

Syllabus

IN THE MATTER OF

FRANK L. O'BRIEN AND CLARENCE J. O'BRIEN,
TRADING AS THE O'BRIEN MACHINERY COMPANY¹COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 4805. Complaint, Feb. 19, 1944²—Decision, Sept. 25, 1944*

Where two partners engaged in the city concerned in the interstate purchase and sale of new and used machinery, including pipe- and nipple-threading machines, along with C. and R., similarly engaged therein; and in competition with others, except insofar as said competition had been restricted or forestalled by the agreement, conspiracy, or acts, etc. below set forth;

Following arrangements by the Navy with a ship-building company under which said company was to undertake construction of naval vessels, and in which connection the Navy agreed to and did arrange for the advancement of funds for the purchase of materials for such construction and for the rehabilitation of the company's shipyards, including office buildings and shipways, to be expended under its general supervision and subject to approval of its officials, and the company, in securing materials and services, agreed to obtain competitive offers from not less than two—or three where specified—reputable firms and to award the contract to the firm quoting the minimum price; the bids to be opened by the Navy Supervisor of Ships or his representative, and to be subject to his approval before award of the contract—

Cooperated, combined, agreed and conspired together and with others, during a period of some fifteen months or more, to, and did, restrain and suppress competition in the purchase and sale of machinery, including pipe- and nipple-threading machines in commerce; and pursuant to and as a part of said understanding, etc.—

- (a) Promoted, established and carried out a practice of maintaining a false appearance of competition between themselves, C., R., and other sellers of such machinery in their submission of price quotations and bids to buyers and prospective buyers;
- (b) Conveyed to such buyers, including official awarding authorities of the United States Government, and others involved in the purchase of such machinery, representations that they, and said C. and R. were rival bidders and competitors, when in reality they were acting collusively between and among themselves;

¹ The instant case is one of a group of eight having to do with the preparation and submission of sham, false, fictitious, fraudulent and non-competitive bids in connection with the Navy's arrangement for the construction of ships by the Cramp Shipbuilding Co. at its shipyards in Philadelphia. For list of these cases, see footnote to the case of the Grater-Bodey Co., et al., Docket 4799, p. 113.

² Amended complaint. The Commission by order of Mar. 20, 1944 dismissed the original complaint as to certain respondents, not joined by the amended complaint, as follows:

This matter coming on to be heard by the Commission upon the record, and as is shown by the amended complaint herein, the Commission for sufficient cause did not name as respondents therein, William J. Cattie, W. B. Rapp, Charles F. Rohleder, Allen McLaine Ward and J. R. Baldridge, Jr., and the Commission having duly considered the matter, and being now fully advised in the premises.

It is ordered, That the complaint herein be, and the same hereby is, dismissed as to respondents, William J. Cattie, an individual, operating under the name of Cattie Tool Company; W. B. Rapp; Charles F. Rohleder; Allen McLaine Ward, individually, and as an agent of Charles F. Rohleder; and J. R. Baldridge, Jr., individually, and as an agent of Charles F. Rohleder.

- (c) Avoided and prevented competition in the purchase and sale of machinery and prevented consideration of genuinely competitive bids or price quotations by purchasers; and

Where said ship-building company on numerous occasions, acting directly and through its agents, including a certain two—

- (d) Cooperated with said partners in the preparation and submission to it and its agents, including the aforesaid two, of sham bids and price quotations for the furnishing of such machinery, and submitted such bids in turn to purchasing officials of said ship-building company and representatives of the Navy Supervisor of Ships, as genuinely competitive bids and price quotations; and

Where said partners, on numerous occasions, in cooperation with said ship-building company and its employees and agents, including the aforesaid two—

- (e) Secured from said C. and R. sham bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names, in which higher prices were quoted than those they specified in each comparable case for the furnishing thereof, and proceeded on each occasion to submit the same along with their own, to said ship-building company and its employees and agents, including one of the aforesaid two; and

Where said ship-building company, and its employees and agents, as aforesaid—

- (f) In turn submitted such sham bids to officials of said ship-building company and to representatives of the Navy Supervisor of Ships, who were thereby misled and deceived into considering and approving them as genuine and competitive; and—

Where said partners, and said C. and R.—

- (g) Participated in the preparation and submission of the aforesaid sham and non-competitive bids, with the intent and result of deceiving and misleading officials of said ship-building company and representatives of the Navy Supervisor of Ships into believing, considering and approving them as genuine and competitive bids for the furnishing of such machinery to said ship-building company;

With the result that said partners profited by securing awards of contracts for machinery from said ship-building company, and with effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between said partners, C., R., and others, with whom they normally would be in competition in making bids and price quotations, and with tendency so to do:

Held, That such acts, practices and combination of said partners, as above set forth, were all to the prejudice of the public; had a dangerous tendency to, and did, actually restrain and eliminate competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce; had the capacity and tendency to and did restrain unreasonably such commerce in said products; had a dangerous tendency to create in said partners a monopoly in the purchase, sale and distribution of said products; and constituted unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Mr. Everett MacIntyre and *Mr. V. W. Summers* for the Commission.

Mr. Raymond A. White, Jr., of Philadelphia, Pa., for *W. B. Rapp*, *Frank L. O'Brien, Jr.* and *Thomas J. O'Brien*, and along with *Mr. Arthur G. Lambert*, of Washington, D. C., for *Frank L. O'Brien* and *Clarence J. O'Brien*.

Mr. James F. Masterson, of Philadelphia, Pa., for *Charles F. Rohleder*, *Allen McLaine Ward* and *J. R. Baldrige, Jr.*

AMENDED COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said act, the Federal Trade Commission, having reason to believe that the persons and partnership named or included by reference in the caption hereof, and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its amended complaint against each of the said parties, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, The O'Brien Machinery Co., with principal place of business located at 113 North Third Street, Philadelphia, Pa., operated as a partnership under the ownership and direction of respondent, Frank L. O'Brien, and respondent, Clarence J. O'Brien, trading as The O'Brien Machinery Co., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942. The said partners are sometimes hereinafter referred to as respondent, The O'Brien Machinery Co. Throughout the said period of time they were engaged in the business of buying and selling new and used machinery, including pipe and nipple threading machines, and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

William J. Cattie, an individual, with principal place of business located at 100 North Third Street, Philadelphia, Pa., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, operated under the name of Cattie Tool Co. and was engaged in the business of buying and selling new and used machinery, including pipe and nipple threading machines, and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

W. B. Rapp, an individual, with principal place of business located at 132 North Third Street, Philadelphia, Pa., throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, was engaged in the purchase and sale of new and used machinery, including pipe and nipple threading machines and in the course of such business shipped and caused to be shipped such machinery from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

PAR. 2. On numerous occasions during the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, Cramp Shipbuilding Co., whose shipyards are located at Richmond and Norris Streets, Philadelphia, Pa., directly and through its agents, including one George Ward and one William C. Darragh, negotiated with and brought from respondent, The O'Brien Machinery Co., and others in competition with that concern machinery, including pipe and nipple threading machines, which were shipped or caused to be shipped from points located in States other than the State of Pennsylvania by respondent, The O'Brien Machinery Co., and others in competition with

that concern, to the said Cramp Shipbuilding Co., and its agents in Philadelphia, Pa.

PAR. 3. The O'Brien Machinery Co. is engaged in competition with others in the purchase and sale of machinery, including pipe and nipple threading machines in "commerce" (as "commerce" is defined in the Federal Trade Commission Act) between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted or forestalled by the understanding, combination, agreement or conspiracy, or the acts, things, practices, policies or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 4. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with the aforesaid Cramp Shipbuilding Co. for the latter to undertake the construction of naval vessels and in that connection agreed to and did arrange for the advancement of funds for the purchase of materials in the construction of naval vessels and in the rehabilitation of the facilities of the Cramp Shipbuilding Co.'s shipyard located at Richmond and Norris Streets, Philadelphia, Pa., including office buildings and shipways, with the understanding that the expenditure of said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including respondent, The O'Brien Machinery Co., for the furnishing of materials and other facilities for the construction of naval vessels and the said office building and shipways. Its undertaking involved an understanding with officials of the United States Navy Department that in securing materials and services it would obtain competitive offers from as many as practicable but not less than two (not less than three, where specified) reputable firms in a position to provide the materials, equipment or services as required at a reasonable cost, and to award contract to that firm quoting the minimum price, and with the further understanding that the said offers, proposals or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment or services.

In connection with the aforesaid contracts, Cramp Shipbuilding Co. negotiated with, and made awards of contracts for the purchase of machinery, including pipe and nipple threading machines, from respondent, The O'Brien Machinery Co.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, respondents have through understanding together and with others cooperated, confederated, combined, agreed and conspired to frustrate, hinder, restrain and suppress competition in the purchase and sale of machinery, including pipe and nipple threading machines, in "commerce" (as "commerce" is defined in the Federal Trade Commission Act, in which sense it is hereinafter used) and have in fact through such understanding, cooperation, confederation, combination, agreement and conspiracy frustrated, hindered, restrained and suppressed competition in the purchase and sale of machinery, including pipe and nipple threading machines.

Complaint

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement and conspiracy the aforesaid respondents have done and performed and used, among other acts, things, practices, policies and methods, the following:

1. Promoted, established, carried out and continued a practice of maintaining a false appearance of competition between and among respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, and other sellers of machinery, including pipe and nipple threading machines, in their submission of price quotations and bids to buyers and prospective buyers;

2. Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of machinery, including pipe and nipple threading machines, representations that said respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, were rival bidders and competitors when they in reality were acting collusively between and among themselves in preparing and submitting bids;

3. Avoided and prevented competition in the purchase and sale of machinery;

4. Prevented consideration of genuinely competitive bids or price quotations by purchasers;

5. On numerous occasions, the exact numbers and dates of which are unknown to the Commission, Cramp Shipbuilding Co., acting directly and through its agents, including one George Ward and one William C. Darragh, cooperated with respondents, Frank L. O'Brien and Clarence J. O'Brien, in the preparation and submission to said Cramp Shipbuilding Co., its agents and employees, including one George Ward and one William C. Darragh, sham, false, fictitious, fraudulent and non-competitive bids and price quotations for the furnishing of machinery, including pipe and nipple threading machines, for use in the Cramp Shipbuilding yards, Richmond and Norris Streets, Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent and non-competitive bids and price quotations in turn to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations;

6. On numerous occasions, the exact number and dates of which are unknown to the Commission, respondents, Frank L. O'Brien and Clarence J. O'Brien, acting as individuals, and in their capacities as partners in The O'Brien Machinery Co., in cooperation with Cramp Shipbuilding Co., its employees and agents, including one George Ward, secured from William J. Cattie (Cattie Tool Co.) and W. B. Rapp, sham, false, fictitious, fraudulent and non-competitive bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names in which different, higher and non-competitive bids or price quotations were included than it specified on each comparable occasion in a bid for the furnishing of said machinery, on the stationery bearing the letterhead and over the name of The O'Brien Machinery Co., and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent and non-competitive bids of Cattie Tool Company and W. B. Rapp along with the bid of The O'Brien Machinery Co., prepared as aforesaid, to Cramp Shipbuilding Co. and its agents and employees, including one George Ward. Thereupon, in each of the said number of instances where said re-

spondents, Frank L. O'Brien and Clarence J. O'Brien, thus submitted said sham, false, fictitious, fraudulent and non-competitive bids to Cramp Shipbuilding Co., its employees and agents, including one George Ward, such bids were in turn submitted by said Cramp Shipbuilding Co., its employees and agents, as and for genuine and competitive bids for the furnishing of said machinery, to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships of the U. S. Navy who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive;

7. Respondents, Frank L. O'Brien and Clarence J. O'Brien, and William J. Cattie and W. B. Rapp, participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent and non-competitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy, into believing, considering and approving the aforesaid sham, false, fictitious, fraudulent and non-competitive bids and price quotations as independent, truthful, genuine and competitive bids for the furnishing of said machinery to Cramp Shipbuilding Co.;

8. As a result of the aforesaid bidding practice, respondent, The O'Brien Machinery Co. profited by securing awards of contracts for machinery from Cramp Shipbuilding Co.

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have and have had the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and sub-contractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondent, The O'Brien Machinery Co., Cattie Tool Co. and W. B. Rapp, and others with whom they normally would be in competition in making bids and price quotations.

PAR. 7. The acts, practices, methods, agreements and combination of the respondents, as hereinbefore alleged, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained and eliminated competition in the purchase and sale of machinery, including pipe and nipple threading machines, in commerce within the intent and meaning of the Federal Trade Commission Act; and the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce, within the intent and meaning of Section 5 of the Federal Trade Commission Act.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of the Federal Trade Commission Act, the Federal Trade Commission on February 19, 1944, issued and subsequently served its amended complaint in this proceeding upon the respondents named in the caption hereof, charging them with the use of unfair methods

of competition and unfair and deceptive acts and practices in commerce in violation of the provisions of Section 5 of said act. After the issuance of said amended complaint respondents filed their answer thereto, admitting all of the material allegations of fact set forth in said complaint and waiving all intervening procedure and further hearing as to the facts. Thereafter, this proceeding regularly came on for final hearing before the Commission on the said amended complaint and admission answers; and the Commission having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom.

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondents, Frank L. O'Brien and Clarence J. O'Brien, were, from about October 1, 1940, until after January 1, 1942, copartners, trading as The O'Brien Machinery Co., with their principal place of business located at 113 North Third Street, Philadelphia, Pa. During said period of time respondents were engaged in the purchase and sale of new and used machinery, including pipe- and nipple-threading machines, which they shipped or caused to be shipped from locations in other States into the State of Pennsylvania. Respondents are sometimes referred to hereinafter as The O'Brien Machinery Co. On or about February 1, 1943, the partnership between respondents was dissolved and respondent, Charles J. O'Brien, is not now a partner in the aforesaid business.

William J. Cattie, is an individual, with his principal place of business located at 100 North Third Street, Philadelphia, Pa. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, he operated under the name of Cattie Tool Co. and was engaged in the business of buying and selling new and used machinery, including pipe- and nipple-threading machines, and in the course of such business shipped such machinery and caused it to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

W. B. Rapp, is an individual, with his principal place of business located at 132 North Third Street, Philadelphia, Pa. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, he was engaged in the purchase and sale of new and used machinery, including pipe- and nipple-threading machines, and in the course of such business shipped such machinery and caused it to be shipped from locations in States other than the State of Pennsylvania to Philadelphia, Pa.

PAR. 2. The O'Brien Machinery Co. was engaged in competition with others in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce as "commerce" is defined in the Federal Trade Commission Act, between and among the various States of the United States, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, combination, agreement, or conspiracy, or the acts, things, practices, policies, or methods done or carried on in pursuance thereto or in furtherance thereof, as hereinafter set forth.

PAR. 3. During 1940, as a part of its work in the defense program of the United States of America, the United States Navy Department arranged with the Cramp Shipbuilding Co. for the latter to undertake the construction of naval vessels, and in that connection agreed to, and did arrange for, the advancement of funds for the purchase of materials for use in the construction of naval vessels and in the rehabilitation of the facilities of the Cramp Shipbuilding Co.'s shipyard located at Richmond and Norris Streets, Philadelphia, Pa., including office buildings and shipways, with the understanding that the expenditure of said funds for such work would be under the general supervision and subject to the approval of officials of the United States Navy Department. Thereupon, the said Cramp Shipbuilding Co. undertook to contract with various parties, including The O'Brien Machinery Co., for the furnishing of materials and other facilities for the construction of naval vessels and the said office buildings and shipways. Its undertaking involved an understanding with officials of the United States Navy Department that in securing materials and services it would obtain competitive offers from as many as practicable but not less than two (not less than three where specified) reputable firms in a position to provide the materials, equipment, or services as required, at a reasonable cost, and to award contract to the firm quoting the minimum price, and with the further understanding that the said offers, proposals, or bids were to be opened by, or in the presence of, the Supervisor of Ships, U. S. Navy, or his representative, and subject to his approval before award of the said contract for materials, equipment, or services.

In connection with the aforesaid contracts, Cramp Shipbuilding Co. negotiated with and made awards of contracts for the purchase of machinery, including pipe- and nipple-threading machines, from The O'Brien Machinery Co.

PAR. 4. On numerous occasions during the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, Cramp Shipbuilding Co., directly and through its agents, including one George Ward and one William C. Darragh, negotiated with and bought from The O'Brien Machinery Co., and others in competition with that concern, machinery, including pipe- and nipple-threading machines, which were shipped or caused to be shipped by The O'Brien Machinery Co. and others in competition with that concern from points located in States other than the State of Pennsylvania to the said Cramp Shipbuilding Co. and its agents in Philadelphia, Pa.

PAR. 5. Throughout the period of time beginning on or about October 1, 1940, and continuing thereafter until subsequent to January 1, 1942, respondents have, through understanding together and with others, cooperated, confederated, combined, agreed, and conspired to frustrate, hinder, restrain, and suppress competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce, as "commerce" is defined in the Federal Trade Commission Act, in which sense that term is hereinafter used, and have in fact, through such understanding, cooperation, confederation, combination, agreement, and conspiracy, frustrated, hindered, restrained, and suppressed competition in the purchase and sale of machinery, including pipe- and nipple-threading machines.

Pursuant to, in furtherance of, and as a part of the aforesaid understanding, cooperation, confederation, combination, agreement, and conspiracy, the aforesaid respondents have done and performed and used, among other acts, things, practices, policies, and methods, the following:

(a) Promoted, established, carried out, and continued a practice of maintaining a false appearance of competition between and among The O'Brien Machinery Co., Cattie Tool Co., W. B. Rapp, and other sellers of machinery, including pipe- and nipple-threading machines, in their submission of price quotations and bids to buyers and prospective buyers;

(b) Conveyed to buyers and prospective buyers, including official awarding authorities of the United States Government, and others involved in the purchase of machinery, including pipe- and nipple-threading machines, representations that said The O'Brien Machinery Co., Cattie Tool Co., and W. B. Rapp were rival bidders and competitors, when in reality they were acting collusively between and among themselves in preparing and submitting bids;

(c) Avoided and prevented competition in the purchase and sale of machinery;

(d) Prevented consideration of genuinely competitive bids or price quotations by purchasers;

(e) On numerous occasions Cramp Shipbuilding Co., acting directly and through its agents, including George Ward and William C. Darragh, cooperated with respondents, Frank L. O'Brien and Clarence J. O'Brien, in the preparation and submission to said Cramp Shipbuilding Co., its agents and employees, including George Ward and William C. Darragh, sham, false, fictitious, fraudulent, and non-competitive bids and price quotations for the furnishing of machinery, including pipe- and nipple-threading machines, for use in the Cramp Shipbuilding yard in Philadelphia, Pa., and submitted such sham, false, fictitious, fraudulent, and non-competitive bids and price quotations, in turn, to purchasing officials of the Cramp Shipbuilding Co. and representatives of the Supervisor of Ships, U. S. Navy Department, for consideration and approval as genuinely competitive bids and price quotations;

(f) On numerous occasions, respondents, Frank L. O'Brien and Clarence J. O'Brien, acting as individuals, and in their capacities as partners in The O'Brien Machinery Co., in cooperation with Cramp Shipbuilding Co., its employees and agents, including George Ward, secured from William J. Cattie (Cattie Tool Co.) and W. B. Rapp, sham, false, fictitious, fraudulent, and non-competitive bids for the furnishing of said machinery, on stationery bearing their respective letterheads and over their respective names, in which different, higher, and non-competitive bids or price quotations were included than respondents specified on each comparable occasion in a bid in the name of The O'Brien Machinery Co. for the furnishing of said machinery, and then proceeded on each such occasion to submit such sham, false, fictitious, fraudulent, and non-competitive bids of Cattie Tool Co. and W. B. Rapp along with the bid of The O'Brien Machinery Co., prepared as aforesaid, to Cramp Shipbuilding Co. and its agents and employees, including George Ward. Thereupon, in each of the instances where said respondents, Frank L. O'Brien and Clarence J. O'Brien, thus submitted sham, false, fictitious, fraudulent, and non-competitive bids to Cramp Shipbuilding Co., its employees and agents, including George

Ward, such bids were in turn submitted by said Cramp Shipbuilding Co., its employees and agents, as and for genuine and competitive bids for the furnishing of said machinery to officials of Cramp Shipbuilding Co. and to representatives of the Supervisor of Ships of the U. S. Navy, who were, through the appearance of such bids, misled and deceived into considering and approving them as genuine and competitive;

(g) Respondents, Frank L. O'Brien and Clarence J. O'Brien, and William J. Cattie and W. B. Rapp participated in the preparation and submission of the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids or price quotations for the purpose and with the result of deceiving and misleading officials of Cramp Shipbuilding Co. and representative of the Supervisor of Ships, U. S. Navy, into believing, considering, and approving the aforesaid sham, false, fictitious, fraudulent, and non-competitive bids and price quotations as independent, truthful, genuine, and competitive bids for the furnishing of said machinery to Cramp Shipbuilding Co.;

(h) As a result of the aforesaid bidding practice, respondent, The O'Brien Machinery Co., profited by securing awards of contracts for machinery from Cramp Shipbuilding Co.;

PAR. 6. The doing and performing of the acts and things and the use of methods set forth in the preceding paragraphs hereof tend to have, and have had, the effect of depriving buyers and prospective buyers of supplies and equipment, including contractors and subcontractors with the United States Government, and the public in general, of the benefit of competition in commerce between and among respondent, The O'Brien Machinery Co., Cattie Tool Co., and W. B. Rapp, and others with whom they normally would be in competition in making bids and price quotations.

CONCLUSION

The acts, practices, methods, agreements, and combination of the respondents, as hereinbefore set forth, are all to the prejudice of the public, have a dangerous tendency to and have actually frustrated, hindered, suppressed, lessened, restrained, and eliminated competition in the purchase and sale of machinery, including pipe- and nipple-threading machines, in commerce within the intent and meaning of the Federal Trade Commission Act; and have the capacity and tendency to restrain unreasonably, and have restrained unreasonably, such commerce in said products; have a dangerous tendency to create in respondents a monopoly in the purchase, sale, and distribution of such products, and constitute unfair methods of competition and unfair and deceptive acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the amended complaint of the Commission and the answer of the respondents, in which answer respondents admit all of the material allega-

tions of fact set forth in said amended complaint and waive all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that the said respondents have violated the provisions of Section 5 of the Federal Trade Commission Act.

It is ordered, That respondents, Frank L. O'Brien, an individual, and Clarence J. O'Brien, an individual, their respective representatives, agents, and employees, in connection with the offering for sale, sale, and distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act, of machinery, including pipe- and nipple-threading machines, do forthwith cease and desist from entering into, continuing, cooperating in, or carrying out any planned common course of action, understanding, agreement, combination, or conspiracy between themselves or with any other person, partnership, or corporation not a party hereto, to do or perform any of the following acts, things, or practices:

1. Conveying or assisting in conveying to buyers or prospective buyers, or to any official or awarding authority of any Federal agency, or to any one contracting with such agency, or to any one acting for or on behalf of any contractor with such agency, any representation that any two or more apparent sellers are rival bidders or competitors, when in reality they are acting collusively in preparing and submitting bids.

2. Aiding, assisting, or cooperating in any manner in the submission of any sham, fictitious, fraudulent, or non-competitive bids or price quotations to any buyer or prospective buyer, or to any Federal agency or to any one acting for or on its behalf, or for or on behalf of any party purchasing material or equipment in fulfillment of a contract with such agency.

3. Interfering with or assisting in interfering with the procurement or consideration of genuinely competitive bids or price quotations by any Federal agency or any official or awarding authority of such agency, or by any buyer or prospective buyer.

4. Promoting, establishing, carrying out, or continuing any act or practice for the purpose or with the effect of maintaining or presenting a false appearance of competition between or among the respondents or other sellers in the submission of price quotations or bids to buyers of prospective buyers.

5. Arranging or attempting to arrange for the filing of any bid in the name of one ostensibly competing bidder when the prices and terms are in fact determined by some other bidder or when in fact the bid is not a bona fide bid.

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

IN THE MATTER OF
ATLANTIC COMMERCIAL AGENCY, INC. ET AL.

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

Docket 5100. Complaint, Dec. 14, 1943—Decision, Sept. 25, 1944

Where a corporation and two individuals in control thereof, engaged in the interstate collection of accounts for clients and in employing in said connection, to secure needed information, certain form letters, the letterheads of which displayed the trade name "Continental Inheritance Service," and such legends and matter as "examiners for title companies," "actuaries," "correspondents in all principal cities of the world," "missing heirs located," "searchers of records," "genealogists," "estate counselors," and "Inheritance Bureau Division Suite 708, 6th North Michigan Avenue, Chicago, Illinois," and which forms, (1) in case of those to be addressed to the alleged debtor, under caption "Office Use Only" set out words and blanks "Section," "Checked by," "Disbursed by," etc., requested information, as a means of identification in "a matter of distinct importance to you if you are the individual in question," etc., including name and address, and those of spouse, parents, employers, banks, etc.; and (2) in case of forms addressed to other than the alleged debtor, advised addressee, as "relative," "friend," "acquaintance" of former, "We are trying to contact the above person," in a matter which "may be of importance to said person," and "Will you be kind enough to give us any or all the information that may lead us to such contact," followed by request for alleged debtor's last address, names and addresses of employer, relative, bank, or business house, and of any person who might supply information concerning him;

Making use of a plan under which such form letters were placed in envelopes addressed to the person concerning whom information was sought at his last known address, or to those believed to have information concerning him, along with envelopes for their return, addressed to "Inheritance Bureau Division 6 North Michigan Avenue, Suite 708, Chicago, Illinois."—which appeared also as the return address on the outer envelopes—and sent to said Chicago address, at which address of a Secretarial Service they were mailed under arrangement with one "D.B.," who also received replies at said address and forwarded them unopened to the others in New Jersey, and, during a certain period, to their attorney; and, aided in said plan by the essential participation of said "D.B.," and for a time by said attorney—

- (a) Represented directly and by implication to the person to whom said form letters were sent that "Continental Inheritance Service" had correspondents in all principal cities of the world, acted as counsellor to those in charge of estates, was engaged in the business of locating heirs to estates or to interests therein, acted as examiner for title insurance companies, and engaged in genealogical research, actuarial work and searches of records, and that the persons concerning whom information was sought had or might have interests in estates or lands which would be of financial benefit to them;

The facts being that, while said corporation and individuals had access to, and had used various legal and commercial directories, and directories of collection agencies, in connection with their business, which gave the names and addresses of attor-