Crucible Steel Company of America.	Vulcan Crucible Steel Company.
Firth-Sterling Steel Company.	

Figures as to their combined production of tool steel are not set forth as such in these findings. These figures are calculated in a

fashion which is by no means complete and which cannot be regarded as free from errors due to the lack of adequate reporting by the companies involved. They are, nevertheless, employed as a basis for the following percentage compilations inasmuch as the possibility of such errors in the basic figures plays no part in the final conclusions of the Commission based upon them. Interpreted in terms of a percentage of the total output of these 15 manufacturers, the output of the Vanadium and the Colonial companies for the year ending June 30, 1928, was:

Brands	Vanadium	Colonial
	<i>Percent</i>	<i>Percent</i>
High speed.....	12.19	3.29
Straight carbon.....	1.71	5.45
Nondeforming.....	5.34	5.68
Special alloys.....	4.91	4.96
Total.....	6.88	4.52

Interpreted in similar percentage terms for 1929, the combined output of the two companies shows the following percentages:

	<i>Percent</i>
High speed.....	17.62
Straight carbon.....	8.55
Non-deforming.....	10.12
Special alloy.....	8.44
Total.....	12.50

The resultant increases in the production of the two companies as a result of the stock acquisition did not, in the judgment of the Commission, so substantially increase the respondent's production in its relation to the whole so as to enable it to restrain in any section or community the line of commerce in which the two companies were engaged, and did not tend to create a monopoly in the line of commerce in which the two corporations were engaged.⁸ Nevertheless,

⁸ This finding makes it unnecessary to consider respondent's contention that the question of monopoly should not be judged merely upon the basis of the ratio of the combined output of the two companies of tool steel to total tool steel production but upon the basis of the ratio of the combined output of the two companies of carbon, alloy and electric furnace steel to the total production of such steels in the United States, inasmuch as these steels by proper treatment could be placed in direct competition with the steels produced by Vanadium and Colonial. The percentage of the output of Vanadium and Colonial, separately as well as combined, to such total steel production is given in the following table:

Kind	Colonial	Vanadium	Combined
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Carbon steel.....	0.013	0.0039	0.017
Alloy steel.....	.22	.066	.29
Electric furnace steel.....	.84	.25	1.1

there having been substantial competition between the two companies, the lessening of this competition was *pari passu* substantial and one whose elimination was a matter of concern to the consuming public. The reduction in the number of leading manufacturers in a product, especially where the number of such manufacturers is comparatively small, may have consequences the import of which is so subtle that it is only fully determinable after the passage of such time as will allow for the new industrial unit to occupy its place in the changed industrial competitive structure thus created.

These findings leave only for the basis of an order by the Commission its conclusion of fact that the acquisition of the stock of the Colonial company by the Vanadium company might and did substantially lessen competition between the Vanadium and the Colonial companies. Respondent contends that such a finding is insufficient in law upon which to base an order under Section 7 of the Clayton Act. It contends that the lessening of competition must also be found to be of such an extent that the interest of the public is prejudiced, in the sense that monopoly or restraint is actually threatened. In other words, respondent contends that the test of the violation of Section 7 of the Clayton Act is similar to that applicable under the Sherman Act, in that the Commission must not only find a substantial lessening of competition but also that the effect of the merger was to tend toward a monopoly or to restrain commerce in the products which were prior thereto sold in competition by the two corporations.⁹

Section 7 of the Clayton Act forbids the acquisition by one corporation of the stock of another corporation where the effect of such acquisition "may be (1) to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or (2) to restrain such commerce in any section or community, or (3) tend to create a monopoly of any line

⁹Had law that consistency that the lay mind attributes to it, it should be sufficient answer to the respondent's contention to quote the following expression of the Supreme Court, bottomed upon an earlier statement by it to the same effect, in *Standard Fashion Co. v. Magrane Houston Co.*, 258 U.S. 346, 355-356, (1922) :

"The Clayton Act, as its title and the history of its enactment disclose, was intended to supplement the purpose and effect of other antitrust legislation, principally the Sherman Act of 1890 . . .

"As the Sherman Act was usually administered, when a case was made out, it resulted in a decree dissolving the combination, sometimes with unsatisfactory results so far as the purpose to maintain free competition was concerned.

"The Clayton Act sought to reach the agreements embraced within its sphere in their incipency, and in the section under consideration to determine their legality by specific tests of its own which declared illegal contracts of sale made upon the agreement or understanding that the purchaser shall not deal in the goods of a competitor or competitors of the seller which may 'substantially lessen competition or tend to create a monopoly '."

of commerce." The parenthetical numerals have been inserted in order to make plain the evident parsing of these clauses, for grammatical interpretation, as high authority still avows,¹⁰ has its uses in statutory interpretation. The legislative history of this section¹¹ leaves no doubt as to its purport. Its origin is traceable beyond the initiation of the legislation itself—to the program of a great political party.¹² Upon the accession of that party to power, this program was made concrete by legislation. The records of the House¹³ and the debates the section evoked, however, demonstrate that an evil sought to be curbed by the section was that of corporate holding of corporate stocks to effect a merger that would lessen competition that might otherwise be substantial.¹⁴ Avowedly the purpose was to go beyond the criteria of the Sherman Law;¹⁵ the

¹⁰ Especially is this deemed to be so of the Clayton Act. Thus the court said of this act in *Standard Fashion Co. v. Magrane Houston Co.*, 258 U.S. 346, 355 (1922): "Much is said in the briefs concerning the reports of committees concerned with the enactment of this legislation, but the words of the act are plain and their meaning is apparent without the necessity of resorting to the extraneous statements and often unsatisfactory aid of such reports."

¹¹ The Supreme Court has again and again adverted to legislative history as a guide to the interpretation of ambiguous language. *St. Louis S.W. Ry. v. United States*, 262 U.S. 70, 76 (1923); *United States v. St. Paul M. & M. Ry.*, 247 U.S. 310 (1918); *Penn Mut. L. Ins. Co. v. Lederer*, 252 U.S. 523; *United States v. Pfisch*, 256 U.S. 547 (1921).

A fortiori it is permissible to support the plain and grammatical meaning of a statute.

¹² The National Platform of the Democratic Party adopted at the Baltimore Convention in 1912 said: "We regret that the Sherman Antitrust Law has received a judicial construction depriving it of much of its efficiency, and we favor the enactment of legislation which will restore to the statute the strength of which it has been deprived by such interpretations."

¹³ Section 7 as introduced into the House (then being Section 8) read as follows: "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition is to eliminate or substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to create a monopoly of any line of trade in any section or community." No changes were made in this provision in the House.

¹⁴ Compare, for example, the following from the minority report on this section which makes clear that monopoly or restraint of trade were not the sole tests applicable to the unlawful acquisition of stock:

"The only possible excuse and justification for legislation against holding companies lies in the fact that the holding company intended to be reached by the law creates a monopoly, or attempts to do so, or restrains interstate trade.

"This proposed law, however, would make the acquisition of stock by one corporation in another in the same line of business, and although the two corporations taken together would form in their united business an infinitesimal fragment of the business of the locality in that particular line, a crime punishable by fine and imprisonment."

¹⁵ Compare the following from Mr. Carlin's speech in the House:

"We have supplemented the language of the statute and taken a forward step. We have gone forward, not backward. The Sherman law in its operation is limited to three things: First, a contract or combination in the form of a trust or otherwise; second, a conspiracy in restraint of trade; third, an attempt to monopolize. There is nothing about competition in the Sherman law. There must be actual restraint of trade under the Sherman law to bring anyone under either its civil or criminal process.

"Under this bill there has to be only a lessening of competition. Competition may be lessened without restraint of trade. Competition may be lessened without attempt to monopolize. Competition may be lessened without conspiracy. It may be the natural

real fear was that the language chosen might relax the requirements of that act.¹⁶ In the Senate these objections were made even more apparent. Fear of restrictive judicial interpretation of the section was pronounced.¹⁷ In order that the proof that the acquisition of such stock resulted in the lessening of competition between the two corporations might not be too difficult,¹⁸ and that potential as well as actual lessening of competition would satisfy the requirements of the statute,¹⁹ the Senate by one amendment substituted the words "may be" for "is",²⁰ and by another eliminated the qualifying term "substantially."²¹ The restoration²² of this qualification in conference was not deemed to cut down upon the force of the rule²³ that "will save the little man, and yet it will reach the people who

effect of the putting together in close relationship through a holding company of two corporations that are natural competitors, or ought to be. Yet there would not be restraint. So, instead of subtracting from the Sherman law, as the gentleman has told the country, we have added to the Sherman law a most effective rule, by which the actions of these combinations in the future may be determined; but still, with due regard to the gentlemen who have come to love the Sherman law, we have left it intact, and have said by an express provision of our bill that nothing in our bill shall be construed to alter, amend, or repeal the Sherman law. It is as effective now as it has ever been." (51 Cong. Rec. 9270-71.)

¹⁶ Thus Mr. Nelson objected to the narrowing provision of the section which required the lessening of competition to be actual rather than merely potential—an objection which was cured by the Senate amendment substituting "may be" for "is"; "Moreover, this section makes the test of a holding company's illegality not whether it has potential power to lessen competition, in substance held to be the law in the Northern Securities case, but instead it introduces a new element, and a dangerous one, whether the holding company actually uses that power with the effect of substantially lessening competition. Upon this test the Northern Securities case would probably have gone against the Government, and it will hereafter be exceedingly difficult to prove that a holding company is illegal." 51 Cong. Rec. 9169. Mr. Volstead and Mr. Green expressed the same views. *Id.* 9078, 9201, 9596.

¹⁷ See e.g. Poindexter in 51 Cong. Rec. 14314.

¹⁸ See e.g. Cummins in 51 Cong. Rec. 4255.

¹⁹ Senator Reed, in proposing the amendment which struck out the word "is" and substituted the words "may be", made the following statement: "My reason for offering the amendment is this: The law, as I understand it, is that a combination is illegal where the effect may be as well as where it is. I understand that the chairman of the committee is prepared to accept the amendment." 51 Cong. Rec. 14404. Upon the chairman of the committee stating that he had no objection to the amendment, it was immediately agreed to without objection. *Ibid.*

²⁰ See note 19 *supra*.

²¹ 51 Cong. Rec. 14465, 14473.

²² The section as passed by the Senate, showing the Senate amendments eliminating matter by striking the same through and showing additional matter in italics, read as follows: "That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce where the effect of such acquisition may be to lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or tend to create a monopoly of any line of commerce."

²³ Such objections as were voiced to the restoration of "substantially" were based upon the fear that it would permit the Supreme Court to interpolate into this section qualifications akin to those that had been interpolated by that Court into the language of the Sherman Act. See e.g. Reed in 51 Cong. Rec. 15856-7; Norris in 51 Cong. Rec. 16047.

are trying to break up their competitors.”²⁴ At no time in the course of these legislative proceedings was there any thought that more than a substantial lessening of competition was needed to be proven in order to warrant the issuance of an order compelling a corporation to divest itself of the stock of another corporation, nor was there any suggestion that “substantial” competition was that type of competition whose lessening or elimination would tend to monopoly or result in restraint of commerce in the products involved.

The plain language of Section 7 in this respect found, in the beginning, courts ready to give it effect. In *Aluminum Co. of America v. Federal Trade Commission*, 284 Fed. 401 (3d. Circ., 1922),²⁵ Judge Woolley, speaking for the court, said:

But the lessening of competition is not the only effect of the acquisition of stock of another which Congress sought to avoid. It intended as well to prevent a transaction “where the effect” may “tend to create a monopoly.”

* * * This is for the reason that the lessening of competition and a tendency

²⁴ The Conference committee's action on the section is thus explained by Senator Chilton of the committee:

“The Senate, however, Mr. President, adopted as its criterion the following, ‘where the effect may be to lessen competition.’ In other words, the Senate struck out ‘eliminate’ and ‘substantially.’ My judgment is that there is very little difference between the two. To lessen is to substantially lessen. Competition is everywhere. A pleasant word, prompt and quick service are both methods of competition. If a competitor takes one customer away, it is lessening, and possibly ‘substantially’ lessening competition; because when one customer shall be secured by one of the competitors to that extent there may be no competition. But when House section 8, which is Senate section 6, came to conference the House conferees insisted that the words ‘eliminate’ or ‘substantially lessen competition’ should be the standard. The Senate conferees insisted that the language of the Senate should be adopted, to wit, ‘where the effect may be to lessen competition.’ As always happens with men of ordinary sense, with men who want to carry out as best they can the instructions of their superiors, the conferees had to find some common ground upon which their minds could meet, and the result was a compromise, which is Section 7 in the bill reported by the conferees. That compromise was the adoption of the words ‘may be’ instead of the word ‘is’, so that instead of reading ‘where the effect is’ the bill now reads, ‘where the effect may be’; that is, where it is possible for the effect to be, which was a decided victory for the Senate. We struck out ‘eliminate,’ which was another victory for the Senate. We left in the word ‘substantially’, which was a victory for the House; but the House conferees insisted that that would change the section and would not accomplish the purpose intended by it; that a corporation might acquire the stock of another corporation, and there would be no lessening of competition, but the tendency might be to create monopoly or to restrain trade or commerce, and therefore there was added to the definition the following: ‘Or to restrain such commerce in any section or community or tend to create a monopoly of any line of commerce.’

“Now, Mr. President, does anyone want to have any better law than that? There is a clear-cut rule fixed that will save the little man, and yet it will reach the people who are trying to break up their competitors. In other words, as regards holding companies, the bill as reported makes the holding of stock in another company unlawful ‘where the effect may be to substantially lessen competition or to restrain commerce or tend to create a monopoly.’ In my judgment, the language of the conferees is much better than the language adopted by either House; the definition is clearer, and gets at the evil intended to be corrected; and, to be perfectly candid with the Senate, I like it because it saves the small business man, who does not want to restrain trade and would not, if he could, create a monopoly.”

²⁵ Certiorari was denied in this case in 261 U.S. 616.

to monopoly are not always synonymous. There may be a lessening of competition between two corporations in a stock transaction that does not tend to monopoly (p. 407).

Three years later in *Swift & Co. v. Federal Trade Commission*, 8 F. (2d) 595 (7th Circ., 1925),²⁰ Judge Evans, speaking for the court, thus disposed of the contention of petitioner that more than a substantial lessening of competition had to be proved in order to support the Commission's order:

These findings (that the effect of the stock acquisition was to substantially lessen competition between the corporation whose stock was acquired and the corporation making the acquisition) would necessarily dispose of the application were it not for petitioner's insistent urge that the statute does not mean what it says, and that the court should read into it "the rule of reason" and insert additional requirements, viz, that the competition between the two companies prior to consolidation was substantial, and the effect of the acquisition was injurious to the public . . .

The statute does not prohibit all acquisitive contracts. It is only when such acquisition produces "the effect" described that the statute condemns. It is worthy of note that such effect may be either to (a) substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition; (b) restrain such commerce in any section or community; or (c) tend to create a monopoly of any line of commerce. (a) Can not be construed without considering (b) and (c). If the court were to read into (a) the elements which petitioner has asked us to insert, what would become of the requirements of (b) and (c)? . . .

We are still dealing with words of general meaning and make no progress. Must Congress act only when the child has grown to the stature of a giant? If authority exists to curb—or to dissolve—a corporation when it has reached the trust stage, may Congress not take steps to arrest the corporation's growth before the final stage has been reached? . . .

Judge Alschuler, concurring, gave voice to the same thought:

. . . Be that as it may, this can not suspend or avoid the very broad and sweeping statute which denounces acquisition by one corporation of the stock of another, or of the stock of two or more other corporations, where this may substantially lessen competition between them, or restrain commerce in any section or community, or tend to create monopoly in any line of commerce. If an exception to the operation of the statute ought and is to be raised in cases where the concern whose stock is acquired is comparatively small, or weak, or for any reason unlikely long to endure, it must come through statutory enactment, and not by judicial construction.

Counsel for the corporations in these cases continued, however, to press the courts upon appeal from the Commission for the encrustation of the "rule of reason" upon the test laid down in Section 7 of the Clayton Act. In *International Shoe Co. v. Federal Trade Commission*, 29 F. (2d) 518 (1st Circ. 1928), the Circuit

²⁰ This case was reversed, four Justices dissenting, upon another ground in 272 U.S. 554 (1926).

Court of Appeals for the First Circuit, adding its voice to that of the third and seventh circuits, rejected such a contention, returning once more to the plain language of Section 7:

Finally, petitioner argues that no such case of monopoly or damage to the public interest is made out as would ground a case under the Sherman Act. A sufficient answer is that the case is not brought under the Sherman Act, but under the Clayton Act, and "the Sherman Act and the Clayton Act provide different tests of liability." *United Shoe Machinery Co. v. United States*, supra.

The International Shoe case was, however, carried to the Supreme Court and, since it is upon the basis of remarks contained in the opinion of the Supreme Court in that case upon which the contention is now made that something more than a substantial lessening of competition must be proved in order to support an order under Section 7, the opinion must be examined with care. The Supreme Court first overturned the finding of the Commission, which had been concurred in by the First Circuit Court of Appeals, that substantial competition had existed between the International Shoe Co. and the W. H. McElwain Co. Examining with meticulous refinement the character of goods sold by the two companies and the markets in which they had thitherto sold their goods, the Court concluded that competition between them existed only with reference to 5 percent of the McElwain company's product. "It is hard to see in this", said the court, "competition of such substance as to fall within the serious purposes of the Clayton Act." *International Shoe Co. v. Federal Trade Commission*, 280 U.S. 291, 299 (1930). This, in itself, was sufficient to dispose of that part of the Commission's order based upon the ground that the stock acquisition resulted in the substantial lessening of competition between the two companies. Nothing in this phase of the case, save for what is mentioned below, can be regarded as advancing the respondent's contention.

The Commission's order under Section 7 can, however, have different foundations than that of substantially lessening competition between the two corporations concerned. It can be based, according to the plain language of Section 7, upon the ground that it restrains interstate commerce in any section or community, or tends to create a monopoly of any line of commerce. True, the substantial lessening of competition is alone sufficient and a finding to that effect will support the order. The First Circuit Court of Appeals, concurring in a finding to that effect by the Commission, had no need to examine additional grounds which might be adduced to support the order. But the Supreme Court of the United States, failing to concur in that

finding, had appropriately to consider other grounds which might be adduced to support the order.²⁷ This it proceeded to do in the second phase of the International Shoe case. Its conclusions in this respect may best be summarized in the language of the court itself:

In the light of the case thus disclosed of a corporation with resources so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure with resulting loss to its stockholders and injury to the communities where its plants were operated, we hold that the purchase of its capital stock by a competitor (there being no other prospective purchaser), not with a purpose to lessen competition, but to facilitate the accumulated business of the purchaser and with the effect of mitigating seriously injurious consequences otherwise probable, is not in contemplation of law prejudicial to the public and does not substantially lessen competition or restrain commerce within the intent of the Clayton Act (pp. 302-303).

Standing by itself this language might be considered as advancing the respondent's contention, but viewed in the light of the whole record and the issues that the Court was called upon to decide, it fails to be relevant in a case where substantial lessening of competition is established. The same may be said of respondent's contention based upon a quotation from the Court's opinion in the first phase of the International Shoe case:

Mere acquisition by one corporation of the stock of a competitor, even though it result in some lessening of competition, is not forbidden; the act deals only with such acquisitions as probably will result in lessening competition to a substantial degree, *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346, 357; *that is to say, to such a degree as will injuriously affect the public*. Obviously, such acquisition will not produce the forbidden result if there be no pre-existing competition to be affected; *for the public interest is not concerned in the lessening of competition, which to begin with, is itself without real substance* (p. 298).

The italicized parenthetical expressions, says respondent, reinforce its contention. But such meaning as may be implicit in these expressions is to be gathered from the four corners of the entire case, especially in view of the fact that the Court, a few sentences later,

²⁷ Paragraph 23 of the findings of fact by the Commission in the International Shoe case read as follows:

"The effect of the acquisition by International Shoe Company of the stock or share capital of W. H. McElwain Company was:

"(a) To substantially lessen competition in commerce between International Shoe Company and W. H. McElwain Company in the sale of dress shoes for men.

"(b) To restrain commerce in the shoe business and especially in that part of such business relating to the sale of dress shoes for men in various sections or communities of the United States in which International Shoe Company and W. H. McElwain Company were engaged in commerce.

"(c) To restrain commerce in the shoe business sections or communities of the United States including Columbus, Ohio; Kansas City, Mo.; and San Francisco, Calif., and in other sections or communities adjacent thereto."

The legal conclusion of the Commission was a general one to the effect that the findings proved a violation of Section 7 of the Clayton Act. See 9 F.T.C. 453-4, 462 (1925).

expressly states that "the existence of competition is a fact disclosed by observation rather than by the processes of logic". . . . To give parenthetical expressions of this type the force of law in the way which respondent urges upon us, would be to attach to observations not essential to the decision of the issue before the Court and themselves capable of varying interpretations, a content contrary to the plain language of Section 7 of the Clayton Act. To do so, moreover, would be to assume that the Court was qualifying the language of the section in a way that is not justified by a knowledge of the legislative travail out of which it was born, and contrary to the express tenets of a comprehensive political program. Judicial power does not extend that far.

Prior to 1930, the lower courts unanimously refused to read into that section any such qualification. It is true that since the *International Shoe* decision, expressions capable of being interpreted to contain an import equivalent to respondent's contention are to be found in the decisions of certain lower courts. Thus Judge Manton, speaking for the Second Circuit Court of Appeals, in *V. Vivaudou v. Federal Trade Commission*, 54 F. (2d) 273 (2d Circ., 1931,) stated:

The question presented on this appeal is whether the competition between these companies has been substantially lessened by reason of the stock acquisition and ownership referred to, and whether the public has been injuriously affected . . . Unless there be a monopoly or tendency toward monopoly, we would not be warranted in concluding that the public had an interest as referred to in the statute.

The first statement only paraphrases the quotation above referred to in the *International Shoe* case. With reference to the second sentence, it is sufficient to observe that Section 7 of the Clayton Act, which is the sole source of this jurisdiction of the Commission, reads in the disjunctive and not the conjunctive and does not possess any such "public interest" clause as is intimated. What has happened is that there has been an unconscious transposition of the "public interest" qualification of Section 5 of the Federal Trade Commission Act to Section 7 of the Clayton Act.²⁸

Temple Anthracite Coal Co. v. Federal Trade Commission, 51 F. (2d) 656 (3rd Circ., 1931) lends no support to the respondent's contention. In that case the Commission's ultimate finding of fact was overturned by the court. The Commission had concluded that the Temple Coal Co. and the East Bear Ridge Colliery Co. were in sub-

²⁸ In *Arrow-Hart & Hegeman Electric Co. v. Federal Trade Commission*, 65 F. (2d) 336 (2d Circ., 1933), where the Commission's order was affirmed, the same judge, however, relying on the *International Shoe* case, gives a content to the term "public interest" wholly in accord with the basic objectives of Section 7, for there it is stated that "if there is real substance in the competition, the public interest is affected" (p. 340). This case is now on certiorari before the Supreme Court.

stantial competition with each other. But the evidence showed only that Thorne, Neale & Co., Inc., who sold the coal of the Temple Coal Co., and Madeira, Hill & Co., who sold the coal of the East Bear Ridge Co., were in substantial competition. The evidence showed also, according to the court, no substantial lessening of competition between Thorne, Neale & Co., Inc., and Madeira, Hill & Co. The conclusions of the court are aptly set forth in the following excerpt from its opinion, and support in no way²⁹ the respondent's contention in this proceeding:

We cannot conclude, because of the ownership in one corporation of the stock of two corporations whose output is sold under contracts with competing wholesalers as distributors, who are found to be in active competition, that these contracts will or are likely to be annulled or terminated. We must take the facts as they exist, and, finding as we do that Thorne, Neale & Co., Inc., and Madeira, Hill & Co. are in active competition, we assume that the interests of the public will be preserved so long as that competition continues.

The Commission found in paragraph 10 of its finding of fact as follows: "The effect of the acquisition by respondent Temple Anthracite Coal Company of the said capital stocks of said Temple Coal Company and of said East Bear Ridge Colliery Company, and the use of such stocks by the voting or granting of proxies, or otherwise, has been and is to substantially lessen competition in interstate commerce between said Temple Coal Company and said East Bear Ridge Colliery Company".

With no evidence in the case to support the finding of fact that the effect of the acquisition of the stock "has been and is to substantially lessen competition", our conclusion is that the actual active competition which is shown by the evidence, without contradiction, to have existed and to continue to exist between Thorne, Neal & Co., Inc., and Madeira, Hill & Co., negatives, so long as it may exist, the very effect which the Commission has found to be caused by the acquisition by the Temple Anthracite Coal Company of the capital stocks of the mining companies.

The finding of the Commission thus being that there was substantial competition between the Vanadium and the Colonial companies, and that that competition was and also might be substantially lessened by the acquisition of the stock of the Colonial company by the Vanadium company, and the Commission being of the opinion that such acquisition was consequently in violation of Section 7 of the Clayton Act, an order must issue compelling the Vanadium company to divest itself of the stock of the Colonial company thus unlawfully acquired.

²⁹ Incidental language can conceivably be interpreted to support the respondent's contention, but such expressions form no part of the *ratio decidendi* of the case. Judge Woolley, dissenting, remarked upon such occasional language that might be susceptible of the construction contended for in the following fashion:

"In arriving at the conclusion that the evidence sustains the order of the Commission I have kept in view the fact, at different times lost sight of in this case, that we are not concerned with the lessening of competition between these two companies and other companies in the industry, but are concerned with the lessening of competition between the two companies themselves."

ORDER TO CEASE AND DESIST AND TO DIVERT CAPITAL STOCK

This proceeding having been heard by the Federal Trade Commission on the complaint of the Commission, the answer of the respondent, the testimony and evidence, briefs and arguments of counsel, and the Commission having made a report in writing in which it stated its findings as to the facts, with its conclusion that the respondent Vanadium-Alloys Steel Co. has violated 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",

Now, therefore, it is hereby ordered, That the respondent, Vanadium-Alloys Steel Co., forthwith cease and desist from 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 within six months from the day of the date of the service upon it of this order, divest itself in good faith of all of the capital stock of the Colonial Steel Co. owned by it and of all its interest in the capital stock of the said Colonial Steel Co., such divestment of such stock and of interest in such stock to carry with it all of the business, property and assets of all kinds whatsoever of said Colonial Steel Co., and to be so made that said Vanadium-Alloys Steel Co. shall not retain, directly or indirectly, any of the fruits of its acquisition of said capital stock of said Colonial Steel Co.

And it is hereby further ordered, That such divestment of the capital stock and of interest in the capital stock of said Colonial Steel Co., shall not be made directly or indirectly to any stockholder, officer, director, employee, or agent of, or to any one otherwise directly or indirectly connected with or under the control of, the respondent Vanadium-Alloys Steel Co., or to any corporation affiliated with, or subsidiary to, said Vanadium-Alloys Steel Co., or to any stockholder, officer, director, employee, or agent of, or to any one otherwise directly or indirectly connected with or under the control of any corporation affiliated with or subsidiary to, said Vanadium-Alloys Steel Co.

And it is hereby further ordered, That respondent Vanadium-Alloys Steel Co., shall within six months from the day of the date of the service upon it of this order, file with this Commission a report in writing setting forth in detail the manner and form in which it has conformed to this order.

IN THE MATTER OF
CECIL B. BOND, TRADING AS WORLD WOOLEN COM-
PANY, INTERNATIONAL WOOLEN COMPANY, DUPLEX
CLOTHES, C. B. BOND, AND C. BOND

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

Docket 2100. Complaint, Apr. 17, 1933—Order, Feb. 5, 1934

Consent order requiring respondent to cease and desist representing to purchasers or prospective purchasers, directly or indirectly in connection with the offer or sale of clothes in interstate commerce, that (1) such clothes have been, are, or will be (a) tailor made in accordance with the measurements of the individual ordering them, unless such is the fact; or (b) made from or out of cloth selected by purchasers from samples submitted to them by respondent or his salesmen or his solicitors, unless such is the fact; or (2) that a store is about to be or will be opened by respondent in the locality or localities in which any purchasers reside at which store or stores clothes purchased from respondent can and will be fitted or altered, unless such is the fact.

Mr. James M. Brinson for the Commission.

COMPLAINT

Acting in the public interest pursuant to the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that Cecil B. Bond, trading as World Woolen Company, International Woolen Company, Duplex Clothes, C. B. Bond, and C. Bond, has been and is using unfair methods of competition in interstate commerce in violation of the provisions of Section 5 of said Act, and states its charges in that respect as follows:

PARAGRAPH 1. Respondent Cecil B. Bond has been and is an individual residing and having his office and principal place of business in the City and State of New York. He has been for several years last past, and now is, engaged in the sale and distribution of men's clothes in commerce among and between the various States of the United States, under the name of "World Woolen Company", "International Woolen Company", "Duplex Clothes", "C. B. Bond", and "C. Bond." He has caused and causes such clothes, when sold by him by, through, or under any of such trade names, to be transported from his place of business in the City and State of New York to purchasers located in the various other States of